Jure Maritimo
ET
NAVALI:
OR, A
TREATISE
OF
Affairs Maritime,
AND OF
Commerce.

In THREE BOOKS.
The EIGHTH EDITION, with many valuable Additions.

By CHARLES MOLLOY, late Barrister at Law.

LONDON:
Printed for JOHN WALTHOR, over-against the Royal Exchange in Cornhill.
MDCCXLIV.
TO THE READER.

THE Wisdom of God is highly to be admired, who hath not endowed the other living Creatures with that Sovereign Perfection of Wisdom, but hath secured and provided for them by natural Monuments from Assault and Peril, and other Necessities: But Man he formed naked and frail, because of furnishing him with Wisdom, Understanding, Memory, and Sense, to govern his Actions; endowing him with that pious Affection of desiring Society, whereby one is inclined to defend, love, cherish, and afford mutual Aid to each other: Nor hath he in no less wonderful manner (infinitely transcending all human Wisdom and Understanding) created the material World to be subservient to his Being and Well-being: Yet without human Understanding and Reason did he not build a Ship, raise a Fort, make Bread or Cloth; but these came to pass only by human Arts and Industry, in which by the Revolutions of the Celestial Bodies, Times and Seasons, Materials and other Necessaries are brought forth, by the Alteration of which Men in their proper Seasons reap the Fruits of their Labour; so that there is no Society, Nation, Country or Kingdom, but stands in need of another. Hence it is, that Men knowing each others Necessaries, are invited to Traffick and Commerce in the different Parts and Immensities of this vast World to supply each others Necessities, and adorn the Conveniencies of human Life.

And
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And as God hath so ordered this wonderful Dependence of his Creatures on each other, so hath he by a Law immutable provided a Rule for Men in all their Actions, obliging each other to the Performance of that which is right, not only to Justice, but likewise to all other Moral Virtues; the which is no more but the Distinct of right Reason founded in the Soul of Man, shewing the Necessity to be in some Act by its Convenience and Disconvenience in the rational Nature in Man, and consequently that it is either forbidden or commanded by the Author of Nature, who is the Eternal Creator of all Things. And as God hath imprinted this universal Law in the Minds of all Men, so hath he given Men Power (Society being admitted) to establish other Laws, which proceed from the Will, the which is drawn from the Civil Power, that is, from him or them that rule the Commonwealth, or Society of Freemen united for their common Benefit, (which is called the Laws of Nations) and which by the Will of all or many Nations, hath received Force to oblige, and is proved by a continued Use and Testimony of authentick Memorials of learned or skilful Men.

Now by the Laws of Nature every Man is bound to profit another in what he can, nor is the same only lawful but commendable; so true was that saying, Nothing is more serviceable to Man than Man: But if Man shall neglect this immutable Law in the aiding and assisting his Fellow Citizen, and inquire and dispute why God hath laid this Necessity upon him; and when Opportunity gives leave to take the Benefit of Wind or Tide (in order to his furnishing himself or Neighbour with those things that adorn human Life) to dispute the Causes of their Flux and Reflux, and how they vary and change; he not only offends the Laws of Nature, but assumes a Power of destroying Society, and consequently becomes (at the least) a wilful Transgressor of the Laws of Nations.

And
To the Reader.

And though the Eternal Power hath so established this Necessity in Mankind, that every Man should stand in need of another Man, yet so great a Providence is over industrious Men, that scarce any Man not disabled by Nature or Accident, Sickness, Impotency, and the like, but by his Industry and Pains may earn more than would supply his necessities; and so much as any Man gets by being truly industrious above what supplies his necessities, is so much beneficial to himself and Family, as also an enriching to that Kingdom or State where he resides: From whence it is, that all Mankind (present or to come) are either Traders by themselves or others; and the Ends designed by Trade and Commerce, are Strength, Wealth and Employment for all sorts of People, (where the same doth most flourish) the End tending to the advancement, Opulence and Greatness of such a Kingdom or State.

Constantinople (the Throne once of Christendom) having been sacked by Mahomet the Second, became a Place of Desolation as well as Horror, yet he by granting a free Trade and Religion, soon after repeopled that great (but unhappy) Spot. Nor did Silemus tread amiss in following the Steps of his victorious Predecessor, when having the like Success on Tauris and Grand Cairo, he translated the Persian and Egyptian Artificers and Traders to that repeopled City, following the Example of the Roman Virtues. Nor did our victorious Third Edward deem it an Act unbecoming his great Wisdom, when he brought in the Walloons, whose Industry soon established the Woollen Manufacture, he vouchsafing to give no less a Security for the enjoying their then granted Immunities and Privileges, than his own Royal Person. Nor did that politic Princess shut her Ears from embracing the Offer of those distressed Burgundians (after the Example of her Great and Royal Predecessor) who sought Refuge in her Dominions from the rigid Se-
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Verity of the long-bearded Akva, who planting themselves by her Appointment at Norwich, Colchester, Canterbury, and other Towns, have of those Places (then only Habitations for Beggars) raised them now in Competition with (if not excelling) all, or most of the Cities in England, for Riches, Plenty, and Trade. Nor need we run into the History of earlier Times to give an Account of the many Kingdoms and States that have risen by Industry and Commerce; 'tis enough if we cast our Eyes on our Neighbour the Hollander, a Place by relation of Ortelius, not much bigger than Yorkshire, and such a Spot, as if God had reserved it as a Place only to dig Turf out of, for the accommodating those Countries wherein he hoards up the Miseries of Winter, it affording naturally not any one Commodity of use; yet by Commerce and Trade (the Daughters of Industry) it is now become the Store-house of all those Merchandizes that may be collected from the rising to the setting of the Sun, and gives those People a Name as large and high as the greatest Monarch this Day on Earth: Nor need we pass out of Christendom to find Examples of the like, when Venice, Genoua, Lubeck, Embden, and the rest of the Hanshatick Towns, once the Marts of the World, till Sloth, Luxury, and Ambition, got within their Walls, and drove it to Ports of Industry, that have since kiss'd and embraced it, the which this Isle, by the Influence of his Royal Majesty, hath been no small Sharer in.

Hence it is, that Trade and Commerce are now become the only Object and Care of all Princes and Potentates, its Dominion not being acquired by the rufeful Face of War, whose Footsteps leave behind them the deep Impression of Misery, Devastation and Poverty, they knowing the Return of Commerce is Riches, and Plenty of all things conducing to the Benefit of human Life, and fortifying their Countries with Reputation and Strength.
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It was Trade that gave occasion to the bringing of those mighty Fleets to Sea, as if God had left it to them to decide by force, (wherein no Age or Time can witness the like) the Empire of the World: Hence it was, (the Advantages being found which arise by Commerce) that Navigation got its Birth into the World, reducing the several Nations on the Earth by that means to be even as one common Family; and when in this Ille we were even in the State of Canibals, it brought in a People that instructed us in Arts, Policies and Manners, and taught us Actions no less virtuous than those themselves followed: And altho' long and difficult it was before that mighty People could be brought over to have Thoughts of the Advantages arising from Commerce and Navigation (they only propounding to themselves Blood, Slaughter, Conquest, the Riches and Spoils of Nations;) yet when they entered into the Carthaginian War, a Quarrel with a People not worth the Opposition of a Tribune (as they thought) finding that neither Tribune nor Confid, no nor the Flower of the Roman Army was able to withstand them, or to prevent the Invasion of their Country, and they in the very Bowels of the same, put it to the Question, Rome or Carthage Mistress of the World; they began to consider whence and from what Causes those unknown Africans should withstand the Conscrip: Fathers and Power of Rome, and should dare to dispute with those that had led so many captivated Kings in Triumph, and brought so many haughty Nations to truckle under their victorious Eagles; at last they found it was Commerce and Navigation that gave Power and Force to that mighty People: Then it was that Rome began to know that Rome could not be Rome without a naval Force; the which and to redeem their bleeding Honour, they soon hastened and equipt, great as their Competitors; afterwards Argentum being won, Carthage became no more impregnable; after which with Peace they plowed
plowed the neighbouring Streights to Tinges, Gades and the Herculean Streights; nor could anything be too difficult afterwards, till they arrived on the British Shore, where beholding her ample Bays, Harbours, Rivers, Shores, and Stations, (the Jewels and Ornaments of that Spot, and having made a Conquest of the same) they soon cultivated into our rude Nature: the Spirit of Commerce, teaching and instructing us in those polite Ways that fortify a Kingdom by Naval Force, as the Standard and undeniable Marks of Empire, and by aiding and teaching us in the driving on a continued and peaceable Tract of Commerce, we have fathomed the unknown Depth of the Indian Shores, uniting, as it were, Extremes, made the Poles to kiss each other, teaching us thereby, that it was not the vast Immensities of Earth that created Empire, but Situation accompanied with Industry, Commerce and Navigation, that would enable a People to give Laws to the World: In the Pursuit of whose Virtues, this Nation hath not been wanting, and of following their great Directions in the enlarging our Fleet; for they, when they advanced their Eagles on the British Shore, found us not then without Ships of Force, time having not been so envious to this Island, as to eat out those Records wherein mention is made, that the Britains accompanied the Cymbrians and Gauls in their memorable Expedition to Greece, long before the Incarnation of the World’s Saviour; and it was from that Center that the mighty Caesar first drew his Line, and took Thoughts of plowing the Ocean to find out that warlike People to face his victorious Legions; when having landed, and finding a Place adorned by Nature beyond any thing that could be called great, taught us to maintain the Superiority of Dominion, that no neighbouring Nation should frequent our peaceable Shores, and those Merchants that came were assigned Places to drive their Commerce and Traffick, jealous that any neighbouring Rival
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Rival should kiss his beloved Britannia but a Roman, and for whom he fetched so long and tedious a March; thus in our Infancy, teaching us both Defence and Commerce. And when that mighty Empire began to decline, and those remaining Romans began to moulter and mix among the Natives, and to become as one People again, then Sloth, Luxury, and Idleness (the Forerunners of Ruin) invaded our Shores by a fatal Stupidity, which suffered our floating Castles (Bulwarks of the Kingdom) to rot in their neglected Brine, and our Ports to be surveyed by Foreign People; which supine Negligence soon subjected us a Prey to our ambitious Neighbours, who no sooner finished their Conquests, and sheathed their devouring Swords, but each (as if inspired by the very Genius of the Place) equip’d out Fleets great as their Competitors, to secure what they had so dearly won, of whom Story makes mention of the mighty Arthur, no less famous in his warlike Achievements, than in leading his Squadrons as far as Iceland, bringing those Northern People to pay Obedience to his victorious Standard, and acknowledge him as their supreme Lord, even from the Britifh to the Russian Tracts, and by him left to famous Edgar, who no sooner found his undoubted Right, but resolved to vindicate that Dominion which his Royal Predecessor had with so much Glory acquired, and with so great Care communicat’d and remitt’d down to his Successor: With no less a Number than four hundred Sail of Ships did that mighty Prince at once cover the neighbouring Ocean, making them the Portculis of this Isle and the adjacent Seas, by which he vindicated his Dominions on the Waters, and gave Laws in the Chambers of his Empire: Nor did his Successors Canutus (whom Record makes mention, that having laid that ancient Tribute, called Danegeld, for the guarding of the Seas, and Sovereignty of them, was emblematically expressed, fitting on the Shore
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Shore in his Royal Chair, while the Sea was flowing, speaking, Tu meae divisionis es, & terra in qua sedeo eff, &c.) Egbert, Altbred, Ethelfred, forget the Assertion of their great Predecessors Dominion and Sovereignty of the same, under no lower a Style, than Supreme Lords and Governors of the Ocean surrounding the British Shore, never so much as contested by any Nation whatsoever, unless by those that attempted the Conquest of the entire Empire, in which that became subject to Fate as well as the other of the Land: Nor did the succeeding Princes also of the Norman Race start or wave that mighty Advantage in their successive Claims, and maintaining their Right to the adjacent Sea; as appeared not long after, by that famous Accord, made between Edward the First, and the French King Philip the Fair, calling him to an Account for Piracies committed within the British Seas; the Submission of the Flemings in open Parliament in the Second Edward's Reign; and the Honour or Duty of the Flag, which the politic King John had above four hundred Years since challenged by that memorable Ordinance at Hastings, there decreed to take place universally, not barely as a Civility, but as a Right, to be paid cum debita reverentia, and Persons refusing to be assaulted and taken as Enemies, the same not only to be paid to whole Fleets bearing the Royal Standard, but to those Ships of Privilege that wear the Prince's Ensigns or Colours of Service: Nor was this barely a Decree written, but nobly affected by a Fleet of no less than 500 Sail in a Voyage Royal of his, wherein he sailed for Ireland, in his way commanding all Vessels which he met in the eight circumfluent Seas to pay that Duty and Acknowledgment. Nor was the Third Edward flow in following the Steps of his wise Predecessors, when he equip'd out a Fleet of no less than 700 (though on another Occasion with 200 of which he vanquished a Fleet of twice the Number before Calais,
Calais, to the Loss of 30,000 French. Nor did our victorious Conqueror of the Sepulchre, the Great Richard, in his Return from the Holy Land, want a Navy Royal to attend him home, by the Force of which he took and destroyed near 100 more Ships of the French. And look we but into the mighty Actions of the succeeding Princes, we shall find that all that ever designed Empire were zealous in the Encouragement of Navigation, looking on that Axiom as undeniable, Qui Mare tenet, eum necesse esse rerum potiri, and that without which the British Sovereignty is but an empty Title.

Nor ought alone the Praises of those great Monarchs, whose mighty Care had always been to preserve the Reputation of their Empire in their Maritime Preparations, to be remembered, but also those of our Inhabitants, who always have been as industrious to follow the Encouragement of those Princes under whom they flourished, and who with no less Glory and timely Application in Traffick, did constantly follow the Examples of those of Genoa, Portugal, Spaniards, Castilians, and Venetians, whose Fame in Matters of Commerce ought to be enrolled in Letters of Gold, since the Ages to come, as well as present, having been doubly obliged to their Memory, the third of which making use of a discontented Native of this Isle, the famous Columbus, who, prompted by that Genius that naturally follows a native wise Man, discovered a new World, in whose Expedition he fathomed unknown Paths, and detected the Antilles, Cuba, and Jamaica, &c. and the Terra Firma of the American Shore, who taking his Conjectures from the spiring of certain Winds from the Western Points by strong Impulse, accompanied with that Philosophy he attained to, concluded some Continent must needs be hid in those unknown Parts; his Service being first offered to his Prince, and refused, he was soon after entertained, purely on the
Faith of that noble Princess Isabella of Spain, who
for 17,000 Crowns (for which she engaged her
jewels) received not long after, as many Tuns of
Treasure, and to her Husband's own Use, in eight or
nine Years Time came above fifteen hundred thousand
of Silver, and three hundred and sixty Tuns of Gold.
Thus Ingenuity encouraged, though in one single
Person, hath occasioned Wonders, and from a small
Kingdom (as Spain) it hath since raised its Head, in
a Condition of bringing all those many Kingdoms, and
vaft Immenites of Earth which they posses, under
their Protection; putting them once on Thoughts of no
less than an Universal Monarchy. We need only
mention Sebastian Chabot, a Native of Bristol, who dis-
covered Florida, and the Shores of Virginia, dedicated
to that Virgin Princess Elizabeth, Thorn, Elliot,
Owen, Gwyned, Hawkins, Cavendish, Furbisher, Da-
vis, Stadion, Raleigh, and the incomparable Drake,
who was the first (agreed universally) of any mortal
to whom God vouchsafed the stupendous Achiev-
ements of encompassing not this New World alone, but
New and Old together, twice embraced by that
mighty Man, who first making up to Nombre de
Dios, got fight (with Tears of Joy) of the Southern
Seas, the which in five Years after he accomplish-
ed, passing through the Magellan Streights towards
the other Indies, and doubling the famous Promon-
tory, he circumnavigated the whole Earth.

Nor ought that truly worthy Captain Sir John
Narborough be precluded from having Place after the
mighty Drake, he having not long since passed and
repassed the Magellan Streights, by which that wor-
thy Person hath performed that Achievement, which
was never done by any Mortal before. To reckon
up the particular Actions of John Oxenham (a Sharer
in that mighty Performance of Drake) who drawing
his Vessel up to Land, and covering the same with
Boughs, passed the unknown Paths of Land from
Nombre
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Nombre de Dios to the South Sea, and there building
Finance, enters the Isle of Pearls, and from the
Spaniards takes a Treasure almost beyond Credit; of
the undaftigable Diligence of Willoughby, Burroughs,
Chancellor, Biffin, Furbisher, James Middleton, Gil-
bert Cumberland, who plowed up the North-East and
North-West Catbaian and China Passage; of Jones and
Smith, whose Fortuine and Courage was great in those
Parts; of Poole, who found the Whale Fishing; of
Captain Bennet, the first Discoverer of Cherry-land; of
Gillian and of Pett, and Jackman that passed the Vai-
gates, Scythian Ices, and the River of Ob, as far as
Nova Zembla; nor of the famous Davies and Wood,
who had penetrated to 86 Degrees of Latitude, and
almost set their Feet on the Northern Pole, and for
truly valiant the famous Monk, Blake, Lawson, Mines,
Sandwich, Offory, and the never-to-be-forgotten
Spragg, and living his Royal Highness York's vic-
rious Duke, and the brave Rupert, Men whose Cou-
rage and glorious Actions as well in Battles as in the
attieieving of Discoveries, and pointing out to Places
for an immense Improvement in Navigation and
Commerce, ought to be inrolled in the Temple of
Fame as Monuments to succeeding Ages, of their
mighty and laborious Travails and Industry. The
Consideration of all which gives some Sparks of En-
couragement to the writing the ensuing Tract, espe-
cially when reflecting, that among all Nations, there
is a Common Law which governs the mighty Thing
of Navigation and Commerce; I had some Impulses
more than ordinary to induce me to the same, espe-
cially at a time when Navigation and Commerce were
never (from the Erection by Divine Instinct of that
mighty Prototype, the Ark to this present Age) in
greater Esteem than now, and by which we have
found vast and great Easements and Discharges from
those royal and just Rights and Dues which now and
of old were justly due to those that governed this
Empire;
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Empire; therefore ought by all ways and means to be fortified and encouraged, be it by whatsoever Art, Science or Thing that does in the least point out towards the same. Nor was it then wanting in Thoughts to promote and incite the Professors of the Law, raising and stirring up their Genius to the Advancement of the Law in this Point; and though I believe many have wished that such a thing might be, yet none that I can find have ever yet attempted the same: Nor is it possible, unless those things which are by Law constituted and known, be rightly separated from those that are natural; for natural Law is immutably and always the same, therefore may easily be collected into Art: But things that come from Constitution, because they often vary and change, and are divers in divers Places, are put without Art, as other Precepts of Laws positive or municipal; hence it was that the Constitutions and Laws of Rhodos, for their Justice and Equity, got footing amongst the Romans as well as amongst other the bordering People on the Mediterranean, Rhodiorum usq; rerum memoriam discipline Navalis & gloria remanuit; yet when they, as well as the Romans, became subject to Fate, they then remained only as Examples of Justice and Reason for others to imitate and follow: An obsequious Adorer of which was the great Justinian, who caused them to be inserted into the Civil Law; and though they obtained a Place amongst others of the Ancient Romans as well as the Modern, yet have they not all received by Custom such a Force as may make them Laws, but remain only as they have the Authority in Shew of Reason, which binds not always alike, but varies according to Circumstances of Time, Place, State, Age, and what other Conveniences or Inconveniences meet with it; nor have those Laws, instituted at Oleron, obtained any other or greater Force than those of Rhodos or Imperial, considered only from the Reason the which are not become Laws.
To the Reader.

Laws by any particular Custom or Constitution, but only esteemed and valued by the Reasons found in them, and applied to the Case emergent.

'Tis true, that in Rome and some other Parts of Italy and Germany, and the Kingdom of Portugal, in all those Cases wherein the municipal Ordinances of those Countries have failed in providing, the Imperial Laws (if the Case be such as that it non Tragua pectado, or be not spiritual) is there made of force; but there is no other Nation, State or Republic can be named, where any Part of the Body of those Imperial Laws hath obtained the just Force of a Law, otherwise than as Custom hath particularly induced it; and where no such settled Custom hath made it a Law, there it hath Force only according to the Strength of Reason and Circumstance joined with it, or as it shews the Opinion and Judgment of those that made it, but not at all as if it had any commanding Power of Obedience, that is, valet pro ratione, non pro inducto jure; pro ratione quantum Reges, Dynastæ & Reipublicæ intra potestatis jure fines valere patiuntur: And for Spain it is observed, Hispani duplex habent jus, solum Canonicum scilicet & Regium; Civile enim (meaning the Imperial Laws) non habet vim Legis, sed rationis. And since this Kingdom, as well as most others, being free from all Subjection to the Empire, having a constituted or known Law of its own, excludes all Imperial Power and Laws, otherwise than as Custom hath variously made some Admission, I applied myself to the Collection of such Matters, according to my inconsiderable Judgment, as are either constituted by the Supreme Authority of the Three Estates, or that which hath in some measure obtained by continued Custom the Force of Law in reference to Matters Maritime, and of Commerce, as well in Cases publick as private.

By the first Part of which I thought it necessary, since Nature by Traffick hath made us all Kinnsmen, to consider and examine upon what Grounds, and in
To the Reader.

in what manner, Commerce was first procured and established, which is by the Laws of Leagues, Embassies, and the like, which is a thing fit to be known; so likewise of what may interrupt the same, and likewise of those that have any reference to Seafaring Causes in Matters Civil.

In the Prosecution of this Work, I have taken care to refer those things, which pertain to the Laws of Nature, unto Notions so certain, that no Man, without offering of Violence to himself, may deny them; and to asceritain the Truth of such, I have used the Testimonies of such Authority as in my weak Judgment are of Credit to evince the same; and as to that Law, which we call the Law of Will, or Common Consent, or the Law of Nations, for that which cannot by sure Consequence be deduced out of sure Principles, and yet appears every where observed, must needs have its Rise from free Will and Consent, which is that which is called the Law of Nations; both which (as much as possible) hath been endeavoured to be kept asunder where the Matter hath required it. And for the Civil Law, I have ascertained the several Authorities which I have made use of, that is, of the Romans, into three sorts, the Pandects, the Codes of Theodofius and Justinian, the Novel Constitutions, and these most excellent Jurisconsults that have by their Profoundness of Judgment illustrated the obscure Paths of the same Law; the third those most excellent Persons who joined Policy to Law, as Grotius, Raleigh, Bacon, Selden, and the like. Of other Pieces, that of Shardiust, intituled, Leges Navales Rhodiorum, & selecte Rhodiorum, Petrus Pekius the Zealander, Locinius, Vinius, that of Oleron collected by Garasias alias Ferrand, and Cleriaxck.

As to those Matters that have passed the Pikes at the Common Law, I have as carefully as possible referred to their several Authorities. In the whole Work I have no where medled with the Admiralty or its Jurisdiction
To the READER.

It is called Imperium, because it proceeds from the Authority of the Judge, and not from any right inherent in the Party. Leg. 1. §. de Const. Prin- cip. Coke Lib. 10. fol. 73. in le Cafe del Marballea.

Ridicition (unless by the by, as incidently falling in with other Matters) knowing well, that it would have been impertinent and saucy in me to enter into the Debate of Imperium merum, Imperium mixtum, Jurisdiction simplex, and the like, and of the bounding out of Jurisdictions, which in effect tends to question the Government, and trip up the Power that gives Laws and Protection to us; since all that can be said, as well on the one side as the other, hath been so fully and learnedly handled and treated of by several worthy Persons (that have indeed said all that can be said) but more especially in that famous Dispute not long since before His Sacred Majesty in Council, where all the most elaborate and ingenious Reasons that could be drawn by the Skill of a learned Civilian, were there asserted in vindicating the Admiralties Jurisdiction, by the Judge of the same, Sir Leoline Jenkins, in answer of whom was produced that Great Good Man the Lord Chief Justice Hale, who as well by Law positive as other his great Reasons, soon put a Period to that Question, which during his Days slept, and it may modestly be presumed will hardly (if ever) be awakened.

He that hath never so little to do with the Compass, though he sits still in his Place, does as much or more than all the other necessary Noise in the Ship; the Comparison is quit of Arrogance, for it holdeth in the Design, it is not meant of the Performance.

And though I well know, that those that spend their Time in brewing of Books, are by Seneca compared to petty Painters, that busy themselves in copying out Originals, having this half Verste of Horace often thrown in their Teeth,

—O imitatores servum pecus!

Yet I have this Hope left, that my Faults and Flaws, like those found in the Cuts of Diamonds, may at this time the easier escape under the Excellency of their Subject, or at least under that of your Charity.

Charles Molloy.
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CHAP. I.

Of Dominion or Property in general, and of the Causes changing the same by War.

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No sooner had the Eternal Power created Man, but he bestowed on him a Right over the things of this inferior Nature; nor was his Goodness leffened upon the
Reparation of the World after the Flood (all things being then undivided and common to all, as if all bad one Patrimony) since every Man might then take to his use what he pleased, and make consumption of what he thought good in his own Eyes; which use of the universal Right was then instead of Property: For what any one had so taken another could not without Injury take away from him.

II. Nor was it impossible for that State to have continued, if Men through great Simplicity or mutual Charity had lived together; and this is instanced in those Americans, who through many Ages have lived in that Community and Custom, and the other of Charity, which the Essenes of old practised, and then the Christians who were first at Jerusalem, and at this Day not a few that lead an ascetic Life: The Simplicity of our first Parents was demonstrated by their Nakedness, there being in them rather an ignorance of Vice, than a knowledge of Virtue, their only Business being the Worship of God, living easily on those things, which the Earth of her own accord brought forth without labour.

III. Yet in this simple and innocent way of Life, all Men perished not, but some applied their Minds to various Arts: the most antient of which were Agriculture and Pasture, appearing in the first Brothers, not without some distribution of Estates, and then from the diversity of each Man’s Actions arose Emulation, and then Slaughter; and at length, when the Good were infected with the Bad, a gigantic Kind of Life, that is, violent; but the World being washed by the Flood, instead of that fierce Life, succeeded the desire of Pleasure, whereunto Wine was subverter; and thence arose unlawful Loves, but by that more general Vice Ambition, Concord was chiefly broken, after which Men parted asunder, and severally possessed several parts of the Earth; yet afterwards, there remained among Neighbours a communion not of Cattle, but of Pastures; because in the small number of Men, so great was the Latitude of Land, that without any incommody it might suffice to the uses of many, until the number of Men, so of Cattle increasing, Lands every where began to be divided; not among Nations as before, but among Families, an instance of which we have hourly before our Eyes in those vast immensities that are daily appropriating
CHAP. I. Of Ships of War.

Priating and planting in America: From hence we learn what was the cause for which Men departed from the primitive communion of things, first of moveables, and then of immoveables also; to wit, because when not content to feed upon that which grew of itself, and the Earth singly brought forth, to dwell in Caves, to go naked, or clad with skins of Beasts; they had chosen a more exquisite kind of Life, there was need of Industry, and thing of Art in those matters, which they should give themselves up to; so likewise from hence we learn, that Men not content to live in that innocent state of community, how things went into Property, not only by the act of the Mind (for they could not know the thoughts of another, what every one would have to be his own, that they might abstain from it, and many might desire the same thing) but by a certain Covenant; either express as by division, or tacit as by occupation: For so soon as Communion did not please them, and division was not made, it ought to be supposed an agreement amongst all, that every one should have proper to himself what he seized on: for every one might prefer himself before another, in getting those things useful for the accommodating of human Life, Nature not being repugnant to the same.

Addendum ii. Lud Quintili-ni; Si hanc conditionem in usu dominii esse, proprium sit habentis, profecto quicquid jure possederis, injuria auferat. Macrobii Saturn. i. 3. c. 12.

IV. And though Property may seem to have swallowed up all that right which arose from the common state of things, yet that is not so; for in the Law of Domination, extrema necessitates seem excepted. Hence it is that in Navigation, if at any time Victuals fail, what every one hath, ought to be brought forth for the common use? And so in a Fire, I may pull down or blow up my Neighbour's House to save mine; destroy the Suburbs, to raise Lines or Forts to preserve the City thereby; dig in any Man's Ground for Salt Peter, cut in pieces the Tackling or Nets upon which my Ship is driven, if it cannot be disintangled by other means: All which are not introduced neither by the Civil Law, nor the Municipal Laws of Countries, but are expounded by them, with their proper diversities.


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Book I.

V. Nor is Property so far in fated in Man, but the same may again be divested by such means as stand with the Law of Nature and Nations; and first by War, the Causes of which are assigned to be three, Defence, Recovery, and Revenge.

of Nations one may take Arms to abate the growing Power of his Neighbours. Sed ut vim pati posse ad vim inimicam jus tribuat, ab omni aequitatis ratione abhorret: But that a possibility of suffering Force, should give a right of offering of Force, this is far from all Equity, says the excellent Gratius, lib. 2. cap. 1. sect. 27. Ralgb's History of the World, p. 678. Grat. de jure belli & pacis, l. 3. c. 6. Sect. 11, 12, 13, 14.

But then such War must be just, and he that undertakes it must be a Sovereign: The just causes to make a War are our Prince's or Country's defence, and that of our Allies, the Satisfaction of our Injuries, or theirs; our just Preten- sions to an Estate or Right; Divines have added another, not only the Defence of Religion, but its Advancement and Propagation, by the way of Arms, and some the expirition and rooting up a contrary. Certainly War is too rough a Hand, too bad a Means, to plant Piety; Sicut non Martyrem pana, fic nec fortrem pugna, sed causa; Ralgb, 680. As it is not the punishment that makes the Martyr, so it is not fighting that declares a valiant Man, but fighting in a just cause; in which whofo shall resolvedly end his Life valiantly, in respect of the cause, that is, in the Defence of his Prince, Religion, or Country, ought to be numbered among the Martyrs of God.

VI. Publick War is either Solemn by the Laws of Nations, or else lefs Solemn. What we here call Solemn is commonly called Just, in the same sense as a just Testa- ment is opposed to Codicils, not that it is not lawful for him that pleases to make Codicils, but because a Solemn Testament hath by the Civil Law some peculiar effects; and this difference is worth Observation, seeing many misunderstanding the Word Just conceive all Wars to be condemn'd as unjust and unlawful, whereunto this Ap- pellation of Just is not agreeable.

VI. Tha

the foregoing Section we think it may be of use to abstrack Lord Chief Justice Hale's sense of this matter as follows,——Our Wars with foreign Countries have been either special or general: 1. Special, usually called Mare or Reprisial, and these either particular, i.e. granted to some particular Persons on particular Oc- casions to right themselves, vid, Stat. 2. H. 5, 7. Or 2. general Mare or Reprisial which
which though it hath the effect of a War, yet differs in these two instances: 1. regularly no Person may by aggression take the Ship or Goods of the adverse Party, without a Commission; 2. the two Nations are not therefore in a perfect State of Hostility; though they mutually take from each other as Enemies; and many times these general Reprisals grow into a formed War. Such was the Dutch War 1664. Hale's Hist. Pl. Cr. 162.

A general War is either solemnly denounced, or not solemnly denounced; the former, when War is solemnly declared or proclaimed by our King against another State. Such was the Dutch War 1671, (and the present War with Spain.) An solemn War is when two Nations slip into a War without any solemnity; and ordinarily happeneth among us. Again, if a foreign Prince invading our Coasts, or sets upon the King's Navy at Sea, hereupon a real, though not a solemn, War may, and hath formerly arisen. Such was the Spanish Invasion in 1588. So that a State of War may be between two Kingdoms without any Proclamation or Indictment thereof, or other matter of Record to prove it. Idem. 164.

VII. That War, according to the Law of Nations, may be Solemn, two things are requisite: First, That it be waged on both sides by his Authority who hath the highest Power in the Commonwealth. Secondly, That certain Rights be used (of which we shall speak in due place) one of these without the other (because they are both required) doth not suffice. Publick War lets Solemn may want those Rites, and be waged against private Persons, and have for the Author any Magistrate. And according to the opinion of most Civilians, if the matter be considered without Civil Laws, it seemeth that every Magistrate hath right to wage War, as for the defence of the People committed to his Charge, so for the Exercise of Jurisdiction, if he be opposed by Force: But because by War the whole Commonwealth is endangered; therefore by the Laws of all Nations that War be not undertaken without the Authority of the whole Power in the Commonwealth is the highest, there is extant such a Law of Plato's, Plur. de Leg. I. 3. and in the Roman Law it is called Treason in him who, D. ad leg. Just. maj. without the Command of the Prince, hath waged War, or lifted Soldiers, or raised an Army; in the Cornelian Law brought in by L. Cornelius Sylla it was, without the Command of the People; in Justinian's Code is extant a Constitution of Valentinian and Valens, None have leave to take any Arms without our knowledge and direction. And Fol. 9. Le Roy my Lork Coke in his Third Institutes observeth, That by the droit de droit Common Law of this Realm it was High-Treason * to levy War.

A 3

Enmies, &c. F. N. B. 113. a. * See 1 Hale's Hist. Pl. Cr. B. 130, &c. and, to the end of Chap. 14, for much good matter on this Point. It must be a levying War. against
War without Authority from the King, for to him it be-longeth only. And the reason why it should be so subject-ed is, because that natural Order for preserving of peace among Men requires that an Authority and Council in undertaking of War should remain in Princes.

VIII. But as all Laws must be interpreted by Equity, so must this Law; and therefore there is no Question but that 'tis lawful for one having Jurisdiction, by force of those which we call a peaceable Guard or Power, viz. Constable, Serjeants, Watchmen, &c. to constrain a few disobedient Persons as oft as there's no need of greater Power to that purpose, and no imminent danger to the Commonwealth. Again, if it be so present a danger, that time will not admit of Consultation with him who hath Supreme Power, here also necessity affordeth another Exception; and therefore in Garrisons, if the Townsmen should endeavour to fall over to an Enemy, they may be dealt withal as Enemies by the Governor of the Garrison, and by that Right L. Pinarius Governor of Enna, a Garrison in Sicily, having information that the Townsmen were falling off to the Carthaginians, making slaughter of them kept the Town: And the reason why such extraordinary Force is called War, is, for that the same is commenced by the right of the Magistrate, in which case the War is supposed to be made by the highest Power, because every one is judged Author of that which he giveth another Commission to do; besides the universal reason which warrants the act, requires that all Dangers, Rebellions, and Insurrections be withstood and check'd in the very bud, and tho' this is called War, yet this strictly is not properly War, tho' the Parties who suppress or punish are impune.

Our Author would be understood here.

of War within the Realm. But War solemn or unsOLEMN with Enemies out of the Realm, are both equally War. See 1. Hale's Hist. 163. shewed above, Sec. 6.

IX. But War properly by the Laws of this Realm or SOLEMN, is, when the Courts of Justice are shut up, and the Judges and Ministers of the same cannot protect Men from violence, nor distribute Justice: So when by Invasion, Insurrection,
Chap. I. Of Ships of War.

Inquisition, Rebellion, or the like, the current of Justice is
flopt and shut up, Et silent leges inter arma, then it is said 14 Ed. 3. siv.
to be time of War, and the Trial of this is by Records
&cire facias 12. inter Mor.

and Judges of the Courts of Justice, and not by a Jury.
timer and the

So likewise War by the Laws of England is when the Earl of Lan.
Kings Standard and Host enter the Realm of another

Prince or State, and hath been there by the space of Forty
Days, for till then the War is not properly said to be

Trin. 7 Ed. 3. for

begun.

X. Wars, though undertaken by publick Authority, Grat. de jure
must have the Effects of Law, that is, there must be a just
belli et pa. 12.
cause for the undertaking the same; so that Alexander, for
2. c. 1. § 1.
that without cause he warred upon the Persians and other
Nations, is by the Scythians in Curtius and by Seneca too Seneca de bene-
defervedly called a Robber. For take away Justice, and 3x. 1. c. 13.
what are Kingdoms but great Robberies? Therefore the
just cause of taking Arms must be the Iniquity, or, as we
understand it, the Injury of the adverse Party, according
to the Words used in the antient Denunciation of the
Roman Heralds, * I call you to witness, that People is unjust, * Ego vos te-
and doth not perform what is Right. Now that is unjust
for, Populum
which hath a necessary repugnance to the rational and
illum injustum
social nature. Now amongst the first principles of Na-
effe, nego jus
ture there is nothing necessarily repugnant to War, there
perfovare.
is much in favour of it; for the end of War, the con-

servation of Life and Members, and the keeping or acquir-
ing of things useful unto Life is most agreeable unto those

Principles: And if need be, to use Force to that purpose
is not disagreeable, since every thing hath by the Gift of
Nature strength, to the end it may be able to defend and
help itself, and therefore be is by Nature fitted for Peace
and War; though coming into the World unarmed, yet be
had a Hand fit to provide and handle Arms. Moreover
right Reason and the Nature of Society inhibits not all
Force, but what is repugnant to Society, that is, which
deprieveth another of his Right; for the end of Society is,
that by mutual Aid every one may enjoy his own. And
this were so, although the Dominion and Propriety of
Possessions had not been introduced; for Life, Members,
Liberty would yet be proper to every one, and therefore
could not without Injury be invaded by another, and to
make use of what is common, and to spend as much as

A 4

may
may suffice Nature, would be the right of the occupant, which right none without Injury could take away: And that is made evident, since by Law and Use, Dominion is establisht, and that appears by the Orator, Ut si munere quodque membrum senem suum baberet, ut posse putaret se valere suproximi membris valesudinem ad se traduisset, debilitari & interire totum corpus necesset: And applying that, says, So if every one of us snatch unto himself the commodities of other Men, and draw away from every one what he can to advantage himself, human Society cannot stand, Nature gives leave to every Man, in the acquisition of things useful, to supply himself before another: But by the Spoils of another to increase his own Store, that Nature doth not permit. It is not then against Society to provide for one's self, so that another's right be not diminished; nor is that violence unjust which doth not violate the Right of another. Of the two kinds, Contention by debate and by force, the one agreeing to Men, the other more becoming Beasts, we must fly unto the latter when the former would not serve. The incomparable Ulpian says, Caesius writes that it is by Nature lawful to repel Force by Force, and Arms by Arms. And this is further proved out of Sacred History; for when Abraham having armed his Servants and Friends, pursued the four Kings that spoiled Sodom, and returned with Victory and Spoil of the Enemy, God by his Priest Melchisedec approved his Action, Blessed be the most High God, said Melchisedec, who hath delivered thine Enemies into thine Hand. Abraham, as appears by the Story, had taken Arms without any special Commission from God; therefore the Law of Nature was his Warrant, whose Wisdom was no less eminent than his Sanctity, nay, God himself hath prescribed to his People general and perpetual Laws of waging War, thereby shewing that Wars may be just, even without his special Mandate; for he doth plainly distinguish the Cause of the seven Nations (in which God gave a special Mandate for the destroying of them, which is properly called the Wars of God, and not of human Counsel) from the Cause of other People, and prescribing nothing about the just Causes of entering into War, thereby shews them to be manifest enough by the Light of Nature, as the cause of the defending of the Frontiers in the Wars of Jebibah against the Ammonites, and the
Chap. I. Of Ships of War.

the cause of Embassadors violated in the Wars of David against the same People.

XII. By the Law of Nature, in War those things are acquired to us, which are either equal to that, which being due unto us, we cannot otherwise obtain, or else is such a mark as does infer Damage to the guilty Party by a fit measure of Punishment; and by the Laws of Nations, not only he that wages War on a just Cause, but every one in solemn War, and without end and measure, is Matter of all he taketh from the Enemy in that Sense, that by all Nations, both himself and they that have Title from him, are to be maintained in the Possession of them; which as to external Effect we may call Domination; Cyrus, in Xenophon, It is an everlasting Law among Men, that the Enemies City being taken, their Goods and Inhabitants, Money should be the Conquerors; for the Law in that matter is a common Agreement, whereby the things taken in War become the Takers. From the Enemy are judged to be taken away those things also which are taken away from the Subjects of the Enemy, and Goods so taken cannot by the Law of Nations be properly said taken, but when the same are out of all probable hopes of recovery, that is, as Pomponius observes, brought within the bounds of guards of the Enemy; For, says he, such is a Person taken in War, whom the Enemies have taken out of our, and brought within their Guards, for till then he remains a Citizen. And as the Law of Nations is the same reason of a Man, so likewise of a thing; and therefore Goods and Merchandise are properly said to be the Captor's, when they are carried Intra Prefidia of that Prince or State, by whose Subjects the same were taken, or into the Fleet, or into the Haven, or some other place where the Navy of the Enemy.

Rides: For then it is that the recovery seems to be past all hope. And therefore the common Law of this Realm calls such a taking a Legalis Captio in jure Belli, and in 7 R. 2. an Action of Trespass was brought for a Ship, and certain Merchandise taken away, the Defendant pleaded that he did take them in le haut D'ere ou les Normans queurt sont Enemies le Roy: And it was adjudged that the same Plea was good. And, in the Year 1610, a Merchant had a Ship and Merchandise taken by a Spaniard, being an Enemy; a Month after a Merchant
Man, with a Ship called *The little Richard*, retakes her from the Spaniard: It was adjudged, that such a possession of the Enemy, divested the Owner of his Interest, and the retaking afterwards in Battle, gained the Captors a Property.

XIII. 'Tis true, the Civilians do hold, That it is not every Possession that qualifies such a Caption, and makes it become the Captor's; but a firm possession (that is) when the Prize doth *pernoëtare* with the Enemy, or remain in his possession by the space of 24 Hours; but as this is a new Law, so it is conceived to be against the ancient judgments of the Civil Law, as well as the modern Practice of common Law: For the Party in the ancient Precedents doth not mention by his Plea, that the Prize did *pernoëtare* with the Enemy, but generally, that the same was gained by Battle of the Enemy.

XIV. This right of changing of Dominion or Property by force of Arms, is so odious, that in the taking of Goods, if by any possibility the right Owners may have restitution, the same hath been done. And although a larger time than 24 Hours happens between the capture and recapture, and so it may *pernoëtare* with the Captor, yet restitution may be made; and therefore if one Enemy takes the Ship and Merchandize of another Enemy, and brings her into the Ports or Havens of a Neuter Nation, the Owners may seize her, and the Admiral of that Neuter Nation may in some cases restore the Ship and Goods to their Owners, and the Persons captive to their former liberty; the reason is, for that the same ought to have been brought infra Presidia (a) of that Prince or State by whose Subject she was taken.

A Dunkirker having seized a Frenchman's Vessiel, *super altum Mare*, fold the same with her lading at Weymouth; whither it had been driven before she was brought *infra Presidio*, Dom. Reg. Hispania: The Frenchman coming into Port, there claims the benefit of the Laws of Nations, the King of England being then in amity with both their Princes, and that restitution be made; in which case it was resolved by all the Judges, (b) That if there be a Caption by Letters of Marque, or Piracy, and the Vessiel and Goods are not brought *infra Presidia* of that Prince or State, by whose Subject the same was taken, the same will
Chap. I. Of Ships of War.

will not divert the Property out of the Owner; with this agrees the Law Civil, and restitution may be made. For this is not an absolute property immediately vested in the Captor upon the taking; but a conditional property to answer the original Debt or Damage, which cannot be done without a judicial Adjudication, the opportunity of which he hath lost by bringing the Prize per leg. liber- into the Country of another Prince: For, as to private War, their Countries are as an Asylum.

XV. But if the Ships of War of Nations in enmity meet at Sea, and there be a capture, if there be that which is called a firm possessio, the Neuter Nation cannot re-deliver or make restitution of the thing so acquired: And so it was adjudged, where *Samuel Pellagius* with a Ship of War, &c. *Bulliord. 28.* brought the same into England, that he could no ways be questioned for the same criminaliter, or restitution to be made civiliter; for that the King of Spain and the Emperor of Morocco were Enemies, and the King of England in Amity with both, and that such a capture is not called Spoliation, sed legalis captio, in which there can be no restitution made, upon neither of the Statutes of 31 H. 6. cap. 4. or 27 Ed. 3. cap. 13. for he that will sue to have restitution in England for Goods taken at Sea, must prove, That the Sovereign of the Party was in Amity with the King of England. Secondly, That he that took the Goods, his Prince was at the time of the taking in Amity with the Sovereign of him whose Goods were taken. For if he which took them, was in enmity with the Sovereign of him whose Goods were taken, then the same will not amount unto a deprestation or robbery, but a lawful taking, as every Enemy might take of another.

A Spaniis Merchant, before the King and his Council, in Camera Scaccarii, brought a Bill against divers Englishmen, wherein setting forth quod deprehendat & spoliis finit, upon the Sea, juxta partes Britanniae per quendam Virum Bellicosum de Britannia, de quaedam Navi, and of divers Merchandizes therein, which were brought into England, and came into the Hands of divers Englishmen, naming them, and so prayed process against them, who came in, and pleaded, that in regard this deprestation was done by a Stranger, and not by the Subjects of the King.
King of England, they ought not to answer. It was
there resolved, *Quod quisquis extraneus*, who brings his
Bill upon this Statute to have restitution, *debet probare*
quod tempore captiosis fuit de amicitia Domini Regis; and
also, *quod ipse qui eum ceperit, & spoliavit, fuit etiam sub*
obedientia Regis, vel de amicitia Domini Regis, *sive Principis*
quarantins, tempore spoliationis, & sive Inimicus Domini Re-
gis, *sive Principis quarantins: Quia sib fecit inimicus, & se*
ceperit bona, tunc non fuit spoliatio, nec depredatio, sed le-
galae captio, prout quilibet inimicus capit super unum &
alterum.

Hujusmodi res

But if the King of England is in enmity with the States
of Holland, and one of their Ships of War takes a Mer-
chant-Man of the King of England's, and afterwards a-
other Ship of War of England meets the Dutchman and
his Prize, and in *aperto praesio*, regains the Prize, there
restitution is commonly made, the Owners paying the
*Salvage*: So where the Prize is recovered by a *Friend in*
*amity*, or comes into his *Ports*, restitution is likewise-
made; but when such Goods become a lawful and just
prize to the Captor, then should the *Admiral* have a tenth
part; following the religious example of *Abraham*, after
his Victory over the five *Kings*.

XVI. He that is an Enemy, may every where be af-
saulted, according to the *Laws of Nations*. Enemies
may therefore be attacked or slain on our Ground, on
our Enemies, or on the Sea; but to assault, kill, or spoil
him in a *Haven* or *peaceable Port*, is not lawful; but
that proceeds not from their Persons, but from his right
that hath *Empire* there, for Civil Societies have provided
that no force be used in their Countries against Men,
but that of *Law*, and where that is open the right of
hurting ceaseth. The *Carthaginian Fleet* was at Anchor,
in *Syrpax Port*, who at that time was at Peace with the
*Romans* and *Carthaginians*; *Scipio* unawares fell into the
same Haven, the *Carthaginian Fleet* being the stronger,
might eaily have destroyed the *Romans*; but yet they
durst not fight them. The like did the *Venetian*, who
hindered the *Greeks* from assaulting the *Turkish Fleet*. who
CHAP. I. Of Ships of War.

rid at Anchor in a Haven, then under the Government of that Republick; so when the Venetian and Turkish Fleet met at Tunis, though that very Port acknowledges the Ottoman Emperor; yet in regard they are in the nature of a Free Port to themselves, and those that come there, they would provide for the peace of the same, and interdict any hostile attempt to be made there.

The Corsairs having been in the Gulph, put into the Port of Vallona, which is subject to the Turk; whereupon Capello, Proveditor-General for the Venetian, and Captain of the Gulph, having notice of the same, made into the Port; and though the Ottoman Port had by Treaty permitted the Venetian to pursue the Pirates in all Places, and forbade their Commanders to protect or shew them any Favour, yet the Castle interdicted, and forbade the Venetian General with Cannon to attack them; for it was nevertheless intended by the Treaty that the Peace of Ports must be preferred.

And the same Republick having War with those of Genoa, met at Tyre, Reinerius Zenus Duke of Venice with the united Power of the Venetians and Pisans, counting no fewer Number than 74 Vessels well provided, and Fuller's Holy War, l. 4. c. interdicted by the Governor; but yet with this Proviso, that if by consent they would go out of the Protection of the Port, and at open Sea decide the cause, they had then freedom: And accordingly they failed forth and engaged. The like not long since happened between Cornelius de Wit, Commander of a Ship of War of the States General, and Captain Harman, Commander of one of His Majesty's Frigates at Cales, a Challenge being made in that Port by the first, and as briskly accepted by the latter, but both were interdicted the execution of the same in the Port, but out of the protection of the same they might decide the Question; the which they did to the no small Fame of the last; for in that dispute, of 380 Men then aboard the States Man of War there were scarce 100 whole Men in her, and Harman having entered and taken her, brought her at his Stern in Triumph to the Port again.

But they of Hamburg were not so kind to the English, when the Dutch Fleet fell into their Road, where rid at
at the same time some English Merchant-Men, whom they assailed, took, burnt, and spoiled; for which Action, and not preferring the Peace of their Port, they were by the Law of Nations adjudged to answer the damage, and I think have paid most or all of it since. But Enemies in their own Ports may be assailed, burnt, or destroyed by the Laws of Arms.

XVII. If the Ships of any Nation happen to arrive in any of the King of England's Ports, and afterwards, and before their departure, a War breaks out, they may be secured, privileged, without harm of Body or Goods; but under this limitation, till it be known to the King, how the Prince or Republick of those, whose Subjects the Parties are, have used and treated those of our Nation in their Ports. But if any should be so bold as to visit our Ports after a War is begun, they are to be dealt with as Enemies.

XVIII. By the Laws of Nations generally all things are the Captor's which he takes from his Enemy, or which his Enemies gained from another by Force of Arms; so likewise all those Goods that he shall find in his Enemies' custody: But then it must be apparently manifest, and evidently proved, that is really the Enemies; for if an English-Man should have Goods in the custody of a Dutch Factor at Cales, and a War should break out between that Prince and that Republick, yet are not the Goods of the English-Man subject to the seizure of the Spaniard, it being apparent, that the Owner is not a Subject of their Enemies: So likewise if the Goods of Friends are found in the Ships of Enemies, this does not ipso facto subject the same to be prize by the Laws of Nations; though it be a violent presumption, and may justly bear a legal examination, till which there may be a securing of the prize, till adjudication shall pass. So on the other hand, if the Ships of Friends shall be freighted out to carry the Goods of Enemies, this may subject them to be prize, especially if the Goods shall be laden aboard by the consent or privy of the Master or Skipper; though in France they have subjected and involved the innocent with the nocent, and made both of them prize.
prize. In the late Flemisht Wars with England, the Oppone-
tors became obsequiously serviceable with their Ships to
the Traffick and Commerce of both Nations. Memora-
ble was the Action, when the War was between the two
Republicks, Venice and Genoa, the Grecian Ships be-
ing then employed, (as those of Offend) were searched,
and the Enemies pulled out, but no other matter done:
However it is most certain, let the Commission or Protec-
tion of such Ships be what they will, if Men will venture
to trade under such a Cloak, it behoves them, that the
Skipper and his Crew be entirely ignorant; for it is his
action that will go far in the freeing, or making abso-
lute the Prize, and Goods so made prize, the property is
immediately gone and changed, be the Owner who he
will, he never can claim the same; for the Laws of
Nations made the Enemies first Masters by External Domi-
nion, and then by Conquest gave the property to the Captor:
Following that Judgment of the Romans, Whatsoever they
got of their Enemies by Valour, they would transmit to their
Romani nostros
Poserity by Right.

XIX. 'Tis not against Nature to spoil the Goods of hiim, whom it is lawful to kill; and by the Laws of Na-
tions it is permitted that the Goods of Enemies may be
as well spoiled as taken; and Polybius observes, That is
all things of the Enemies may be spoiled, their Ships,
Goods, Forts, &c.

XX. And though it may happen sometimes that a
War may break out, and there may be no publick de-
nouncing or proclaiming the same; that if a Friend or
Neuter should affish an Enemy with Contraband Goods, that
is,
is, Arms, &c. whether upon such a caption the Good may be made prize; the resolution of which will depend on these Considerations.

First, By natural Law, where either force offered, is repelled, or punishment exacted of one that hath offended, an cap. 3. § 2, 3. is denied, there needs no denunciation; for Princes are not to stand debating with Words and Arguments, being injured beyond Words: For War undertaken to resist violence, is proclaimed not by an Herald, but by Nature: For it is no more than the invading of one for another, or taking of the Goods of the Debtor, to answer the Creditor's damage.

Secondly, Interpellation is introduced by the Laws of Nations, whereby Princes or Republicks having received injuries, may apparently shew that they had no other way to recover their own, or that which is due to them: For such Interpellation following after injuries committed, constitutes that Prince or State in a fault that shall not render satisfaction.


Denunciation is either conditionate or pure: Conditionate where it is joynd with demanding of things and in the name of reparation the Heralds Law, called Jus Sociale, comprehended not only vindication by right of Dominion, but also the prosecution of that which is due upon a civil or criminal Case. Severns.

Thirdly, Admitting that Interpellation hath gone, and satisfaction hath been required for the damage, and no satisfactory return hath been made, whether then the Ships or Territories of the Enemy may be assaulted: And for that it has been conceived they may, for denunciation is no more but to signify that the Parties, against whom the same is commenced, are unjust and will not do right, and therefore War is begun by the Supreme Power. Now Princes or Republicks having done that which by the Law of Nature they were not obliged to do, that is, after a wrong done, abstained from War by Friendly demanding of Satisfaction or Reparation (which is required only by the Laws of Nations) and publick Justice being denied them, there remains no other or further obligation on the State, the same amounting to, and indeed is an apparent defiance; and Proclamation is no other.

— ad 10. Ex. explains it rightly thence was that in the Forms to be rendered, to be satisfied, to be yielded, where to be yielded,
in beginning a War; for they never sent forth their Armies till they had sought for Justice in the tracts of Peace; and after the publick promulgation of their intent. Such also was the integrity of the Actaeons, before they had forewarned the Enemy to a defence. Machiavel commends the simplicity of the Antient Florentines, that enterprized no Hostility on their Neighbours till they had by ringing a Bell for the space of a whole Month, summoned them to a peaceable satisfaction or a brave resistance: But these Customs and Institutions are only of some Countries, not from the Law of Nations. The white Rod among the Greeks, the Turfs and Bloody Spear among the Equilotes, renunciation of Friendship and Society (if there had been any) thirty solemn days after satisfaction demanded, are rather introduced by that which we call the Cufom or Law of particular Kingdoms and States; for there may be War no Question introduced, without any solemn Proclamation, as the violation of Ambassadors by approbation of publick Authority is an open denunciation of War, and upon the same Reason: Gustavus Adolphus invaded the German Empire, without ever declaring War, to revenge the contumelious usage of his Ambassadors at Lubeck. The form of denunciation of War is either conditional, or absolute; Conditional, when restitution or satisfaction is demanded at the same time that the War is denounced. A pure or absolute denunciation, is that which especially is called an Indiction or Proclamation, which is either when the other Party hath already begun the War, or when he himself hath committed that which deserves to be punished. See Examples, Grot. lib. 3. c. 3, 8, 7.

XXII. But if War be indicted, or is begun, against him who hath the higheft Power over the People, it is supposed to be proclaimed against all his, not only Subjects, but those who will join themselves unto him, as being
being an accession to his party. And this is that which
the Law interprets, the Prince being defied, bis adverens
also are defied; for to proclaim a War is to defie, which
is to be understood of that same War which his waged a-
gainst him to whom it is indicted, as when War was de-
nounced against Antiochus, they were not pleased to de-
nounce it against the Ætolians apart because they had o-
penly joined themselves with Antiochus: The Heralds an-
swered, Ætolians have declared War of their own accord
against themselves; but that War being ended, if another
People or King, for supply of Aids, is to be warred a-
gainst, that the effects of the Laws of Nations may fol-
low, there will be need of a new Indiction, for now he
is not looakt upon as assenary, but principal: Wherefore
it is rightly said, That by the Law of Nations, neither
the War of Manlius upon the Gallo-Greeks, nor of Caesar
upon Ariovistus was lawful. For they were not assault-
ed now as an accession of a Neighbour's War, but prin-
cipally: To which purpose, as by the Law of Nations
Indiction, so by the Roman Law a new Command of the
Roman People was necessary. For what was said in the
proposal against Antiochus: Was it their Will that War
should be entered with King Antiochus and those that followed
his Party (which was observed also in the Decree against
King Perseus) seems truly understood so long as the War
continued with King Antiochus or Perseus, and those that
really immixed themselves in that War.

XXIII. Now the true Reason wherefore Nations re-
quired Denunciation to that War which was said to be
just by the Law of Nations, was not that Force should
not be offered privily, or carried on by deceit, for that per-
tains more to the excellency of their Valour than to strict
Right; (for some Nations (as we have read) have ap-
pointed their Enemy the time and place of Battle) but
that it might certainly appear the War was not waged
by a private undertaking, but by the will of either peo-
ple or their Heads. Servius Honoratus when he had de-
duced the Original of the Heralds Law from Ancus Man-
lus, and further from the Equitile, faith, That if at any
time Men or Beasts were by any Nation taken from the Peo-
ple of Rome, the Pater Patratus went with the Heralds
(that is, Priests) who have Authority in making Leagues,
CHAP. I. Of Ships of War.

Standing before the Bounds, with a loud voice pronounced Timea e-cause of the War; and if they would not restore the things taken, or deliver up the Authors of the Injury, be threw a spear, which was the beginning of the fight, and thence-forth it was lawful, after the manner of War, to take the spoil.

XXIV. War is not only lawful against those that are our Enemies, but likewise against those that supply them; but yet we must distinguish of the things themselves. For some things there are that have use only in War, as Arms: Some that have no use in War, as those that serve for pleasure: Some that have use both in War and out of War, as Money, Corn, Victuals, Ships and things belonging thereto.

1. It is plain, that by the first he is my Enemy that supplies my Enemies with things necessary for the War.

2. But by the second he is not, according to that of French and Dutch: I will not help him to Monies to pay bis Guards, if he shall defere Marbles and Robes, such things hurt others, only they minister to his Luxury: Soldiers and Arms I will not supply him with; if he shall seek for players and recreations to soften his fierceness, I will gladly refer to him: Ships of War I will not send him, but such are for Pleasure and ostentation of Princes sporting in the Sea. I will deny to give to one that purposes the destruction of another's Country those things that are essential, for it is a bounty not to be allowed of.

3. But in the third, which is a doubtful use, there the state of the War is to be considered: For if I cannot defend myself unless I intercept the things sent, necessity will then give right, but with the Burden of the Neutralitie, Anno 1676. except some other cause accede; but if the apportionment of those things hinders the execution of my right, and he could know so much who brought them, as if I had driven the Enemies Fleet into a Port Haven, or had straitened a Town with a Siege or The English blockade, and were now in expectation of their yielding drive the compounding, there is no question but he that shall such care succour my Enemy, ought in Justice be made able for the Damage I have sustained through his means; there protect-
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ed them a- against the League and the Laws of Nations, for which the ensuing War was accounted just on the King of Britain's part. 
Sylv. in orb. Restitut. p. 3. §. 12.

means: Like a Goaler that shall wilfully suffer my Prisoner to escape; or one that hath rescued my Debtor justly detained by me for my damage, whereby I am injured, and according to the measure of my losses Goods also may be seized and brought into such a state to the end I may obtain a just satisfaction. But if hath not yet done any damage, but hath been willing to do it, there will be a right by retention or staying of the Ship and Goods to compel him to give caution for the future; but if my Enemies injustice towards me be most evident, and a Nation that ought to be Neuter confirm him in that most unjust War, in that case will not only Civilly be liable, but Criminally as o that rescues a Pirate manifestly guilty from the Judge of the very Bar; and therefore it will be lawful to determine against him by such measures as are necessary against his Offence: Wherefore within those rules, may be spoiled of Ship and Lading; and that is the true reason why Indiction or publick Proclamation internal right ought to be denounced, that so other Nations may see they have a just cause who commenced the War, and that they ought not to be impeded in the acquiring due satisfaction.

And though Neuters are not compellable, by the rigour of War, to afford Assistance to either Party without the Will of the other, yet such may the emergency of the case be, that if enforced, they may lawfully declare, though to the damage of the weaker. Such was the case, when the Venetians had so far prevailed against the Turks in Candia, that Canea which they the besieged by Sea and Land, was brought to that extremity that in all human probability it must then have been speedily surrendered, the English Ships being at Smyrna, and press'd by the Turk to assist the Great Signior in the relief of that City. If the Persons who the English had thus assisted, had been Christians, there is no question this Auxiliary Aid had been well; but assist an Enemy of Christianity against Christians they selves hath seem'd doubtful: But surely there seem little reason for such an Ambiguity; for if it be lawful to make League with those that are Aliens fro
the true Religion by the Law of Nature, then there can be no doubt but they may be aided. Now by the Law of Nature they may be entered into by Christians with such, for that Law is so common to all Men, that it admittheth not any Difference of Religion: Nor was the same univerally forbidden by the Hebrew Law, as appears by Abram's aiding the wicked Sodomites with his Arms; and that which was very remarkable, that the Asmonians, being exceedingly skilful in the Law, and great Observers of the Hebrew Rites, yet made Leagues with the Lacedemonians and Romans by the vonent of the Priests and People, yea and publickly offered Sacrifice for their safety: Nor were they forbidden by the Evangelical Law, according to that of Ter-Lib. 7. c. 3, Iulian who observes, That so long as Israel was only his People, God did justly command mercy towards their Brethren alone; but after that, he gave unto Christ the Nations for his inheritance, and the ends of the Earth for his possession, and that began to be paid which was promised in Hosea, They that were not my People shall be my People, and the Nations that had not obtained mercy shall obtain mercy; From that time Christ hath extended unto all the Law of fraternal benignity, excluding none from our Compassion, no more than from his Vocation: From whence it follows, that at large in the action of those Captains being then in the power of the Turk, was lawful in the assisting them against the Venetians.

XXV. And although the Goods of Friends, according to the circumstance of the case, may be preferred by adjudication, and restored to their owner; yet all manner of Goods have not that priviledge: For though the Freedom of Trade preserves the Goods of Friends, against the rigor of War, yet it does not those Goods that supply the Enemy for War, as Money, Victuals, Ships, Arms, and other things belonging thereto: For to supply an Enemy that invades our right, or seeks the destruction of our Countries, is a liberality not to be allowed of; and by Goods it certainly stands with necessity, that if I cannot safely defend myself or endamage my Enemy without intercepting the things sent, it may jufly be done: But when such goods
are seized, whether they give the Captor a right of Property, or right by Retention, to compel that neuter Nation to give Caution for the future, by Hostages or Pledges, not to supply the Enemy, may be a question. The Romans who had brought Victuals to the Enemy of Carthage, were taken by the Carthaginians, and again rendered upon request; the Hollanders in the heat of the War between Sweden and Poland, never suffered themselves to be interdicted with either Nation; the same State when they had War with Spain, intercepted the French Ships, passing to or from Spain, but restored them.

And Pompey, in the History of the Milbridatick War, set a Guard on the Bosporus, to observe if any Merchant failed in thither; whoever did, and was taken, was surely put to Death; so Demetrius when he possessed Attica with his Army, having blockt up Athens, hanged up both the Master and Commander of a Ship, who attempted to bring in Corn: The Hollanders having blockt up Dunkirk, some English Merchants Ships did attempt to enter, but were denied by the Hollanders.

Most certain, if a Neuter Nation had had notice of the War, and Caution given them (as is usual) not to supply the Enemy with the Counterband Goods, as they call them; if such be the case, the prize is become absolutely the Captor’s. So Queen Elizabeth did, when she seized on the 60 Sail of the Hanfatick Towns, who were carrying of Goods, ropas contrabanda, to the Spaniard her Enemy; she condemned them, and made them absolute prize; For as neutrals are not compellable by the rigour of War, to give any thing against their Will, so must they not against the Will of each Party afford such things as may damage one another. For Persons or Nations having had notice of the War, which is done, and Caution given sometimes by Proclamation, or some other publick Edict, signifying the right of their Cause, and shall afterwards gather to, and assist the Enemy, whether Associates, Neuters, or Subjects, the same yields a right, so far as to them, not only to the charge and damage that may fall thereby, by making them prize, but may make
make them obnoxious to punishment: For it is the
Duty of those that abstain from War to do nothing for the
strengthening of him who maintains a bad Cause, whereby
the motions of him that wageth a just War may be re-
cessed; and where the cause is doubtful they ought to
shew themselves equal to both, permitting paftage,
 taking, dressing, and affording Provision for each Army
or Navy.

Matches, Bullets, Pikes, Swords, Lances, Spears, Halberds, Guns, Mortar-Pieces;
Petards, Granadoes, Musket-rebs, Bandaliers, Salt-petre, Muskets, Musket-shot, Hel-
nets, Corsetts, Breast-plates, Coats of Mail, and the like kinds of Armature; so
for Hores and other Warlike Infruments. Vide Marine Treaty between England and
Holland, December 1, 1674. Art. 3. Vide the Attempt made by John Borrough, to
trade with the Swedes expressly against the Interdiction of the Danish King: Sir Walter
Raleigh; I. 5. c. 1. § 10.

L. Aemilius Prator accused the Tejans for victuallimg So likewise
the Enemy’s Navy, promising them Wine, adding Ships Masts,
That unless they would do the like for the Navy of the
Romans, he would account them as Enemies; thought or ab-
certained experienced Nations and Kingdoms, when they declare Neutrality, to make Pro-
vision by way of League with both the Nations at
War, that when it should happen the Armies of both, or any draw towards their Territories, it might be law-
ful for them to exhibit the Common Offices of Humanity
to both.

It happened that about seven stout Merchant-Men
rode in the Port at Smyrna; the General of the Venet-
ians, being jealous of their joining with the Turkish Arm-
ado, desired to know their Minds, who answer’d, they
would prove Neuter in the Dispute; but afterwards
(though at firft the Captains all refus’d) upon
the threatening of the Grand Signior, to lay an Embargo
on all the Goods of the English Nation in his Dominion,
1651. vide R.,
and to make Slaves of their Persons; those Captains, who were forced to join with the Turkish Forces, who beat
the Venetians from before Canea, and so relied’d it; the
Venetian Ambassador complained to the then Powers in
Trade, England, but could have no Relief, being answer’d, That
those Ships being in the Turks Power, were subject to it; the
accident
accident being such as made the Action lawful, as we have afore remembred.

Leagues may be made with Infidels, by the Law of Nature, and likewise by that of Religion, which is equally indulgent to all Men, that it will not admit of any Difference upon the Score of Religion. *Vid.* Examples and Cautions. *Grot. de jure belli et pacis lib. 2* Cap. 15. § 8, 9, 10, 11, 12.
CHAP. II.

Of Letters of Marque and Reprisals.

I. Of Reprisals generally considered, and for what Causes awarded.

II. Whether unlawful by the Laws of Nature, and of the Roman Law.

III. Where lawful by the Laws of Nations at this Day, and the rea-

IV. Of the Advantages that accrue universally by such Reprisals.

V. Of the essential Causes or Grounds generally for the awarding Letters of Reprisals.

VI. Of the essential Causes or Grounds particularly that are re-

VII. Of the ordinary and extraordinary by the Laws of England.

VIII. Whether the same creates a Debt in the Grantor, and whether the Execution may be suspended.

IX. Whether the awarding the same amounts to a Breach of Peace.

X. Of Letters of Reprisal extraordinary where granted, and of what Force.

XI. That it consists with the Interest of Princes, not only to prevent those things that may occasion reprisals, but likewise not to deny the same, if there be ground sufficient.

XII. The Difference of Injustices offered to Subjects and to Foreigners, and where the one is concluded by the same and not the other.

XIII. What is meant by denying of Right and doing of Injustice, and where Reprisal takes resting, and where not.

XIV. Of Reprisals where awarded, for denying of common Justice, or those which are called Letters of Marque in Cases ordinary.

XV. Not repairing the damage after Letters of Request creates a National Debt, and is the Foundation of Reprisal.

XVI. Domistic not Origination subject to reprisals.

XVII. Reprisal not grantable, if the Spoil was occasioned by War.

XVIII. Of Persons exempted from Reprisal by the Laws of Nations, Canon and Civil Law.

XIX. Where Ships and Goods are subject to reprisals, and where not.

XX. When Right is denied, whether Life is engaged, and whether Persons refusing to yield may be slain.

XXI. Goods taken by Reprisals where the Property is altered, and where not triable in the Admiralty.

XXII. Where many Ships are present, and one becomes Captor, whether the Spoil must be divided, or remain bis that became Master of the Prize.

XXIII. Where the Grantee of Letters of Reprisal may become a Pirate notwithstanding such Commission.

XXIV. Where a Misceaption creates not an Injury in the Grantee, nor subject his to answer Damage to the Sufferers.

XXV. Of the Duties incumbent upon the Captor, and whether the Goods taken are subject to pay Customs.

XXVI. After the Debt and Damage satisfied, restitution of the Residue ought to be made.

XXVII. Contribution, whether it can be by the Laws of England to him whose Goods are taken by Reprisals.

XXVIII. Where Commissiones have been awarded for the enquiring of Depredations, under which the Parties have sometimes obtained Satisfaction.

I. Reprisals.
Reprisals, known to us by the Word Reprisalia, or Letters of Marque, in Law have other Appellations, as Pignoratio, Clarigatio, and Androlepsia, &c. in Imitation of that Androlepsia, among the Greeks, to seize the three next Citizens of that Place, whither the Murderer had fled, and was always given to him who required revenge of the Offender; the word (Reprisals) is from the French repren dre and Reprise, i.e. resumption, that is, to re-take or take again one thing for another, like our Saxon Withernam.

Though the Act is now become lawful by the Law (indeed consent of Nations, yet must it have its Standard-mark, for the same cannot be done by any private Authority, but only by the power of that Prince or Republick, whose Subject the injured Person is; nor is the same grantable by Authority, but where the Party injured has justice denied him, or the same illegally delayed.

creditori pro injuriis et damnis acceptis. vocabular. strinque Jurs. 27 E. 3. Stat. 2. cap. 17. 2 Inst. 204, 205.

II. By the Law of Nature no Man is bound for another's Act, but only the Successor of his Estate, for that Goods and Estate should pass with their Burthen, was introduced together with the Dominion of Things; hence it is that the Son cannot be molest'd for the debt of his Father, neither the Wife for the debt of the Husband, nor the Husband for the debt of the Wife; the same being against natural equity, that one should be troubled for the debt of another.

Ulpian. Leg. fii. ex ual. ex uictr. quod cuique univerf. nam Et fuguli debe sunt non tanquam proprium sed tanquam publicam publici partem. Seneca, lib. 6. contribute as for my Country, naturally, by the very de Benefic. c. Roman Law. one Village was not bound for the other, nor one Man's Possessions charged for another; no not so much.

Leg. nullam.
much as with the Debts publick; the reason being added, c. de Execut. & Exeunt.
That it was against reason for one to be charged with the debts of another.

III. And though by the Law of Nature one Man's Goods are not tied for the debts of another, no nor for those of the Publick; yet by the voluntary Law of Nations, the same might be introduced and brought in, and the same may stand well with the Laws of Nature; for that might be introduced by Custom and tacit Consent, when even Sureties without any Cause, may subject and make liable their Goods and Estates for the Debts of a Stranger. So likewise that for any Debt, which any Civil Society, or the Head thereof ought to make good, or because the Sovereign or Head hath not done right in another's Debt, but hath made himself liable to render Satisfaction; such a Society may oblige and make liable all their Goods corporeal or incorporeal, for the Redemption of Satisfaction. Hence it was, as the great Justinian observeth, That this Custom was constituted by the Nations, grounded on the Urgency of human Needs, asserted with the greatest of Necessities: Since without this, great Licence would be given and tolerated for the committing of Depredations and Injuries; especially if only the Goods of Rulers were made liable, who seldom possess any thing, that, for Satisfaction, the injured may easily come by; whereas those private Men, whose Commerces are various, may be catcht for recompence, sometimes with the greatest ease, and freeet from Danger. Besides, the Owners of such Prize being Members of the same Society, might more easily obtain mutual right for satisfaction of the injured, and their own future indemnity than Foreigners could, who without such a Tyre would be very little regarded.

IV. Besides, the Benefit of this Obligation was common to all Nations, so that they which were one Time grieved with it, another time might be eas'd by the same. Moreover that this Custom was received, appears not only out of full Wars which Nations wage against Nations (for in these what is observed may be seen in the Forms of the ancient Denunciations. Popul. priscorum Latinorum, dominibusque, prisciis Latinis bellum Leo. lib. vii.

indicat.
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Lib. 31. indicia facioque. So likewise in the Proposal: Vellent, ju-
bynent Philippo Regi, Macedonibusque qui sub regno ejus essent,
bellum indici. And in the very Decree or Proclamation
itself: Populus Romanus cum populo Hermundulii hominibus-
que Hermundulii bellum justi) but also where Wars are
not come to that fulness of War, yet there is need of a
certain violent Execution of Right, that is imperfect
War. Agesilaus of old said to Pharnabazus, a Subject to
the King of Persia: We, O Pharnabazus, when we were
the King's Friends, carried ourselves like Friends towards all
bis, and being now become his Enemies, we carry ourselves
like Enemies; wherefore seeing you will be one of the things
that are bis, we do justly oppose him in you. A species of
this sort of Execution by Reprizal was that which the
Athenians called apprehension of Men, of which the At-
tick Law (as Mr Rous observes) If one have force offer'd
him and die, his Kinmen and Friends may apprehend Men,
still either the Manslayer be duly punished or yielded; but it is
lawful to apprehend three Men and no more. By which it
plainly appears, that for the debt of the City, which is
bound to punish her Subjects that have hurt others, is
tied a certain incorporeal right of the Subjects, that is,
the liberty of taking whom they please, and doing
what they will: So that such Persons so taken, by that
Law might be made Slaves until the City did that
which by Law she was obliged to perform. In like
manner to recover a Citizen taken Captive by mani-
feft Injury, are the Citizens of that City, where the In-
jury was done, retained by Reprise, Wherefore at
Carthage they would not suffer Ariston the Tyrian to be
taken; for, said they, the same will befall the Carthaginians
at Tyre, and in other Towns of Trade, whereunto they often
refort.

V. A due Administration of Justice is not the least
fence, wherein Princes are stiled Gods: To deny or de-
lay Justice is Injustice; Justice is every Man's right
who hath not forfeited what he might claim by the Jus
Gentium.

C. Si sententia,

e. 16. de Senet.

arcom. in 6

confit. Leg.

get resititer

de ret vindic.
can be had, the Bodies and Moveables of his Subjects, who renders not right, may be taken.

VI. In the Prosecution of which there must be,
1. The Oath of the Party injured, or other sufficient Proof, touching the pretended Injury, and of the certain Loss and Damage thereby sustained.
2. A Proof of the due Prosecution for the obtaining of Satisfaction in a legal way.
3. Protestation or denial of Justice.
4. A Complaint to his own Prince or State.
5. Requisition of Justice by him or them, made to the Supreme Head or State, where Justice in the ordinary course was denied.


All which being done, Letters of Reprizal under such cautions, restrictions, and limitations as are consonant to Law, and as the special case may require, may issue not only by the Jus Gentium and Civile, but by the antient and municipal Laws of the Kingdom *.

Magna Char. 26 C. 30. the last Clause.


VII. The Reprizals grantable by the Laws of England, are of two sorts, Ordinary and Extraordinary. The Ordinary are either within the Realm or without, and are always granted where any English Merchants or their Goods are spoiled, or taken from them, in parts beyond the Sea, by Merchants Strangers, and cannot upon Suit, or the King’s demanding of Justice for him, obtain the same, he shall have upon Testimony of such prosecution, a Writ out of the Chancery, to arrest the Merchants Strangers of that Nation their Goods here in England; the which is grantable to the Subject oppressed of Common Right, by the Chancellor or Keeper of England, who always in such case hath the approbation of the King or Council, or both, for his so doing; the other, which is for satisfaction out of the Realm, is always under the Great Seal.

* Hals’s Hist.
Pl. Cr p. 162.

They are either, 1. Particular to particular Persons upon particular Occasions; or,
2. General, which hath in a great Degree the Effect of a War, though it is not a regular War. See for more Matter the Place cited; or above, Chap. 1. Sect. 6.

VIII. But
VIII. But Letters of Reprizal granted in the Ordinary way for reparation out of the Realm, which are always under the Great Seal of England, cannot be revoked, (though perhaps in point of State there may be a suspending the Execution of them for reason grounded on the publick good) and the reason wherefore they cannot be annulled or revoked is, because after the Person injured hath petitioned, and hath according to Law made out by proof his los, and Letters of Request have gone, and no reparation made, then the Letters Patents of Reprizal being sealed, the same does immediately create and vest a National Debt in the Grantee to be satisfied in such manner and by such means as the same Letters Patents do direct out of the Goods and Estates of his Subjects, who refuses or protestes to do right (however as the King hath the Legislative power of Peace and War in a publick Treaty for the Nation's good, they may be mortified, and then revoked by the great Seal in pursuance of that Treaty).

Nor do I see it an act unjust internal to deny the Execution of such Letters Patents, according to that of St Paul, All things are lawful for me, but all things are not expedient. Now to the true Interpretation of the word lawful strictly, it is to do a thing without violating the Rules of Piety and Charity. Now there are many things amongst men which are not internally just, and cannot be done without violating the Laws of Charity, yet are lawful to be done, as in the Law of the XII. Tables, the Creditors might divide the Debtor's Body amongst them. So in acquiring satisfaction for Damages, the Lives and Goods of Innocents may be involved in Death and Destruction, whose peaceable Trade in Commerce never gave them knowledge of this privatum Bellum, nor were they Actors in the Injury original. 'Tis true externally, according to that of Lucan, That Prince or State that denies me right, gives me all. But the incomparable Cicero observes, That there are some Offices to be done to them from whom you have receiv'd an Injury, for revenge and punishment must have a measure. Now if the supreme Power does think that the Execution of such Letters of Reprizal cannot well be effected without endangering the Peace of both Estates, there may be a just cause to ref-
pite the Execution till a time more convenient may occur, for that the Lives and Estates of thousands may be involved in the repairing of one Injury, private and peculiar: Nor do I see the same to appear repugnant to the Laws positive that have been made for the awarding those Commissions. "Tis very true the Statute 4 Hen. 5. 6. 7. reciting, "That at the grievous Complaints of the Commons of England, who had suffered many Wrongs and Injuries in the Loss of their Ships and Goods upon the main Sea against Leagues, safe-Conducts, and Truces which were broken by the Subjects of other Nations, the same Parliament reciting their willingness to provide Remedy and Relief for the grieved by spoil and injuries done unto them beyond the Seas, upon Complaint to the Keeper of the Privy-Seal (on full evidence shewn) he shall sign Letters of Request to demand restitution and reparation to the Parties grieved: Which if not made in convenient time, then the Lord Chancellor of England shall grant Letters of Reprizal in due Form of Law for the Indemnity of the Persons interested and injured." Yet this does in no respect restrain the King's Prerogative and Authority, which he had at the Common Law in the judging the conveniency and time, when to be executed. Nor does the subsequent Statute, reciting: "Whereas divers great offences were often committed against Leagues, Truces, and Amities between the King and other Princes or States, against safe-Conducts and Licences, and against the Laws and Statutes of the Realm (in that case made and provided) to the great slander of our Sovereign Lord the King, and the Damages of the good Subjects the Commons of England. It was therefore Obtained, Established, Enacted, and Confirmed by the Consent of the Lords Spiritual and Temporal, and Commons assembled in Parliament, That all Statutes and Ordinances against the Offenders of Leagues, Truces, safe-Conducts, and Amities shall be in full force, excepting the Clause in the Act which made it High Treason in the Second Year of Hen. 5. Therefore it is plain there were Statutes made for the more effectual
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fectual providing for the Subject, and Letters of Reprizals, they being granted long before the Statutes, and the King’s Prerogative not the least diminished, but remaining at the Common Law to judge when expedient.

IX. And since the granting of Letters of Reprizal does not, in the ordinary way for particular satisfaction, amount to a breach of the Peace, I have thought fit for the excellency and care that is had in the composing and framing of them, to recommend one that was granted upon Solemn Advice, and for the Reasons therein mentioned.

X. The Extraordinary are by Letters of Marque, for reparation at Sea, or any place out of the Realm, grantable by the Secretaries of State, with the like approbation, of the King or Council, or both; but they are only during the King’s Pleasure, and to weaken the Enemy during the time of War, and may at any time be revoked.

Machiavel on his Tit. Liv. C. A Prince in this latter Age left his Country but for a Load of Sheep-Skins: Philip Comines in vita Caroli Ducis Burgund. Machiavel on his Tit. Liv. C. A Prince in this latter Age left his Country but for a Load of Sheep-Skins: Philip Comines in vita Caroli Ducis Burgund.

XI. As Princes by the Laws of Nations are responsible for injuries publick, so should they by the moost prudent ways imaginable prevent those that are private, not suffering Foreigners, if possible, to receive wrongs in their Countries: For, as the Florentine observes, If a Man be exceedingly offended, either by the publick, or by any other private band, in a Foreign Nation, and cannot obtain reparation according to Justice, he will never leave blowing the Coals, or cease promoting the injury, till the flame break out into War; in which he cares not if he see the ruin of that Kingdom or State, where he received his wrongs.

Nor should the Prince or State of the Person injured, value his Misfortune at so low a Rate, as to deny him Letters of Request, for that were to heap up injury upon injury; but likewise, if Justice be denied after such request, to arm him with power to take satisfaction by reprife, vi, manu & militari.

Generally there always proceed Letters of Request, two or three, more or less; and according to the satisfaction, sufficient or insufficent, returned in answer to the same, Commissions are awarded.

XII. Subjects cannot by force hinder the Execution even of an unjust Judgment, or lawfully pursue their right by
by force, by reason of the efficacy of the power over them. But *Foreigners* have a right to compel, which yet they cannot use lawfully, so long as they may obtain satisfaction by Judgment. But if that ceases, then Reprizal is let in.

XIII. Now Judgment is obtained either in the *Ordinary* Court, by way of * Prosecution*, or *Suit*, or *Appeal* from the same, after *Sentence*, or Judgment given, to a higher Court; or else in the *Extraordinary way*, which is by way of *Supplication*, or Petition to the *Supreme Power*, but we must understand that to be, when the matter is *convenient* and not doubtful, for in doubtful matters the presumption is ever for the Judge or Court.

But the Reprizal must be grounded on wrong Judgment given in matters *not doubtful*, which might have been redressed one way or other; either by the ordinary *probatum*, *Leg. Scriptur. E* de difr. sign. or extraordinary power of the Country or Place; and the which was apparently *perverted* or *denied*.

But if the matter be doubtful, then otherwise; for in Causes dubious or difficult, there is a presumption always that Justice was truly Administered by them who were duly Elected to publick Judgments.

XIV. And yet in this latter Case, some *are* of Opinion, *Veras debitor, licet absolutionem sit naturae tamen debitor permanet. Pau- *sub* Leg. *Julia D. de cond. in- debitor.* that if the Case were dubious, and if the Judgment were against apparent Right, the Stranger oppressed is let into his satisfaction; and the reason is, because the Judge's Authority is not the same over *Foreigners*, as over *Subjects*, for the reason above-mentioned.

If an *English* Merchant shall prosecute a *Suit* in the *Ordinary Courts* of the Law beyond Seas, and *Sentence* or Judgment shall pass against him, from which he appeals to the *Supreme Judgment*, and there the first Judgment or Sentence is affirmed, though the Complainant hath received a *Judgment* against the *real Right* of the Cause, yet this will be no cause for Letters of Reprizal, though perhaps it may occasion Letters of *Reques* (if there be strong circumstances for the same) to have a rehearing of the Cause.

But if an *English* Man shall recover a *Debt* there, and then the *Officer* having the *Debtor* in Custody, will wil-
Of Letters of Marque and Reprizal. Book I.

Nulli vendemus, nulli negamus, aut deferamus iustitiam, Grand Charter Coke 2 Inst. 56.

fully let the Prisoner escape, and then become insolvent, the same may perhaps occasion Reprizal.

In England, If a Foreigner bring an Action Personal against I. S. and the matter is found special or general, and the Party prays Judgment, and the Court refuses it; and then the Defendant dies, and with him the Action, (the nature of it being such) the Party is here without Remedy, the same may occasion Letters of Reprizal, if it be accompanied with those Circumstances that evince an apparent denial of Justice, i. e. as putting it off from Term to Term without cause.

An English Man pursues his Right in the legal Courts beyond Seas, and the Military Governor opposes the prosecution, and by force conveys away the Debtor and his Goods, the Sentence or Judgment is obtained: its ultimate end being Execution, being thus frustrated, may occasion Letters of Reprizal.

XV. Perions murder’d, spoil’d, or otherwise damned in hostile manner, in the Territories or places belonging to that King, to whom Letters of Request are issued forth, if no satisfaction be returned, Letters of Reprizal may issue forth; and the Parties Petitioners are not in such cases compelled to resort to the Ordinary prosecution: But the Prince of that Country, against whom the same are awarded, must repair the damage out of his or their Estates, who committed the injuries; and if that proves deficient, it must then fall as a common Debt on his Country.

Such Letters of Request generally allot a time certain for Damages to be repair’d, if not, Reprizals to issue forth: A singular Example of which you will find hereunder.

† After the Massacre at Ambounge, and the other depredations committed by the Flemings on the English, his Majesty in 1625, issued forth his Letters of Request to the States of Holland; for Satisfaction within 18 Months, otherwise Letters of Reprizal. Vide Journals of that Year, and Leo Alzuma, p. 48. 13. 41. 82. So likewise Letters of Request went to the King of Spain, requiring Satisfaction for the depredation committed on the Ship and Goods of Mr. Stamps, who was spoiled and murdered at Havanna, Anno 1674. Vide the Proclamation 1675. of Reward promised by his Majesty for the apprehending the Offenders dead or alive.

A Copy of Letters Patents, for e-special Repri-

CHARLES the Second, by the Grace of God, of England, Scotland, France, and Ireland, King, De-
sender of the Faith, &c. To all Christian People, to whom
whom these presents shall come, GREETING: as from the King of Great Britain (under the Great Seal of England) against the States-General and their Subjects, enrolled in the High Court of Chancery, 19 Mai, 15 Car. a.

CHAP. II. Of Letters of Marque and Reprizal.

WHEREAS our loving Subject William Courten, esq. deceased, and his Partners Ann, 1643, by the depredation and hostile act of one Gailand, Commander in chief of Two Ships belonging to the East-India Company of the Netherlands, was between Goa and Maccao in the Straights of Malacca, deprived and most injuriously spoiled of a certain Ship named the Bona Esperanza, and of her Tackling, Apparel, and Furniture, and all the Goods and Lading in her, upon a very hopeful trading Voyage to China, which were carried to Batavia, and there all de facto without due Process of Law confiscated. And that also in the same Year another laden Ship of Our said Subject, called the Henry Bonadventure, being come on Ground near the Island Mauritius, was there both Ship and Goods seized upon by some of the Officers and Ministers, and others under the Command of the said East-India Company, and utterly detained from the right Owners, AND WHEREAS the said William Courten, and his Assigns in his Lifetime, used all possible endeavours to recover the said Ships and Goods, and to procure further Justice against the Dealers, and yet could obtain no Restitution or Satisfaction, whereby they became much to be disheartened and utterly undone in their Estate and Credit: And that thereupon, and upon the most humble Supplications and Advertisements of Francis Earl of Shrewbury, and William Courten, esq. Grand-Child and Heir of the said Sir William deceased, Sir John Ayton and Sir Edmond Turner Knights, George Carew and Charles Whitaker Esquires, on the behalf of themselves and divers others interested in the said two Ships Bona Esperanza, and Henry Bonadventure, and in the Estates of the said Sir William Courten deceased, Sir Edward Littleton Baronet, and Sir Paul Pindar Knight deceased, that We would take their Case into Our princely consideration, WE OUT OF A JUST SENSE We then had and still have of their unjust sufferings in that business; both by Our own Letters under OUR SIGN Manual to the States-General of the United Provinces, and by Sir George
Of Letters of Marque and Reprizal. Book II.

George Downing Knight and Baronet, Our Envoy Extraordinary, to whom We gave Special Command is to do, required satisfaction to be made according to the Rules of Justice, and the Amity an good correspondence, which We then desired to conserve with them firm and inviolable. AND

WHEREAS after several Addresses made to the said States-General by our said Envoy, and nothing granted effectual for Relief of Our said Subjects (whom we take Ourselves in Honour and Justice concerned to see satisfied and repaid) We late commanded the said Sir George Downing to intimation and signify to the said States, that we expected the final Answer, concerning satisfaction to be made for the said Ships and Goods by a time then purposed and since elapaned, that We might to govern Ourselves thereupon, that Our aforesaid Subject might be relieved according to Right and Justice and yet no satisfactory Answer hath been given, that We cannot but apprehend it to be, not only fruitless Endeavour, but a prostituting of Our Honour and Dignity, to make further Application after so many denials and refusals and refusals.

AND

WHEREAS John Exton, Doctor of Laws, Judge of our High Admiralty Court of England upon our Command, to certify to Us the Value of the Loses and Damages sustained by the said William Courten and Partners, whose Interest is vested in our loving Subjects, Sir Edmond Turne Knight, and George Carew, Esq; and Partners, hath upon full Examination and Proofs there made by Witnesses in Our High Court of Admiralty, reported and certified under his Hand, that the same do amount to the Sum of One Hundred and Twelve Pounds.

NOW KNOW YE, That for a full restitution to be made to them for their Ships, Goods and Merchandizes, of which the said William Courten and the Alliances of the said William Courten all Partners, were so deposed as aforesaid, with such Costs and Charges, as they shall be at for the recovery of the same. We by the Advice of Our Privy Council have thought fit, and by these P
CHAP. II. Of Letters of Marque and Reprizal.

Lentes do grant Licence and Authority under Our Great Seal of England, unto our said Subjects Sir Edmond Turner arid George Carew, their Executors, Administrators and Assigns, for and on the behalf of themselves, and other persons interested as aforesaid, to equip, victual, furnish, and to let to sea from time to time, such and so many Ships and Pinaces as they shall think fit. PROVIDED, always that there be an Entry made and recorded in the Admiralty Court of the Names of all Ships and Vessels, and of their Burden and Ammunition, and for how long time they are victualled: And also of the Name of the Commander thereof, before the same or any of them be let forth to Sea; And with the said Ships and Pinaces by force of Arms to be upon, take and apprehend any of the Ships, Goods, Monies and Merchandizes of the States General, or any of the Subjects inhabiting within any their Dominions or Territories, wheresoever the same shall be found, and not in any Port or Harbour in England, or Ireland, unless it be the Ships and Goods of the Parties that did the Wrong. And the said Ships and Goods, Monies and Merchandizes, being so taken and brought into some Port of Our Realms and Dominions, an Inventory thereof shall be taken by Authority of Our Court of Admiralty by the Judge or Judges thereof, for the time being, upon Proof, made before him or them, that the said Ships, Goods, Wares, Merchandizes or Money, did belong to the States General, or any of the Subjects as aforesaid. That they shall be lawful Prize to the said Sir Edmond Turner and George Carew, their Executors, Administrators and Assigns as aforesaid, to retain and keep in their or any of their Possessions, and to make sale, and dispose thereof in open Market or howsoever else, to their and every of their best Advatage and Benefit, in as ample manner as at any time heretofore hath been accustomed by way of Reprizal, and to have and enjoy the same as lawful Prize, and as their own proper Goods: SO THAT "NEITHER Captain, Master, nor any of the Company, that shall serve in his own person, or shall promote and advance the
Of Letters of Marque and Reprizal. Book I.

the said enterprise in manner and form aforesaid,
yhall in any manner of wise be reputed or challenged for any Offender against any of our Laws.
And that also it shall be lawful for all manner of persons as well our Subjects, as any other, to buy the said Ships, Goods, and Merchandizes so taken and apprehended by the said Captains, Masters and others, and adjudged as aforesaid, without any Damage, Loss, hindrance, trouble, oz molestation, oz incumbance, to behalf the said Buyers, oz any of them, in as ample and lawful manner, as if the Ships, Goods, Wares, and Merchandize, had been come and gotten by the lawful Traffick of Merchants, oz of just Prizes in the Time of open War. PROVIDED always that all Ships, Goods, and Merchandize, taken by virtue of this our Commission shall be kept in safety, and no part of them wasted, spoiled or diminished, oz the Bulk thereof broken, until Judgment have first pass as aforesaid, that they are the Ships and Merchandizes of the States General, oz some of their Subjects as aforesaid. And if by colour of this our Commission, there shall be taken any Ships, Goods, or Merchandizes of any of our loving Subjects, oz the Subjects of any Prince, oz State in good League, oz Amity with Us (except the States General) oz their Subjects as aforesaid, and the Goods therein laden, sold and embezzeled, oz diminished, oz the Bulk thereof broken in any place before they shall be adjudged to belong to the States General, oz some of their Subjects as aforesaid, that then this Commission shall be of no sufficient Authority, to take the said Ships, Goods and Merchandizes, oz to warrant, oz have harmsels such as shall receive, buy oz intermeddle therein; but that both the prizes to taken, and the said Ship of War, shall be confisc rated to our Use.

AND FURTHER, We do hereby declare, that it is our Will and Pleasure, that this our Commission shall remain in full force and power, to all intents and purposes, until the said Sir Edmond Turner, and George Carew, their Execut eys, Administrators, and Aliens, as aforesaid, shall
CHAP. I. Of Letters of Marque and Reprizal.

shall by virtue thereof have by force of Arms appre
tended, taken, seiz'd, recover'd, and received from the said States General, or their Subjects, one hundred fifty one thousand six hundred and twelve Pounds, according to the Appraisement to be made by sufficient Appraisers, upon Oath nominated and authorized in Our said Court of Admiralty, of all such Ships, Goods, Wares, and Merchandizes, as shall be taken from the said States General, or any of their Subjects, by virtue of this Commission, or shall otherwise receive satisfaction of the Debt aforesaid, by Composition to be made between those of the East India Company of the Netherlands, and the said Sir Edmond Turner, and George Carew, their Executors, Administrators and Assigns, as aforesaid. NOTWITHSTANDING it to happen, the present Difference between Us, and the States-General, depending upon general Reprisals, may be agreed and composed, and that in the Interv'rim a peace and good Correspondence may be renewed between Us and the said States General: In which Case nevertheless, It is Our Will and Pleasure that in the Execution of this Our Commission, no Violence shall be done to the Persons of the said Subjects of the said States General, but only in Case of Resistance, and that after in cold Blood, the Subjects of the said States General, if hurt or wounded, shall be used with all convenient Office of humanity and Kindness.

AND FURTHER, Our Will and Pleasure is, That although it shall happen that all Hostili
ty between Us and the States General, and Our respective Subjects shall cease, yet this Our Commission shall remain, and be in full Force and Power, to the said Sir Edmond Turner, and George Carew, their Executors, Administrators, and Assigns, as aforesaid, by virtue thereof to appre
tend, take and seize, by Force and Arms, so many more of the said Ships and Goods of the States-General, or any of their said Subjects. as besides the said Sum before-mentioned shall coun-
terbail, satisfy, and pay all such Costs and Charges
Of Letters of Marque and Reprizal. Book I.

"Charges as the said Sir Edmond Turner, and
George Carew, their Executors, Administrators, 
their Assigns, as aforesaid, shall from time to time
make Proof to have disbursed, and paid towards
the equipping, manning, paying, furnishing, and
victualling of the said Ships, so licensed and au-
thorized as aforesaid, by this our said Commis-
sion to be equipped, manned, furnished, and vic-
tualled, by the said Sir Edmond Turner, and George
Carew, their Executors, Administrators, and As-
signs as aforesaid, for the purpose aforesaid.

AND OUR WILL and pleasure is, and we do
hereby require Our Judge or Judges of Our high
Court of Admiralty, for the Time being, and all
other Officers of the Admiralty, and all other
our Judges or Judges, Officers, Ministers, and
Subjects whatsoever, to be aiding and assisting to
the said Sir Edmond Turner, and George Carew,
their Executors, Administrators, and Assigns as
aforesaid, in all Points in the due Execution of
this Our Royal Commission, and to proceed to
Inquisitions, and adjudge all Ships, Merchants,
Vessels, Monies and Goods by virtue thereof to be
taken, according to our princely Intention, here-
by signified and expressed, and to take Care that
this Our Royal Commission to be duly executed,
and favourably interpreted and construed in all re-
spects, to the Benefit and best Advantage of the
said Sir Edmond Turner and George Carew, their Ex-
cutors, Administrators, and Assigns, as aforesaid.

IN WITNESS whereof, We have caused these Our
Letters to be made Patents. Witness Ourself at
Westminster, the 19th Day of May, in the Seven-
teenth Year of Our Reign.

BY THE KING.

XVI. It is not the place of any Man's Nativity, but his
Domicil; not of his Origination but of his Habitation, that
subjects him to Reprize: The Law doth not consider so
much where he was born, as where he lives; not so much
where he came into the World, as where he improves
the World.
Chap. II. Of Letters of Marque and Reprisal.

If therefore Letters of Reprisal should be awarded against the Subjects of the Duke of Florence, and a Native of Florence, (but denized or naturalized in England) should have a Ship in a Voyage for Leghorn, if a Captain should be made, the same is not lawful, nor can the same be made Prize. Yet by the Laws of England, a natural born Subject cannot divest himself of his Allegiance; tho' he happens to be commorant in the Enemy's Country.

XVII. It doth not any where appear, that Reprisals can be granted on Misfortunes happening to Persons or their Goods, residing or being in Foreign parts in time of War there; for if any Misfortune happens, or is occasioned to their Effects, or to their Persons, then they must be contented to sit down under the Loss; it being their own fault, they would not fly or relinquish the place, when they foreflew the Country was subject to the spoil of the Soldiers, and devastation of the Conqueror.

The Faction of the Guelfs and Ghibellins in Florence, warring against each other, The Guelfs obtaining the Victory, and thrusting the Ghibellins out of it, after they had taken the City, Domum cujusdam Hagonis de Papi in loco Regno Anglie demorantis divurerunt, and plundered his Goods therein, qui Hugo supplicavit Domino Regi, ut Inde Thesaur. Re-Itali Mercatores (of that Faction and City then in England) emendas hic ibi facerent; upon which adjudicatum fuit, quod di ubi Mercatores dixit Hugoni satisfaciam pro damnis suscepitis, & destruptione domus sua: upon which a Writ of Error was brought, and the Judgment was reversed in these words; Quod non est consuetudo Anglie de aliqua transgressione falsa in aliena Regione, tempore Guerre, vel alio modo—consideratum est, quod totus processus & ejus effectus revocentur, &c.

XVIII. By right (for so it is now called of rendering like for like) there are many Persons exempted, and those whose Persons are so privileged, have also protection for their Goods, some by the Laws of Nations, some by the Civil Law, others by the Common Law; among which Ambassadors by the Laws of Nations, their Retinue and The Ambassadors Goods are exempt, coming from him who awarded the favor of the Reprize, the Laws of Nations not only provided for the Dignity of him that sends, but likewise the secure going and coming of him that is sent.

Nor Scipio's Army
Of Letters of Marque and Reprizal. Book I.

Nor against those that travel for Religion, nor on Students, Scholars, or their Books; nor on Women or Children by the Civil Law: nor those that travel through a Country, staying but a little while there; for they are only subject to the Law of the place.

By the Canon Law Ecclesiastical Persons are expressly exempt from Reprizals.

A Merchant of another place than that against which Reprizals are granted, albeit the Factor of such Goods were of that place, is not subject to Reprizals.

XX. Ships driven into Port by storm or stress of weather, have an exemption from the Law of Reprizals, according to the Jus Commune, but by the Law of England otherwise, unless expressly provided for in the Writ, or Commission.

But if such Ship flies from his own Country to avoid Confiscation, or some other Fault, and is driven in by stress of Weather, the may then become subject to be prize.

But it is not lawful to make seizure in any Ports, but in his who awarded the Reprizal, or his against whom the same issued; for the Ports of other Princes or States the Peace of them are to be maintained.

XX. Ships attacked by those that have Letters of Reprize, and refused to be yielded up, may be assaulted and entred; and though it may fall out, not by intention, but by accident, that some of those that so resist, may happen to be slain, yet the Fault will lie at their own Doors, for hindring the Execution of right, and that which the Law most justly approves of.

Errores uniusque dominionis judicium ubi plenum esse in se, et ad rem publicam patuitque transferrir, quod minus in probabil, nec sancti Theologiae contentaneum. Gratius de Jure belli lib. 3. c. 2. §. 4. And seems to be of opinion by the Law of Charity, that the Prosecution of right for a Man's Goods, which inevitably must be by the Life of Man, ought to be omitted. Lib. 2. cap. 10. Lib. lib. 2.

XXI. This right of changing of Dominion is so odious, that in the taking of Goods, if by any possibility the right Owners may have Restitution, the same hath been done; and though a larger time than 24 Hours may happen between the capture and recapture, and so may perpetuare with the Captor; yet Restitution may be made.
If a Ship be Prize or not, this shall be tried in the Ad-
ministry, and no Prohibition shall be granted. The Case
was, there being War between us and Denmark, a Priva-
teer of Scotland took a Ship as Prize being a Danijh Ship,
and she was condemned as Prize by the Admiralty in
Scotland; and brought her upon the Land, and S. libell’d
in the Admiralty of England; and suggested that she was
not a Danijh but a Ship of London, per Curiam, In as much
that the matter is Prize or not Prize no Prohibition.

Tompson and Smith 1 Sid. 320. 2 Keeble 158. & 176.

One who had Letters of Marque in the late Wars
with the Dutch, took an Offender for a Dutch Ship, and
brought her into an Haven, and libelled against her as
Prize, and the Offender libelled in the Admiralty against
the Captor for damage sustained, for the hurt the Ship
sustained in the Port, and a Prohibition was prayed, for
this that the Suit is for damage done in the Port, for
which an Action lies at the Common Law; but the Pro-
hibition was denied, because the Original being a Caption
at Sea, and the bringing her into Port in order to have
her condemned as Prize, is but a consequent of it, not
only the Original, but also the consequences shall be
Delbov con. Eglesfield and Whital 2. Keeble 828. and
2. Lev. 25. 2. Saun. 259.

And therefore if he, who hath Letters of Marque or
Baribal, in Reprizal, takes the Ships and Goods of that Nation,
against whom the same are awarded, and brings the same
into a Neuter Nation, the Owners may there seize her,
or there the Admiral may make Restitution by Law, as
well of the Ship’s Goods to the Owners, as the Persons
captives to their former Liberty; for that the same ought
first to have been brought infra Praesidia of that Prince or
State, by whose Subjects the same was taken.

And with this agrees the Common Law; for a Dunkirk
having taken a French Vessel, sold the same at Weymouth, in B.R.
whether it had been driven before it was brought infra
Praesidia Dom. Regis Hisp. it was in such case ruled, that
if a Ship be taken by Piracy, or Letters of Marque and
Reprizal, and is not brought infra Praesidia of that Prince or
State, by whose Subject the same was taken, the same
could
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could not become lawful Prize, nor were the Owners by such a Caption divested of their Property.

But if the Caption be by Ships of War, the Property will be immediately in the Captors, and never divested, unless afterwards vi, manu & fori it be in Battle regained.

Vide 6 A. c. 13. § 6, 7, 8. XXII. Upon the sharing the Spoil of the captivated Ships, regard is had to the Ships present, not the Captors only; (for his Reward must be the Encouragement of his Prince, like the Roman Corona's, of which there were various, according to the Achievement of the Conqueror,) for the Profits of Prizes are to be equally divided amongst the Ships present, and not solely to the Captor; therefore if Letters of Reprizal are granted to two Ships, and they happen both of them at Sea to meet a Prize, and the one attacks and enters her, by means of which she becomes absolutely the Conqueror; yet the other hath right to an equal distribution with the Captor both in Ship and Goods, although he did nothing in the Conquest: the

Mich. 32. c. 13. reason is, That although he missed the opportunity of taking of her, yet the presence of his Vessel armed and prepared for Battle, at the time of taking, became a Terror to the Ship that was so conquered. And by the Law presumed eur, that the other Ship would not or could not be so taken, which Law hath passed the current, and approbation of the Common Law, as reasonable, just, and equitable, and may be pretended or surmised to entitle the Party Captor to the making Restitution of a Moiety to his Companion then present.

XXIII. But if it should happen, that those to whom Letters of Marque are granted, should instead of taking the Ships and Goods of that Nation against whom the same were awarded, wilfully take or spoil the Goods of another Nation in amity, this would amount to a downright Pitacy. And the Persons offenders would for such fault create a Forfeiture of their Vessel, and the Owners must be for ever concluded by the same, notwithstanding such Commission.

XXIV. But that must be understood where such a Caption is done in a Pyrratical manner: for most certainly, if Letters of Reprizal are granted to a Man, and then he devolves the power to another, and the Party to whom the
the power is confisged, takes the Ship and Goods of another Nation than against whom the same were awarded, but upon a violent presumption that he made a right Caption, for that he found the Colours of several Nations in the Ship, the Mariners of several Countries, the Ship of the Built of that Country against whom the Letters of Reprizal were awarded, though perhaps upon a Judicial hearing the parties are restored to their Ship and Goods, yet the Captors are not to be punished Criminaliter, nor the Grantee of the Letters Patent Civiliter: and the reason wherefore it was no injury in the Captors to take, did arise from the probable cause which will excuse the Captors from punishment (though perhaps it will not from answering of the damage;) but it is clear the Grantees are excused from both, unless privy to the Caption; and the reason is this, for the Letters Patent do not only vest the debt in the party, but do likewise give Power to the Party to recover, and is a judicial process to obtain satisfaction, vi, manu & fori from the Subjects of that Prince or State against whom the same are awarded: So then it will be no more than if the Creditor deliver process to the Officer to take his Debtor, and he takes a wrong Person without the Knowledge of the Creditor, this may subject the Officer to answer Damage to the Party taken, but not the Creditor.

XXV. Therefore Letters of Marque or Reprizal issue not without good and sufficient Caution first given for the due observance thereof according to Law; the Transgression of which creates a Forfeiture of the same.

And therefore having taken a Prize, and brought the same infra Presidia, the Captor must exhibit all the Ship-papers, and captivated Mariners to be examined, in order to adjudication, till when Bulk ought not to be broken without Commission, nor may the Captain of the Captor suffer any embezzlement of the lading, or sell, barter or dispose of any part without Commission; for the King hath 3 Eliz. cap. 5, a proportion in all Prizes.

Such Goods so brought in are not subject to pay Customs.

XXVI. By the Law of Nations, ipso facto, the Dominion of the things taken by those to whom Letters of Marque
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Marque are granted, become the Captors, till the Debt and Costs, that is, the original Damage and subsequent charges are satisfied; which being done, the residue ought to be restored: So the Venetians used their equity, having taken the Ships of Genoa, did not spoil any of the lading, but preferred the same very carefully, till the Debt was paid; which done, restitution was made of the things entirely, without diminution.

XXVII. When for the fault perhaps of a few, a debt becomes National, by reason of which the Goods of the innocent become liable (if taken for satisfaction) whether by the Law of England, the party ought to have Contribution, is a question most certain by the Common Law; where more are bound to one thing, and yet one is put to the whole Burden, the Party may have process called "Contributions facienda" for his Relief: but when a debt becomes Universal or National, it seems otherwise: For if one lends my Country Money, I will not call myself debtor, yet I will pay my share: So it may seem equitable by the Laws of Charity, though not compellable by the Laws of the Land.

XXVIII. Yet when depredations have happened to Foreign Merchants, and complaint hath been made, the Kings of England have often issued forth Commissions to enquire of the same: and so it was done upon the Petition of some Merchants of Genoa, who complained against the Inhabitants of the Isle of Guernsey for a depredation, in taking away and detaining their Merchandize and Goods, to the value of many thousands of Pounds, out of a Ship wrecked by tempest near that Isle, by which the Commissioners were empower'd to punish the offenders, and to make restitution and satisfaction for the damages.

The like complaint was made by the Merchants of the Duke of Britain, of certain depredations committed by the Subjects of the King of England, who issued forth the like Commission, and to give them reparation and damages for the same; so that if the Subjects of the King of England have had their Goods taken by way of Reprize for the satisfaction of such debt or damage, they may have the Benefit of the like Commissions to lick themselves whole out of the Estates of the Offenders.
C H A P. III.

Of Privateers or Capers.

I. Of Privateers, whether allowable by the Laws of Nature.
II. Of permission of such by the Laws of Nations.
III. The Occasion of their first Institution.
IV. Whether it be lawful to undertake such an Employment.
V. Of Commissions general to damage an Enemy.
VI. Of Commissions special and to Privateers, and the Immunities they claim by the same.
VII. They are not to violate the Law of Nations. A great Case on that Head.
VIII. Of the Case that is obliging on the issuing forth such Commissions, in reference to their Regulation, and especially in the last Treaty Marine, between England and Holland.
IX. Of Goods subject to Prize, both considered in reference to adjudication general.
X. Of the Goods considered in reference to adjudication, or Occasional special.
XI. Of the Lading made Prize, whether it draws in a Forfeiture of the Vessel, and elsewhere otherwise.
XII. Whether Ships refusing to yield up to such, life is engaged.
XIII. Privateers where subject to Punishment, and their Actions where Occasion a Forfeiture of their Vessel.
XIV. Of Things not subject to spoil.
XV. Considerations general on Privateers.

I. Naturally every one may vindicate his own Right, Leg. armis. D. therefore were our Hands given us; but to profit another in what we can, is not only lawful, but commendable, since nothing is more serviceable to Man than Man. Now there are divers obligations between Men which engage them to mutual Aid, for Kinsmen assemblable and bring help, and Neighbours are called upon, and fellow Citizens; for it behoves every one, either to take Arms for himself, if he hath received Injury, or for his Kindred, or for his Benefactors, or to help his Fellows, if they be wronged. And Solon taught, That Common-Bartolius. Leg. wealths would be happy wherein everyone would think another's ut omn. D. de injurias to be his own. But when War is denounced, it matters not what obligations are wanting, it is enough the Nation is injured in general; for in that every individual is wronged, and all participate in the Indignities and publick Damages of his Country; to revenge or prevent which, is the Duty of every Member of the same.

II. Since
II. Since therefore it is not against the Law of Nature, to spoil him whom it is lawful to kill, no wonder that the Laws of Nations permitted the Goods and Ships of Enemies to be spoiled, when it suffered their Persons to be slain.

III. The approbation of which in the Wars of later Ages, hath given occasion to Princes to issue forth Commissions to endanger the Enemy in their Commerce, and to prevent such Supplies as might strengthen or lengthen out War, to persons to whom the prize or caption become absolutely the Captors, and that to prevent the spare of Ships of Force to be absent from their respective Squadrons or Fleets.

By those of Holland they were termed Capers, by the Spaniard they had their denomination from their respective parts, as Offenders, Dunkirkers, and the like, in England call’d Privateers; how far the Actions of those, as in relation to the attacking and killing of the Enemy, or spoiling of their Ships and Goods are lawful, not being commanded nor hired thereto, may be a question.

IV. By the Laws of Nations (as hath been said) it is lawful for every Subject of that Nation in War to seize upon the Enemy’s Goods and Ships, as also to kill them; for they are, after War denounced by Law, look’d upon as of no account; and if respect be had to natural and internal Right, it seems granted to every one in a just War to do those Things, which he is confident within the just measure of warring, to be advantageous to the innocent party: but though there may be such authority given, yet what title can they claim or appropriate to themselves of the Ships or Goods of Enemies, (for surely there is nothing owing to such, nor are they lawfully called to the fame) unless they can shrowd themselves under the Protection of this, that what they do, is only to exact punishment from the Enemy by the common right of men.

V. Commissions to kill or spoil the Enemy are in two respects, either general or special: General as in a tumult;
mum; among the Romans the Consul said, *Whoever would have the Commonwealth safe, let him follow me*; and to all particular subjects it is sometimes granted a Right of killing in self-defence, when it is publickly expedient, as on a sudden occasion, and the like.

VI. Special Commisions are such as are granted to those that take Pay, and are under Orders; the not obeying of which may be punished with Death, though the act succeeds well.

Others to repair a particular damage by way of Re-prize, the original damage being turned into a National debt, but that satisfied, the other determines: or else to those who receive no pay, but go to War at their own charge; and that which is more, administer at their own costs a part of a War, by providing Ships of Force, and all other military provisions to endamage the Enemy or their Confederates, the which are termed *Privateers*, &c. as above, to whom instead of pay is granted leave to keep what they can take from the Enemy; and though such Licence is granted them, yet may they not convert of their own Heads to their private use those Prizes, before the same have been by Law adjudged lawful to the Cap-tors, and the Admiral had his share.

VII. Nor may such *Privateers* attempt any thing against the Laws of Nations, as to assault or endamage an Enemy in the Port or Haven, under the protection of any Prince or Republick, be he Friend, Ally, or Neuter, for the peace of such places must be kept inviolably.

Sir Kenelm Digby having obtained a Commission against the French, being in the Straights, was every where honoured as a *Cavalier* whom the King of Great-Britain favoured; in his Voyage he took some Prizes, and coming to Algier redeemed several Captives, whom he took aboard, and placed in the several Vessels he had made prize of: the which he so effected, that in a short time he became *Illustriissimo* of six Ships of War; coming to Cape Congare, ten leagues from Scanderoon, and having sent a Boat to descry the road, word being brought that there were in the road two Venetian Galeasses, with two other Galleons, two *English* Ships, and several *French* Ships, Sir Kenelm being satisfied of the Prize, resolved to attack them the next morning, although the Admiral
of the Venetians had declared himself Protector of the French, and that he would destroy all the English Ships of War that he should meet, either in that Republick’s or Grand Signior’s Seas. Sir Kenelm notwithstanding resolved to engage them, and accordingly bore up to them, and the Venetian General weigh’d Anchor to meet him; Sir Kenelm before he fired, sent a Settee to inform the Venetian of his Quality, and of his Commission, being only to endeavour to make prize of the French, and giving him all the assurance possible of his friendship and respect to the Republick; but before the Settee was answered, the engagement was begun by the English, French, and Venetian. This Action of Sir Kenelm Digby was questioned by the Turk; for that Hostility had been committed by the English in the Grand Signior’s Road, and thereupon the Bajza of Aleppo and Cady of Scanderoon made an Avanias or Embargo on the English Merchants, till reparation was made, for the breaking the Peace of the Port.

VIII. In the granting of such private Commissions there is always great care to be had and taken by caution, to preserve the Leagues of our Allies, Neuters and Friends, according to their various and several Treaties; and therefore at this day by the late Treaty between His Majesty and the States of Holland at London, before any Privateer or Caper can receive Commission, the Commander is obliged to enter before a competent Judge, good and sufficient security by able and responsible Men, who have no part or interest in such Ship, in 1500 l. Sterling, or 15,500 Gilders; and when they have above an hundred and fifty Men, then in 3000 l. or 33000 Gilders, that they will give full satisfaction for any damage or injuries, which they shall commit in their courses at Sea, contrary to that Treaty, or any other Treaty made between His Majesty and that State, and upon pain of Revocation and Annulity of their Commissions; and for answering of such damage or injuries, as they shall do, the Ship is made liable.

There is a Provision to the like Effect between us and the French on the last Peace.

IX. If a Suit be commenced between the Captor of a Prize and the Claimer, and there is a Sentence or a Decree given for the party reclaiming; such Sentence or Decree (upon
(upon security given) shall be put in execution, notwithstanding the Appeal made by him that took the Prize, which shall not be observed in case the Sentence shall be given against the Claimers; if torture, cruelty, or barbarous use happens after a Caption, to be done to the Persons taken in the Prize, the same shall ipso facto discharge such a Prize, although the was lawful, and the Captains shall lose their Commissions, and both they and the Offenders be subjected to punishment.

X. Such sorts of Instruments having made a caption of Ships bound for an Enemy from Nations Neuter, or in amity with both the warring States; the lading, in order to be made Prize is reduced to these three several heads.

First, Those Goods that are fit to be used in War, under which are included Powder, Shot, Guns, Pikes, Swords, and all other instruments and provisions of Armament fit to be used in the Field or at Sea.

The second, are those things that may be used in time of War and out of War, as Money, Corn, Victuals, Ships, and the like.

And the last, are those Goods that are only fit for luxury and pleasure.

XI. The first are accounted Prize without controversy; He is to be accounted an Enemy that supplies an Enemy with things necessary for the War.

The second is to be governed according to the state and condition of the war; for if a Prince cannot well defend himself, or endanger the Enemy, without intercepting such things, necessity will then give a right to the condemnation. And so Queen Elizabeth did the Hanstastick Fleet taken, laden with Corn for Lisbon, upon consideration of the state of the War, the same became prize.

Ships may not upon any account be called prohibited, nor subject to a condemnation, except carried to places besieged, Art. 4. See John Mersius his Danish History concerning the prohibiting of Goods by those Northern States. Vide postea, the Grand Prize condemned by Q. Elizabeth in tit. Cuxoms, and wide tit. Ships of War, § 24.

The last become free, and (as we have before mentioned) according to that of Seneca; I will not help him to Money to pay his Guards; but if he shall desire Marbles and Robes, such things hurt not others, only they minister to his luxury: Soldiers and Arms I will not supply him with; if
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be shall seek for Players and recreations to soften his fierceness, I will gladly offer to him: Ships of War, I would not send him, but such as are for pleasure and ostentation of Princes sporting in the Sea, I will not deny.

And Persons so attempting to relieve an Enemy may be punished; but if the same be done by necessity of obedience, though the parties are much to be blamed, they yet are not to be punished; and so it was with those which relieved Sir John Oldcastle with provisions, who being taken, were discharged.

But if part be prohibited Goods, and the other part is not prohibited, but such as according to the necessity of the War shall be so deemed, the same may draw a conseq- uential condemnation of Ships, as well as lading.

By the seventh Article in the Treaty at Lon- don, if the Skipper will deliver out the prohibited Goods, the Ship may proceed with the rest in their Voyage or Course, as they please, and the Ship shall not be brought into Port.

Nec reus est mortis alienae, inquit Augustinus, qui suae possessioni munitorum circumsidit: si aliquid ex ipsorum usi percutius intereat. Publ. Epist. 154.

XIII. If such Ships shall be attacked in order to an examination, and shall refuse, they may be assaulted, as a house suppos'd to have Thieves or Pirates in it, which refuses to yield up their persons, may be broken up by the Officer, and the persons resisters may be slain.

XIV. But if any of these Privateers willfully commit any spoil, depredations, or any other injuries, either on the Ships of our Friends or Neuters, or on the Ships or Goods of our own Subjects, they will, notwithstanding they are not in pay, be subjected in some cases to Death and other punishments, according to the demerits of their crimes, and perhaps may subject their Vessel to Forfeiture.

And though by the Law of Nature the Goods of Enemies are to be spoiled as well as their Persons slain, yet some Goods and things seem exempted, and ought not to
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To be spoiled, and therefore it is not lawful to land on the Territories of our Enemies, to spoil places dedicated to God: though Pomponius observes, when places Pompéon. Leg. are taken by the Enemy, all things cease to be Sacred; the reason given is because the things which are call’d Sacred, yet are they not indeed exempted from humane ues, but are publick. *The Townsmen, faith Tacitus, open- Tacit. Annal. ing their gates, submitted themselves and all they had to the 13. Romans, themselves were spared, the Town was fired. Pompey entered the Temple by the right of Victory, not as a suppliant, but as a Conqueror: and though that privilege may seem right by the Law of War to a Sovereign, or a General, that intends a Conquest, yet that power may not seem devolved to him, whose Commission is cautiously to endanger the Enemy only, as in reference to his commerce and provisions of enabling them to withstand the War: Certainly, that Conquest is poor, whose Trophies and Triumphs are made up with Roofs, Pillars, Posts, Pulpits, and Pews, and the spoil of Agriculture. Hence it is, that at this day the king of France in Germany and the Netherlands accepts of Contributions, by which the Cities and Churches are not only spared, but even the Countrymen plough and sow as quietly as if there were no Armies in their Territories at all.

Wars and Victories for the most part consist in taking and overthrowing Cities, which work is not done without injury of the Goods, the walls of Cities and Temples of the Gods partake in the same ruin, the Citizens and Priests equally slaughtered; nor is the spine of sacred riches and profligate unlike: so many are the Sacrileges of the Romans as their Trophies, so many are their Triumphs over Gods and Nations; and then goes further, *Et manubies quot mament adhuc simula praecipuorum deorum. Max et bene, quad si quid adversi Urbibus accidit, cedam clades Temporum que et munimenta suarent.*

Even upon the same Reason, that the Instruments of Husbandmen are not to be taken for a pledge by the Civil or Common Law. Leg. extenu. C. que res sit sign. Coke on Littleton 47.

XV. Most certain, those sorts of Capers or Privateers, being Instruments found out but of later Ages, and 'tis well known by whom, it were well they were restrained by consent of all Princes; since all good Men account them but one Remove from Pirates, who without any respect to the cause, or having any injury done them, or so much as hired for the Service, spoil Men and Goods, making even a Trade and Calling of it, amidst the Calamities of a War, and driving a commerce and mart with the spoil, and that with as much peace and content, as if
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if they had never heard of Tears, Blood, Wounds or Death, or any such things: such, to expose their lives against Ships of the like kind, were both honourable and just, or those that should aid the Enemy with Goods prohibited as afore, such Prizes were possessions most noble; but the Goods, Ships and Lives of the innocent peaceable Traders to be exposed to rapine and spoil, renders them worse than the Roman Lictors, by how much 'tis to kill without cause, Headsmen executing the guilty, they the guiltless.

It was a high necessity that enforced the English to commission such, the number of her then Enemies covering the Sea, like the Egyptian Locusts; it were well they were rejected by consent, or if allowed of, not subject to Quarter, when taken by Ships of War: A Trade that St Paul never heard of, when he said, Who goeth to War at his own charge?
CHAP. IV.  

Of Piracy.

I. Pirates what.
II. Of the duty incumbent on Princes and States as in reference to such, and whether liable for the damages they commit.
III. Pirates where they hold a Society, how the same is esteemed in Law, and of Equality held by them.
IV. Whether capable of the Solemnities of War, and Right of Legation.
V. Whether capable of succour by the Laws of Nations.
VI. Ships where liable for redemption of the Master remaining pledge for Ship and Lading, and where.
VII. Oath given to pay a reward for redemption of a Ship from Pirates, whether the same ought to be performed.
VIII. Foreigners spoiled by English Pirates, may pursue for Justice within the Statute of 28 H. 8.
IX. Where the Subjects of any Foreign Nation committing the same, may be punished by the same Statute.
XI. Committed on the British Seas punishable by the Crown of England, and none other.
XII. Where committed in the Ocean, whether they may be executed without trial, by the Law of Nature.
XIII. The like where the Judge refuses to try them, or in case of emergency, whether Justice may be executed immediately.
XIV. Pirates attempting to rob, commit a Murder, whether all principals, or only the slayer, and the rest Accessories.
XV. If the Subjects of one Foreign Nation rob another, and bring the Booty into England, whether the party injured may proceed Criminaliter for punishment, and Civiliter for restitution.
XVI. Pirates take Men, and no part of the Lading, if Piracy.
XVII. Where a Master may commit Piracy of those things that are committed to his charge, and whether.
XVIII. Where Piracy may be, though there be nothing taken: and whether Goods are taken out of a Ship, and no body in it.
XIX. The Captain and Crew of a Vessel having a Commission of Reprize commit Piracy, whether those that employed them ought to answer the Damage.
XX. Where Goods taken at Sea amount not to Piracy.
XXI. Goods taken and retaken by a Friend, whether the Property of the Prize is altered.

Justifications in this by a Warrant from the Admiralty. The Admiralty must allow the Statute of Limitation if pleaded.
XXIV. Of Piracy as in reference to matters Criminal, and how punishable at this Day by the Laws of England.
XXV. The Statute of 28 H. 8, how it operates in cases of Piracy.
XXVI. Of Pardons in cases of Piracy, Forfeitures, Corruption of Blood, and Clergy.
XXVII. Whether a Depredation committed in a Port within this Realm remains Robbery, at the Common Law, or Piracy by the Law Marine.
I. A Pirate is a Sea-Thief, or Hoftis humani generis, who to enrich himself, either by surprize or open force, seizes upon Merchants and others trading by Sea, ever spoiling their Lading, if by any possibility he can get the mastery, sometimes bereaving them of their Lives, and sinking their Ships; the Actors wherein, fully calls Enemies to all, with whom neither Faith nor Oath is to be kept. Against Pirates and such as live by Robbery at Sea, any Prince hath power to make War, tho' they are not subject to his Government. Grot. de jure belli & pacis. lib. i. cap. 20. § 40.

II. By the Laws of Nature, Princes and States are responsible for their neglect if they do not provide Ships of War, and other remedies for the restraining of those fort of Robbers; but how far they are bound, either by the Civil Law or Common Law of this Kingdom, may be some question: for it is agreed they are not the cause of the unjust spoil that is committed by them, nor do they partake in any part of the plunder; but if a Prince or State should send forth Ships of War, or Commissions for reprife, and those instead of taking prizes from the Enemy, turn Pirates and spoil the Subjects of other Friends, there has been some doubt, whether they ought not to make satisfaction to the Parties injured, in case the offenders should prove unable. Surely there is no more reason for this latter than the first; seeing Princes and States may give all their subjects power to spoil the Enemy, nor is such a Permission any caufe why damage was done to our Friends, when even private Men, without any such permission, might send forth Ships of War; besides it is impossible that Princes or States should foresee, whether they...
they would prove such or not; nor can it be avoided, but we must employ such, otherwise no Army or Fleet could be prepared; neither are Kings to be accused if their Soldiers or Mariners wrong their Confederates, contrary to their commands, though they are obliged to punish and yield up the Offenders, and to see that legal Reparation be made out of the Estate of the Pirates. If Letters of Marque or Reprizal be granted out to a Merchant, and he furnishes out a Ship with a Captain and Mariners, and they instead of taking the Goods or Ships of that Nation against whom their Commission is awarded, take the Ships and Goods of a Friend, this is Piracy; and if the Ships arrive in England, or in any other of his Majesty's Dominions, the same shall be seized, and the Owners for ever lose their Vessel.

From hence it is, that Princes and States are very cautious upon this we call Jure Belli privati, how they engage themselves, or those who seek reparation for wrongs before received; for the Person injured governs not the action, but devolves the power to some other hired for that particular use, whose Law is no more than this, There is most right where is most pay or prize. Unhappy state of man, whose support and living is maintained only by expelling himself to Death; a Calling that nothing can make honest, but the highest necessity or pious charity. And therefore those that issue forth such sort of Commissions, generally take Caution for their returning within a convenient Time, and not to wander in that unhappy condition.

III. Though Pirates are called Enemies, yet are they not properly so termed: For be is an Enemy, says Cicero, who bathe a Commonwealth, a Court, a Treasury, Content and Concord of Citizens, and some way, if occasion be, of Peace and League; and therefore a Company of Pirates or Freebooters are not a Commonwealth, though perhaps they may keep a kind of equality among themselves, without which no Company is able to consist; and though it is fel-
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dom they are without fault, yet they hold society to maintain **right**, and they do right to others, if not in all Things according to the **Law of Nature** (which among many people is in part obliterated) at least according to agreements made with many other Nations: or according to Custom: So the Greeks, at what Time it was accounted lawful to take spoil at Sea, abstained from slaughter and depopulations, and from stealing Oxen that plowed, as the **Scholiast** upon **Thucydidès** observes; and other Nations living also upon the spoil when they were come home from Sea, sent unto the Owners to redeem (if they pleaded at an equal rate) what they were robbed of at Sea: and at this day, if a Ship hath the Emperor of Barbary's protection, the Pirates of that Nation (if they seize) will restore, and if there be no protection, yet if taken within fight of their Castles, the Prize is not absolute; but if resistance is made, and there be a Caption, the then becomes the Captor's for ever, as the **price of Blood**.

IV. Again, Pirates that have reduced themselves into a Government or State, as those of Algier, Sallee, Tripoli, Tunis, and the like, some do conceive ought not to obtain the Rights or Solemnities of War, as other Towns or places: for though they acknowledge the Supremacy of the **Porte**, yet all the power of it cannot impose on them more than their own Wills voluntarily consent to. The famous Caribage having yielded to the victorious Scipio, did in some respect continue, and began to raise up her drooping Towers, 'till the knowing Cato gave Counsel for the total extirpation; out of the Ruins of which arose Tunis, the revenging Ghost of that famous City, who now, what open Hostility denied, by Thieving and Piracy continue; as stinking Elders spring from those places where noble Oaks have been fell'd; and in their Art are become such Masters, and to that degree as to disturb the mightiest Nations of the Western Empire: and though the name is small in bigness, yet it is great in mischief: the consideration of which put fire in the Breast of the aged Lewis IX. to burn up this nest of Wafps, who having equipt out a Fleet in his way for Palestine, resolv'd to besiege it: whereupon a Council of War being called, the question was Whether the same should be summoned? and carried, it should not; for it was not fit the solemn Ceremonies of War should
should be lirc load away on a company of Thieves and Pirates. Notwithstanding this, Tunis and Tripoli, and their Sister Algier do at this day (though nowt of Pirates) obtain the right of Legation, and Sir John Lawson did conclude a Peace between his Majesty by the Name of the moat Se- 1662. But by rene and Mighty Prince Charles the Second, by the the Turk in Grace of God King of Great Britain, France, and Ire- these words, land, Defender of the Faith, &c. and the most Excellent confirmed and sealed in the presence of Almighty Signiors Habomet Bashaw, the Dian of the Noble God, in our City of Tunis; Yarje Mustapha Dey, Hoar Beit, House in the and the rest of the Soldiers in the Kingdom of Tunis; and noble City of with them of Tripoli by Sir John Narborough * by the Name of Bail Bashaw, Htbatim Dep, Aea, Dian, Tunis, the last and Governors of the Noble City and Kingdom of Tripoli day of the in Barbary. So that now (though indeed Pirates) yet having acquired the Reputation of a Government, they cannot properly be esteemed Pirates but Enemies.

(afterwards, May 1, 1676, by the Turk) being the 26th day of the Moon Dccadi, and the year of Hgira 1085.

* March 5, 1675-6, and

V. Pirates and Robbers that make not a Society, i. e. such a Society as the Law of Nations accounts lawful, are not to have any succour by the Law of Nations. Tiberius, when Tacfarinas had sent Legates to him, he was di- pleased that both a Traitor and a Pirate should use the manner of an Enemy, as Tacitus hath it; yet sometimes such men (Faith being given them) obtain the right of Legation, as the Fugitives in the Pyrenean Forêt, and the Banditti at Naples; and Solyman the Magnificent, hav- ing entertained Barbaro the famous Pirate, sent word to the Venetians, that they should use him and esteem him no more as a Pirate, but one of their own Port.

VI. If a Ship is assaulted by a Pirate, for redemption of which the Master becomes a Slave to the Captors, by the Law Marine, the * Ship and Lading are tacitly obliged for his redemption by a general Contribution. But if a Pi- rate shall feign himself stranded, and to decoy the Mer- chant-Man for his relief, shall fire his Guns, or wave his Co- lours, who accordingly varies his Course for his Affistance, and the Pirate enters him, for redemption of which he be- comes Raymond 933.
VII. By the Civil Law a Ransom promised to a Pirate, if not complied with, creates no wrong; and the reason given is, for that the Law of Arms is not communicated to such, neither are they capable of enjoying that privilege which lawful enemies may challenge in the Caption of another: however this hath its measure; for a Pirate may have a lawful possession, the which he cannot be denied (if injury or wrong be done him) to claim the benefit of Law. But the reason of that springs from a more noble Fountain, which is his taking a legal course, for by that he hath submitted to the Magistrate, and paid obedience to the Laws in demanding Justice; besides, the same is not done so much in favour of the Pirate as in Hatred of him who first commits the wrong. Augustus the Emperor proclaimed a reward of ten Septerces to be given him that should bring in Coracotas, the famous Spanish Pirate, who having notice of the same, voluntarily comes and presents himself before the Emperor, and demands the promised reward; and the question was, whether death or the Septerces were to be his reward: The Emperor gave Judgment, that the sum promised, should be paid him, for otherwise in taking away his life he should deceive him of the sum promised, which would, in effect, violate the publick Faith given to him, who of himself offered himself upon the tryal of Justice.

A Pirate attacks a Merchant-Man, and enters her, for redemption of which the Master gives his Oath, at a time and place to pay the Pirate a Sum certain; by some it hath been held, that the Master commits not perjury, if the price promised for redemption be not brought according to the Oath; because a Pirate is not a determinate, but a common Enemy of all, with whom neither Faith nor Oath is to be kept: but that is no reason for the affooling of the Vow: for though the Person be deficient, yet the Just God is concerned; nor can that person that hath promised a thing, satisfy his Conscience after he hath once delivered it to him, to recover it back again;
OF PIRACY.

again; for the words in an Oath, as to God, are to be
understood most simply, and with effect; and therefore
he that returned secretly to the Enemy, and again depart-
ed, made not good his Oath concerning his Return.

VIII. If an English Man commit Piracy, be it upon
the Subject of any Prince or Repulick in amity with the
Crown of England, he is within the purview of the
Stat. of 28 H. 8. and so it was held where one Winter-
son, Smith, and others, had robbed a Ship of one Ma-
turine Gantier, belonging to Bourdeaux, and bound from
hence with French Wines for England, and that the same
was Felony by the Law Marine, and the parties were con-
victed of the same.

IX. And so if the Subject of any other Nation or
Kingdom, being in Amity with the King of England,
commit Piracy on the Ships or Goods of the English,
the same is Felony, and punishable by virtue of the Stat.
and so it was adjudged, where one Careless, Captain of a
French Man of War of about 40 Tuns, and divers others,
setting upon four Merchant-Men going from the Port of
Bristol to Caermathen, did rob them of about 1000l. for
which he and the rest were arraigned, and found guil-
ty of the Piracy.

But before the Stat. of 25 Ed. 3. if the subjects of a fo-

\begin{verbatim}
Normandy was
\end{verbatim}

\begin{verbatim}
foreign Nation and some English had joined together, and
\end{verbatim}

\begin{verbatim}
had committed Piracy, it had been Treason in the Eng-
\end{verbatim}

\begin{verbatim}
lish, and Felony in the Foreigners: And so it was said by
\end{verbatim}

\begin{verbatim}
Shard, where a Norman being Commander of a Ship, had
\end{verbatim}

\begin{verbatim}
also committed some English, committed Robberies on the
\end{verbatim}

\begin{verbatim}
Sea, being taken, they were arraigned and found guilty; the
\end{verbatim}

\begin{verbatim}
Norman of Felony, and the English of Treason, who ac-
\end{verbatim}

\begin{verbatim}
cordingly were drawn and hang’d. But now at this day
\end{verbatim}

\begin{verbatim}
they both receive Judgment as Felons by the Laws Marine.
\end{verbatim}

X. If the Subjects in enmity with the Crown of England
be Sailors aboard an English Pirate with other English, and
then a Robbery is committed by them, and afterwards are
taken, it is Felony without controversy in the English, but
not in the Strangers; for they cannot be tried by virtue
of the Commission upon the Statute, for it was no Piracy
in them, but the Depredation of an Enemy, for which they
shall receive a Trial by Martial Law, and Judgment accordingly.

XI. Piracy
XI. Piracy committed by the Subjects of the French King, or of any other Prince or Republick, in amity with the Crown of England, upon the British Seas, is punishable properly by the Crown of England only, for the Kings of the same have isud regimen & dominium exclusive of the Kings of France, and all other Princes and States whatsoever.

XII. If Piracy be committed on the Ocean, and the Pirates in the Attempt there happen to be overcome, the Captors are not obliged to bring them to any port, but may expose them immediately to punishment, by hanging them up at the Main-yard end before a Departure; for the old natural liberty remains in places where are no Judgments.

And therefore at this Day, if a Ship shall be on a Voyage to the West-Indies, or on a Discovery of those parts of the unknown World, and in her Way be assaulted by a Pirate, but in the Attempt overcomes the Pirate, by the Laws Marine, the Vessel is become the Captors; and they may execute such Beasts of Prey immediately, without any Solemnity of Condemnation. If we respect expeditory Justice, it cannot be denied, but for the Conservation of Ship and Goods, a Pirate invading may be slain, for the inequality between these things and life is made up in favour of the innocent, and by hatred to the injurious: Whence it follows, if we regard only that Right, that a Pirate running away with stolen Goods, if they cannot otherwise be recovered, may be sunk. De modestibus said, It was very hard and unjust, and contrary both to the written Laws and the common Rules among Men, not to be suffered to use Force against him who in a boisterous manner hath taken my Goods.

XIII: So likewise, if a Ship shall be assaulted by Pirates, and in the Attempt the Pirates shall be overcome, if the Captors bring them to the next port, and the Judge openly rejects the Trial, or the Captors cannot wait for the Judge without certain peril and loss, Justice may be done upon them by the Law of Nature, and the same may be there executed by the Captors.

Caius
Chap. IV. Of Piracy.

Caesar being but a private man pursued the Pirates, by whom he formerly had been taken and spoiled, and making up to them with such a fleet as he possibly in haste could get ready, attacked, burnt, and destroyed their Ships, and the men he brought back to an Anchor, where repairing to the Proconsul to do Justice, and he neglecting, himself turned back, and there hung them up.

XIV. If a Pirate at sea assault a ship, but by force is prevented entering her, and in the attempt the pirate happens to slay a person in the other ship, they are all principals in such a murder, if the common law hath jurisdiction of the cause: but by the law marine, if the parties are known, they who gave the wound only shall be principals, and the rest accessories; and where they have Ralph Wil- 

XV. If a Spaniard robs a French man on the high sea, both their prides being then in amity, and they likewise with the King of England, and the ship is brought into the ports of the King of England, the French man may proceed Criminaliter against the Spaniard to punish him, and Civiliter to have restitution of his vessel: but if the vessel is carried infra Praesidia of that prince, by whose subject the same was taken, there can be no proceeding Civiliter, and doubted if Criminaliter; but the French-man must resort into the Captor’s or Pirate’s own country, or where he carried the ships, and there proceeded.

A Dutchman, but naturalized by the Duke of Savoy, living at Villa Franca, in his dominions, procures a commission from the States of Holland, and coming to Lgdorn, there rid with the Colours and Ensigns of the Duke of Savoy; the ship Diamond being then in port, and which there having received her lading, was afterwards in her voyage surprized by that Caper, and brought into Villa Franca.
nothing came of it.

Rota. Admir.
in An. super-
dis. 3 Bulstrode 28.

3. Fac. in B. R.
5. part. Wet-
6. ton's C.

Francia, and there condemned and sold to one Poleman, which Ship afterwards coming for England, the Plaintiffs having Notice, made a seizure; and upon Trial, Adjudication passed for the Plaintiffs, the original Proprietors: For tho' the Ship of War and the Captors were of Savoy, and carried thither; yet being taken by virtue of a Dutch Commission, by the Low Marine, she must be carried infra Presidia of that Prince or State by virtue of whose Commission she was taken. Nor can such carrying of the Signs or Colours of the Duke of Savoy, who was then in amity with the Crown of England, or the Commander, though a Subject of that Prince, make him a Pirate, or Subject them or those to whom they have transferr'd their interest of the prize, any ways to be questioned for the same Criminaliter; for that the original quoad the taking was lawful, * as one Enemy might take from another, but Civiliter the same might be, for that the Captors had not entitled himself to a firm possession. And therefore in all cases where a Ship is taken by Letters of Marque or Piracy *, if the same is not carried infra Presidia of that Prince or State by whose Subject the same was taken, the Owners are not divested of their Property, but may seize whereover they meet with their Vessels.

XVI. If a Pirate attacks a Ship, and only takes away some of the Men, in order to the selling them for slaves, this is Piracy by the Law Marine; but if a Man takes away a Villain or Ward, or any other Subject, and sells them for slaves, yet this is no robbery by the Common Law.

C. 2 Inst. 109. this is Piracy by the Law Marine; but if a Man takes away a Villain or Ward, or any other Subject, and sells them for slaves, yet this is no robbery by the Common Law.

XVII. If a Bale or Pack of Merchandise be delivered to a Master to carry over Sea to such a Port, and he goes away with the whole Pack or Bale to another Port, and there fells and disperses of the same, * the same is no Felony. But if he opens the Bale or Pack, and take any thing out, animo furandi, the same may amount to such a Larceny, as he may be indicted in the Admiralty, though it amounts not to a Piracy. Yet if such a Master of Ship shall carry the Lading to the Port appointed, and after retakes the whole
whole Pack or Bale back again, this may amount to a
Piracy; for he being in the nature of a Common Carrier,
the delivery had taken its effect, and the Privity of the
Bailment is determined.

XVIII. If a Pirate shall attack a Ship, and the Master
for the Redemption shall give his Oath to pay a Sum
certain; though there be no taking, yet is the same Pi-
racys by the Law Marine; but by the Common Law there
must be an actual taking, though it be but to the value of
a Penny, as to a Robbery on the Highway.

If a Ship shall ride at Anchor, and the Mariners shall
be part in their Ship-boat, and the rest on the shore, and
none shall be in the Ship; yet if a Pirate shall attack her
and rob her, the same is Piracy.

XIX. A Merchant procures Letters of Marque or Repri,
and then delivers the Commissions to persons to endeavour
a satisfaction; if such Persons commit Piracy, the Vessel
is forfeited without controversy: But the Merchant is
no ways liable to make satisfaction; for though the Su-
perior shall answer for the Actions of his Ministers or Ser-
vants, yet that is introduced by the Civil Law; but this
question must be decided by the Law of Nations, by virtue
of which such Commissions are awarded or granted, the
which does exempt any Man to answer for the Damages
of his Servants, unless he foreknew that they would com-
mit such a Piracy or Spoliation, or any way have abetted
or confented to the same, which right may be forfeited,
and the Civil Law let in to acquire satisfaction. And yet
in the Case of Sir Edmond Turner, and Mr George Carew,
who having Letters of Reprizal against the Dutch, Mr
Carew by Indorsement on the back-side of the Letters Pa-
tents did nominate and appoint one Tyrence Byrne to exe-
cute and perform all such acts and things as by force of the
Letters Patents he might lawfully do: Tyrence Byrne pro-
vides Ship and Crew, and being at Sea takes a certain Ship
belonging to Bruges called the Godelife, and there was
some probable cause of suspicion, yet not enough to war-
rant a Condemnation: Whereupon the Owners, having
had sentence of Restitution, libell’d in the Admiralty against
Sir Edmond Turner, Mr Carew and Byrne, for Damages;
upon which a Sentence was given against the Defen-
dants.
Of Piracy.

Book I.

... dants, who Appealing, the Delegates confirmed the first Sentence.

XX. But if a Ship shall be at Sea and in necessity, if she attacks another Ship, and takes out some Victuals, Cables, Ropes, Anchors or Sails, (especially if that other Ship may spare them) this is not Piracy; but then the Party must pay ready Money for such things, or give a Note or Bill for the payment of the value; if on this side the Straits of Morocco, within four Months, if beyond within twelve Months.

XXI. By the Law Marine, if Goods are taken by a Pirate, and afterwards the Pirate attacks another Ship, but in the Attempt is conquered, the Prize becomes absolutely the Captor’s, having the account to be rendred to the Admiral. And it is accounted in Law a just Caption of whatsoever may be got or taken from such Beasts of prey, be the same in their own or in their Successors Possession. But then an account ought to be rendred to the Admiral, who may (if they happen to be the Goods of the Fellow-subject of the Captors, or of Nations in amity with his own Sovereign) make restitution to the Owner; the costs and charges, and what other things in equity shall be decreed to the Captor, first considered and deducted.

XXII. By the Statute of 27 Edw. 3. cap. 13. if a Merchant lose his Goods at Sea by Piracy, or Tempest (not being wreckt) and they afterwards come to Land; if he can make proof they are his Goods, they shall be restored to him in places Guildable, by the King’s Officers and six Men of the Country; and in other places by the Lords there and their Officers, and six Men of the Country. If a Pirate takes Goods upon the Sea, and sell them, the Property is not thereby changed, no more than if a Thief upon the Land steals them and sells them. Codd. 193. Barber’s Case.

This Law hath a very near relation to that of the Romans, called De Ufu-Captione or the Aelian Law; for Aelius Enacted, That the Plea of Prescription or long possesion, should not avail in things that had been stolen, but the Interest which the right Owners had should remain perpetual; the words of the Law are these, Quod surreptum
surreptum est, ejus rei aeterna autoritas effet, where by Autho-
ritas is meant 'fus Dominii.

XXIII. Yet by the Common Law of England, it has been Bingh's Case held, That if a Man commit Piracy upon the Subjects of another Prince or Republick (though in League with us) and brings the Goods into England, and sells them in a Market Overt, the same shall bind, and the owners are for ever concluded; and if they should go about in the Admiralty to question the Property, in order to Restitution, they will be prohibited. (a) Hob. 79.

In Trover for Goods of 400 l. value, Motion was for a Trial at Bar, the Goods being taken by a Spanish Caper, and brought into Plymouth, and from thence Shipt away without Condemnation, because the Br. Property 38. says the Property is altered by the Enemy's possession above 24 hours, which is good when they are brought into safe Port of an Enemy's Country, yet the constant Opinion of the Civilians and the Practice at Guildhall in the Dutch War, is that if such Goods be brought into a Neutral Port, or, as there were, into a Friend's, the Property is not altered till Condemnation, and these Goods were taken from a French Man in League with us, which is stronger; and this being matter of Evidence, tho' the Defendant was only a Factor in England could not condemn the Goods, but the condemnation was in Holland, whither they were shipt; yet the Trial at Bar was granted. 3. Keeble 397. Verdaile con. Marten. Like Case Radley and Delbow against Eglesfield & al. 2 Sand. 259. 1 Vent. 173.

Several Persons were Owners of a Ship, which they sent to the Indies to merchandize, upon the High Sea the Mariners and Residue commit Piracy. Upon the Return of this Ship to the River of Thames the Admiral seiz'd her, as Bona Pyratarum, the Merchants took the Sails and Tackle out of the Ship. The Admiral shall not have the Goods stoln from other Men, but the Owner shall have them, 1 Rol. Rep. 285. the Case of Hildebrand and others.

XXIV. This offence was not punishable by the Common Law, as appears by the Preamble of the Stat. of 28 H. 8. cap. 15. but the same was determined and judged by the admiral, after the course of the Civil Law; but by force of the said Act, the same is inquired of, heard, and deter-

(a) This is a Report of two Cases where a pro-
hibition was granted, be-
cause the con-
tact was made on
Land and un-
der Seal; and so not to the
purpose. Sed
vid. Cro. El.
685. Ybor.
135. 1 Sid.
320. 367. 2d.
Saun. 260. 2d.
Law. 2d. 1st.
Vern. 173. 308.
Where it is
held that if the Admiral
 hath Jurisdi-
cion of the
Orig. Caue,
the Matters
depending
thereon shall
be tried in
the Admiral's
Court, tho' they arise on
the Land.
minded according to the course of the Common Law, as if
the offence had been committed on Land.

The Court of King's-Bench had certainly a concurrent
Jurisdiction with the Admiralty, in Cases of Felonies
done upon the narrow Seas or Coast, though it were High
Sea, because within the King's Realm of England: But
this Jurisdiction of the Common-Law Courts was inter-
rupted by a special Order of the King and Council,
35 Ed. 3. And since 38 Ed. 3. it does not appear, that
the Common-Law Courts took Cognizance of Crimes
committed upon the High Seas.

Stat. 11. and 12. W. 3. cap. 7. All Piracies, Felonies,
and Robberies committed in or upon the Sea, or in any
Haven, River, Creeks, or Place where the Admiral hath
Jurisdiction, may be tried at Sea, or upon the Land, in
any of his Majesty's Islands, Plantations, Colonies, &c.
appointed for that purpose by Commission under the
Great Seal of England, or Seal of the Admiralty direct-
ed to such Commissioners as his Majesty shall think fit,
who may commit such Offenders and call a Court of
Admiralty thereupon to consist of seven Persons at the
least.

And for want of seven, then any three of the Commisso-
ners may call others as therein is mentioned.

The Persons so assembled may proceed according to
the course of the Admiralty, and give Sentence of Death
and award execution of the Offenders, who shall there-
upon suffer Loss of Lands, Goods and Chattels.

The Register of the Court, or if none be, the Presi-
dent to take Minutes of the Proceedings and transmit the
same to the Admiralty Court in England.

If any natural born Subjects or Denizens of England
commit Piracy or any act of Hostility, against any of his
Majesty's Subjects at Sea, under Colour of a Commission or
Authority from any Foreign Prince or State or Per-
son whatsoever, such Offenders shall be adjudged Pi-
rates.

If any Commander or Master of a Ship, or Sea-man or
Mariner, turn Pirate, or give up his Ship, &c. to Pi-
rates, or combine to yield up, or run away with any
Ship, or lay violent Hands on his Commander, or en-
deavour
deavour to make a Revolt in the Ship, he shall be adjudged a Pirate and suffer accordingly.

All Persons who after the 29th of September 1700, shall set forth any Pirate (or be aiding and assisting to any such Pirate) committing Piracy on Land or Sea, or shall conceal such Pirate, or shall receive any Vessel or Goods, Piratically taken, shall be adjudged accessory to such Piracy, and suffer as Principals, according to the Statute of 28 H. 8. which is hereby declared to be in force.

When any English Ship shall have been defended by Fight against Pirates, and any of the Officers or Seamen killed or wounded, the Judge of the Admiralty or his Surrogate in London, or the Major, or chief Officer in the Out-Ports, assisted by four Substantial Merchants, may by Proceeds out of the said Court levy upon the Owners of such Ships, &c. a Sum not exceeding 2 l. per Cent. of the Value of the Freight, Ship and Goods so defended, to be distributed among the Officers and Seamen of the said Ships, or Widows and Children of the slain.

A Reward of 10 l. for every Vessel of 100 Tuns or under, and 15 l. for every Vessel of a greater Burden shall be paid by the Captain, Commander or Master, to the first Discoverer of any combination for running away with, or destroying any such Ship at the Port where the Wages are to be paid.

The Commissioners aforesaid shall after the 29th of September 1700, have the sole power of trying the said Crimes, and Offences within the Colonies and Plantations in America governed by Proprietors, or under Grants or Charters from the Crown, and may issue their Warrants for apprehending such Pirates, &c. and their Accessories in order to their being tried there, or sent into England.

Commissions for Trial of the said Offences sent to any Place within the Jurisdiction of the Cinque Ports, shall be directed to the Lord Warden of the Cinque Ports, or his Lieutenant, and such Persons as the Lord Chancellor shall appoint; and the Trial to be by the Inhabitants of the Cinque Ports.
Of Piracy.

All Seamen, Officers and Sailors, who shall desert the Ships or Vessels, wherein they are hired for a Voyage, shall forfeit their Wages.

If any Master of a Merchant Ship or Vessel shall after the 29th of September 1700, during his being abroad, force any Man afloat, or wilfully leave him behind, or refuse to bring all his Men home again, who are in a Condition to return, he shall suffer three Months Imprisonment.

The above Act 11 and 12 W. 3, cb. 7. was continued by 1 Geo. 1. cb. 25. for five Years, &c. and was made perpetual by 6 Geo. 1. cb. 19. And is enacted by 4 Geo. 1. cb. 11. sec. 7. that all Persons who shall commit any Offence for which they ought to be adjudged Pirates, Felons, or Robbers, by 11 and 12 W. 3. may be tried and judged for every such Offence, according to 28 H. 8. and shall be excluded from their Clergy.

By Stat. 3. Geo. 1. cb. 24. Sec. 1. If any Commander of a Ship, or other Person, shall any wife trade with any Pirate, or shall furnish any Pirate with Ammunition or Stores, or fit out any Ship with such design, or confederate or correspond with any Pirate, knowing him to be such, such Person shall be adjudged guilty of piracy, and shall be tried according to Stat. 28. H. 8. cb. 15. and Stat. 11 and 12 W. 3. cb. 7. and being convicted shall suffer as a Pirate. And persons belonging to any Ship, who shall upon meeting any Merchant-man upon the High Seas, forcibly board such Ship, and though they do not carry off such Ships, shall throw overboard, or destroy any part of her Goods, shall be punished as Pirates.

And ibid. sec. 2. Every Ship fitted out with design to trade with, or supply any Pirate, and all the Goods put on board such Ship, shall be ipso facto forfeited, one Moiety to the King, and the other to the Informer, to be recovered in the High Court of Admiralty.

And ibid. sec. 3. All persons declared Accessories by 11 and 12 W. 3. are hereby declared principal Offenders.

And by sec. 4. Offenders convicted on this Act are excluded Clergy.

XXV. The Act 11 and 12 W. 3. cb. 7. does not alter the Offence, or make the Offence Felony, but leaves the Offence
fence as it was before this Act, viz. Felony only by the Civil Law, but giveth a mean of Trial by the Common Law, and inflicts the pains of death, as if they had been attainted of any Felony done upon the Land. The Indictment must mention the same to be done upon the High Sea.

Note. By 2 Geo. 2. c. 21. If any Person be feloniously stricken, or poisioned upon the Sea, or at any place out of England, and dies in England, or stricken or poisioned in England, and dies on the Sea, or out of England; the Fact is triable in any County, according to the Course of the Common Law, except Challenges for the Hundred.

XXVI. A pardon of all Felonies does not extend to Piracy, but the same ought especially to be named; and though there be a Forfeiture of Lands and Goods, yet there is no corruption of Blood, nor can there be an Accessory of this offence, tried by virtue of this Statute; but if there be an Accessory upon the Sea to a Piracy, he must be tried by the Civil Law.

The Statute of 35 H. 8. cap. 2. taketh not away the Statute for Treasons done upon the Sea, nor is Clergy allowable to the Party on the Statute 28 H. 8. vide 14 Jac. in B. R. Moore 756. pl. 1044. 3 Inst. 112.

XXVII. Though a Port be Locus publicus uti pars Oceani, yet it hath been resolved more than once, that all Ports, not only the Town, but the Water is infra corpus Comitatus.

If a Pirate enters into a Port or Haven of this Kingdom, and a Merchant being at Anchor there, the Pirate assaults him and robs him, this is not Piracy, because the same is not done super alium Mare; but this is a down right Robbery at the Common Law, for that the Act is infra corpus Comitatus, and was inquirable and punishable by the Common Law, before the Statute of 28 H. 8. cap. 15.

at the Common Law, and were found guilty of the same, Anno 22 Car. 2. at the Old Bailey.

XXVIII. So if such a Piracy or Robbery be made in a Creek or Port, in such cases it has been conceived, that Clergy is allowable upon the Statute of 28 H. 8. but if it be done super alium Mare, there no Clergy is allowable; was so ruled how-
Of Piracy.

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howbeit, if such a Robbery be committed on great Rivers within the Realm, which are look’d upon as common Highways, there perhaps Clergy may not be granted; and so it was rul’d in the aforesaid Case of Hyde, who with a parcel of Men came one Night in a Boat in the River of Thames, and under the Colour of Press-Masters, boarded the Ship of one Captain Sue, and rob’d her, for which being taken and tried at the Old-Baily, by the greater Opinion of the Judges there present, 22 Car. 2. Clergy was denied him. By the Pardon of all Felonies, at the Common Law, or by the Statute-Law, Felony super altum Mare is not pardonable; for though the King may pardon this Offence, yet being no Felony in the eye of the Law of this Realm, but only by the Civil Law, the Pardon of all Felonies generally extends not it; for this is a special Offence, and ought especially to be mentioned.

XXIX. One Cobham was arraigned in Southwark, before the Commissioner of Oyer and Terminer, for a Piracy and Robbery committed on a Spaniard, & petit mutuus & noluit direcete respondere: And it being moved by the Attorney-General, whether he ought to have the Judgment of pain fort & dure in this Case, Saunders, Chief Baron, Brown and Dyer were of Opinion he should, and that by the Words and reasonable Intendment of the Statute of 28 H. 8. c. 15. and according to the Opinion supra, the Judgment was given by Carus Serjeant. Dy. 241. pl. 49.

XXX. A Man attainted by virtue of that Statute, forfeits his Lands and Goods, yet there works no corruption of blood, by virtue of that Attainder; nor can there be any Accessoary of Piracy by the Law of this Realm; but if it falls out that there is an Accessoary upon the Sea, such Accessoary may be punished by the Civil Law, before the Lord Admiral, but he cannot be punished by virtue of this Act, because it extends not to Accessories, nor makes the Offence Felony.

XXXI. If one steals Goods in one County, and brings them into another, the Party may be indicted in either County; but if one commits Piracy at Sea, and brings the Goods into a County in England, yet he cannot be indicted upon the Statute, for that the original taking was
was not Felony, whereof the Common Law took Cognizance.

XXXII. If a Man is taken on suspicion of Piracy, and a Bill is preferred against him, and the Jury find Ignoramus; if the Court of Admiralty will not discharge him, the Court of King's-Bench will grant a Habeas Corpus, and if there be good Cause, discharge him, or at least take Bail for him: But if the Court suspects that the Party is guilty, perhaps they may remand him; and therefore in all cases, where the Admiralty legally have an original, or a concurrent Jurisdiction, the Courts above will be well informed before they will meddle.

Trespass for breaking a Ship, and taking away the Sails; the Defendant justified by warrant out of the Admiralty, by which he entered the Ship, and took away the Sails. Objection, The breaking is not answered, per Curiam its good enough, for the entry is a breaking in Law, as Clausum fregit, &c. And that he may carry away the Sails, because this is the manner of their proceedings, and grounded upon Reason, because the Ship cannot be kept safe, if the Sails be not carried away. Creamer against Tokely. Lat. 188.

Suit in the Admiralty, the Defendant pleaded the Statute of Limitation; if that Court deny the Plea, Prohibition will be granted, or if they do receive the Plea, but will not give Sentence accordingly, Prohibition will go.


If a Man be in custody for Piracy, if any aids or afflicts him in his Escape, though that matter is an Offence at Land, yet the Admiralty having Jurisdiction to punish the principal, may have likewise power to punish such an Offender, who is look’d upon quasi an Accessory to the Piracy; but to rescue a Prisoner from an Officer of theirs, they may examine the cause, but they cannot proceed criminally against the Offender.

The Exemplification of the Sentence of the Court of Admiralty, under their Seal, is conclusive Evidence in a Court of Common Law. Lord Raymond, 893.

XXXIII. Anciently when any Merchants were robbed at Sea, or spoilt of their Goods, the King usually issued out Commissions under the Great Seal of England, to enquire of such depredations and robberies, and to punish the
XXXIV. The Courts of Westminster have a Sovereign power to enquire after the Liberty of every Man, and that he should not be depriv’d of the same without just cause; and therefore as in other capital Causes, so likewise in this they may send their Habeas Corpus to remove the Body of any committed upon such an account, and if they see a just cause, they may either bail, or discharge, or remand, as the matter shall seem just before them.

And altho' the Statute of 28 H. 8. c. 15. does not alter the offence, or make the offence felony, but leaveth the offence as it was before that Statute, (viz.) Felony only by the Civil Law, and gives a mean of Trial by the Common Law, and inflicted such pains of death as if they had been attainted of any Felony; yet it was resolved by all the Judges, and the rest of the Commissioner then present, that his Majesty having granted Letters of Reprizal to Sir Edmond Turner and George Carew, against the Subjects of the States-General of the United Provinces, and that afterwards that Grant was called in by Proclamation, then mortified in the Treaty of Breda, and afterwards superseded under the Great Seal: That Carew, (without Turner) having deputed several to put in Execution the said Commission, who accordingly did; and being indicted for Piracy, the same was not a felonious and a piratical Spoliation in them, but a Caption in order to an Adjudication; and though the Authority was deficient, yet not being done by the Captain and his Mariners, animo depredata, they were acquitted.
The Right of the Flag, as to the acknowledging the Dominion of the British Seas.

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II. Whether Princes may have an exclusive Property in the Sea.
III. That such an exclusive Dominion may be, proved.
IV. Of the Sea, whether capable of Division as the Land.
V. Considerations general, in reference to Maritime Cities touching Sea Dominion.
VI. Of the Sea, by reason of its instability, whether capable of subjection.
VII. Of the Dominion of the British Sea asserted long before, and ever since the Conquest of this Isle by the Romans.
VIII. The Duty of the Flag, but a consectutive Acknowledgment of that Right. And of the Ordinance of Hadings declaring that Customs-ry obeisance.
IX. Considerations had on some Treaties, in reference to affording the Duty of the Flag.
X. Of the extent how far that duty is required and payable.
XI. Of the duty of the Flag, not a bare Honorary Salute, but a Right.
XII. Of the importance and value of the same, as well in Nations Foreign, as in England.
XIII. Of the effects of such a Right and Sovereignty. Of the extent of this Dominion by the Laws of England.
XIV. Of the Duty of the Flag not regarded as a Civility, but commanded as a Duty.
XV. Of the importance of that acknowledgment.

After the Writings of the Illustrious Selden, certainly 'tis impossible to find any Prince or Republic, or single Person indued with Reason or Sense, that doubts the Dominion of the British Sea, to be entirely subject to that Imperial Diadem; or the duty or right of the Flag, which indeed is but a consectutive Acknowledgment of that ancient Superiority: Yet there have not been wanting some, who though they have not questioned the former, have highly disputed the latter.

But there are some fatal Periods amongst our Northern Regions, when the Inhabitants do become so brutal and prejudiced, that no obligation of Reason, Prudence, Conscience, or Religion can prevail over their Passions, especially if they become the devoted Mercenaries of an implacable Passion, in opposition to all that can be called
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led either just or honourable; we need not rip up the Carriage of that late insolent Son of a Tallow-Chandler, whose Departments made him no less insupportable at home, than he was amongst Foreign Princes; the testimo
dies of his greatest Parts and Abilities being no other than Monuments of his Malice and Hatred to this Nation, and Records of his own folly. But Princes are not to be wrangled out of their ancient Right and Regalities by the subtil Arguments of Wit and Sophistry; nor are they to be supplant or overthrown by Malice or Arms, so long as God and good Men will assist, in which his sacred Ma
desty did not want, when he asserted his Right with the Blood and Lives of so many Thousands that fell in the dispute.

II. That Princes may have an exclusive property in the Sovereignty of the several parts of the Sea, and in the passage, Fisbing and Shores, is so evidently true by way of fact, as no man that is not desperately impudent can deny it: the Considerations of the general practice in all Maritime Countries, the necessity of order in mutual Commerce, and the Safety of men persons, goods, and lives, hath taught even the most Barbarous Nations to know by the Light of human Reason, that Laws are as equally necessary for the Government and Preservation of the Sea, as those that nego
tiate and trade on the firm Land; and that to make Laws, and to give them the Life of Execution, must of necessity require a supreme Authority; for to leave every part of the Sea and Shores to an arbitrary and promiscu
ous Use, without a correcting and securing Power in case of wrong or danger, is to make Men in the like Condition with the Fishes, where the greater devour and swallow the less.

III. And though the Sea is as the Highway, and com
mon to all; yet it is as other Highways by Land or great Rivers are, which though common and free, are not to be usurped by private Persons to their own entire Service, but remain to the use of every one: Not that their Freedom is such, as that they should be without Protection or Govern
ment of some Prince or Republick, but rather not exclude the same; for the true Ensign of Liberty and Freedom is Protection from those that maintain it in liberty.

IV. And
IV. And as the Sea is capable of Protection and Government, so is the same no less than the Land subject to be divided amongst Men, and appropriated to Cities and Potentates, which long since was ordained of God as a thing most natural: whence it was that Aristotle said, That unto Maritime Cities the Sea is the Territory, because from thence they take their subsistence and defence; a thing which cannot be, unless part of it might be appropriated in the like manner as the Land is, which is divided between Cities and Governments, not by equal Parts, or according to their greatness, but according as they are able to rule, govern, and defend them; Berne is not the greatest City of Switzerland; yet she hath as large a Territory as all the rest of the Twelve Cantons put together: The Cities of Nuremberg and Genoa are very rich and great, yet their Territories hardly exceed their Walls; and Venice the Mistress and Queen of the Mediterranean, was known for many Years to be without any manner of Possession on the firm Land.

V. Again on the Sea, certain Cities of great Force have possessed large quantities thereof; others of little Force have been contented with the next Waters.

Neither are there wanting Examples of such, as notwithstanding they are Maritime, yet having fertile Lands lying on the back of them, have been contented therewith without ever attempting to gain any Sea-Dominion; others who being owed by their more mighty Neighbours, have been constrained to forbear any such attempt; for which two causes a City or Republick, though it be Maritime, yet it may remain without any possession of the Sea. God hath instituted Principalities for the maintenance of Justice to the benefit of Mankind; which is necessary to be executed as well by Sea as by Land: St Paul faith, that for this cause there were due to Princes, Customs and Contributions.
It would be a great absurdity to praise the well Government and Defence of the Land, and to condemn that of the Sea; nor doth it follow, because of the vastness of the Sea, that it is not possible to be governed and protected; but that proceeds from a defect in Mankind; for Defarts, though part of Kingdoms, are impossible to be governed and protected, witness the many Defarts in Africk, and the immense vastities of the New World.

VI. As it is a gift of God, that a Land by the Laws and publick Power be ruled, protected, and governed: so the same happens to the Sea; and those are deceived by a gross equivocation, who aver that the Land, by reason of its stability, ought to be subjected, but not the Sea, for being an unconstant Element, no more than Air; forasmuch as they intend by the Sea and the Air all the parts of the fluid Elements, it is a most certain thing, that they cannot be brought under Subjection and Government, because whilst a Man serves himself with any one part of them, the other escapes out of his power; but this chance also to Rivers, which cannot be detained: but when one is said to rule over a Sea or River, it is understood not of the Element, but of the Site where they are placed: the Waters of the Adriatick and British Seas continually run out thereof, and yet it is the same Sea: as the Tyber, Po, Rhine, Thames, or Severn, are the same Rivers they were a Thousand Years since; and this is that which is subject to Princes by way of Protection and Government.

Again, it would seem ridiculous if any Man would assert that the Sea ought to be left without Protection, so that any one might do therein well or ill, robbing, spoiling, and making it un navigable, or whatsoever should seem fitting in their Eyes; from all which it is apparent, that the Sea ought to be governed by those to whom it most properly appertains by the Divine Disposition.

VII. When Julius Caesar first undertook the Invasion of this Isle, he summoned the neighbouring Gauls to inform him of the Shores, Ports, Havens, and other things convenient.
convenient that might accelerate his intended Conquests; but from them nothing could be had, they answering, All Commerce and Traffick, and visiting their Ports, was interdicted to all Nations before licence had; nor could any but Merchants visit the same, and then had they places assigned them whither they should come; nor was this Dominion that the Britains then used, commanded without a Naval Force; the sight of which when Caesar saw, he preferred them before those of the Romans: For upon that occasion it was that Caesar, having seen those Auxiliary Squadrons, which the Britains sent the Gauls in their Expeditions against the Romans, took occasion to find out that Warlike People, whose bare Auxiliary Aid shook the Flower of the Roman Squadrons.

.. of Mart or Commerce for the Gauls. Quod omnibus sere Galli bosphibus nostris inde subministrata auxilia intelligebat.

And when the Romans became Conquerors of this Isle, the same Right or Dominion was during all their time supported and maintained, when they failed, round their new achieved Conquests in the time of Domitian, Agricola giving terror to all the neighbouring Nations.

But when that Mighty Empire became subject to Fate, and this Nation by the continual supply of Men, which went out of the Kingdom to fill up the Contingences of the Roman Legions, became at last so enfeebled as to render us a Prey to the Saxons; which Empire having settled Peace with their Danisb Neighbours, and quieted their own home-bred Quarrels; and having reduced the several petty Kingdoms of their Heptarchy under one Diadem, they forgot not to assume their antient Right and Dominion of the Seas; as did the most Noble Edgar +, who kept no less a Number than 400 Sail of Ships to vindicate and acertain his Dominion, giving Protection to the peaceable, and punishment to the offenders: nor did his Successors Eibeldred, Canatus, Edmond, and others that followed of the Danisb Race, any ways wave, relinquisha or lose that Royalty, but obsequiously maintained the same down to the Conqueror, and from him since for upwards of 1200 years in a quiet and peaceable Possession.

+ Alciatamantis:

Dei longissima
clementia qua
est Sax Reg-
gum; Ego
Edgarus An-
glorum Baf-
litus, omnium-
que regum
Infalarum Oc-
ceanii, qua Bri-
tanniam cir-
cumjacent, cum-
Of the Flag.

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To mention the antient Commiffions, and Exercise of this Sovereign Power, Safe-conduéf, Writs of Seizure, Arrests, Records of Grants, and Licences to pass through the Sea and to fifh, Parliament Rolls and the like, would make a Volume; in a word, if Right of Prescription, Succession of Inheritance, continual Claim, matter of Fact, Consent of History and Confesfions, even from the Mouths and Pens of adversaries, be of any moment to the asferting of a Title, his Sacred Majefty may be presumed to have as good a Title to that, as the moft absolutely Monarch this day on Earth, hath to whatever he can claim or does enjoy. 1 Rol. Ab. 528. pl. 2.

VIII. Now the Duty of the Flag is no more but a consecutive acknowledgment that the Right and Dominion of the Britifh Seas, (not as a bare Honorable Salute or Ceremony, but as an absolute Sign of the Right and Sovereignty of those Seas where they are obliged to strike Sail) are in him to whose Flag they veil, and pay that duty to; and in substance there is no more but that the King grants a general Licence for Ships to pass through his Seas, that are his Friends, paying that obeisance and duty, like those services when Lords grant out Estates, reserving a Rose or Pepper-Corn, the value of which is not regarded, but the remembrance and acknowledgment of their Benefactor’s Right and Dominion.

The Duty of the Flag or Salutation, is to be paid not only by Foreigners, but also by natural born Subjects, and such who refuse to pay the fame, may be brought to the Flag to answer that Contempt.

That this hath been an Antient Custom, always waiting on that Sovereignty, appears by that memorable Record upwards of 500 years since made, where it is declared by King John what the Antient Custom was, in thes Words; That if a Lieutenant in any Voyage, being ordained by Common Council of the Kingdom, be encountered...
encounter upon the Sea any Ships or Vessels, laden or unloaded, that will not strike and veil their Bonnets at the Commandment of the Lieutenant of the King, but will fight against them of the Fleet, that if they can be taken, they be reputed as Enemies, and their Ships, Vessels, and Goods taken and forfeited as the Goods of Enemies, although the Masters or Possessors of the same would come afterwards, and allege, that they are the Ships, Vessels, and Goods of those that are Friends to our Lord the King; and that the common People in the same be chastized by Imposition of their Bodies by their Rebellion, by discretion.

Thus this Immortal Custom was by that prudent Prince affirmed, the which hath been always before, and ever since (without interruption) by all Nations constantly paid to the Ships of War, bearing the Royal Standard, and other of his Majesty's Ships, wearing his Colours and Ensigns of Service; he knowing that undisputed Maxim of State, That Kingdoms are preferred by reputation, which is as well their strongest support in Peace, as their chiefest safety in time of War; when once they grow despised, they are either subject to Foreign Invasions, or Domestic Troubles, the which (if possible) that Prince would have prevented, but he lived when those Celestial Bodies, which govern the actions of Princes, seemed to frown on the most Virtuous and Wife.

IX. And as there is no Nation in the World more tender and jealous of their Honour than the English; so none more impatiently tolerate the diminution thereof. Hence it was that in all Treaties, before any thing was ascertained, the Dominion of the Seas, and striking the Top-sail was always first provided for.

In the Year 1653, after the Dutch had measured the length of their Swords with those of this Nation, and being sensible of the odds, had by their four Ambassadors most humbly besought Peace, this very Duty of the Flag was demanded by the 15th Article, in these words:

That the Ships and Vessels of the said United Provinces, as well Men of War as others, be they in single Ships, or in Fleets, meeting at Sea with F
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any of the Ships of this State of England, or in their service, and wearing the Flag, shall strike the Flag, and lower their Top-sail, until they passed by; and shall likewise submit themselves to be visited if thereto required, and perform all other respects due to the said Commonwealth of England, to whom the Dominion and Sovereignty of the British Seas belong.

This was so peremptorily demanded, that without the solemn acknowledgment of the Sovereignty over the British Seas, there was no Peace to be had. As to the acknowledging of the Sovereignty and the Flag, they were willing to continue the Ancient Custom, but that of Visiting was somewhat hard: 'tis true the latter Calue was by the Usurper waved, for Realons standing with his private Interest; but the first was (with the addition of these words — in such manner as the same hath been formerly observed in any times whatsoever) made absolute by the 13th Article between Him and that Republick, in these words: Item quod Naves & Navigia dictarum Federatarum Provinciarum, tam bellica & ad Hostium vim propulsandam instruxa, quam alia, que alucii & Navibus bellicos byuju Reipublice in maribus Britannicis obviam dederint, vexillum suum à mali vertice detrabent, & supremum velum demittent, eo modo, quo ullis retro temporibus, sub quocunque anteriori reginime unquam observatum fuit, and from thence it was transcribed into the 10th Article at Whitehall, and afterwards into the 19th Article at Breda, and from thence into the 6th Article made last at Westminster, and that Clause of searching of each others Ships made reciprocate, by the 5th Article made in the Marine Treaty at London; but that extends not to Ships of War, but only to the Ships of Subjects.

X. By the British Seas in the Article about the Flag are meant the four Seas, and not the Channel only; for in the 16th Article of the Treaty in 1653, they did express what was meant by the British Seas.

The dominion is ascertained from Cape Finisterre to the middle Point of the Land Van States in Norway Feb. 9. 1674.
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That the Inhabitants and Subjects of the United Provinces may with their Ships and Vessels furnished as Merchant-Men, freely use their Navigation, sail, pass and repass in the Seas of Great Britain and Ireland, and the Isles within the same, commonly called the British Seas, without any wrong or injury to be offered them by the Ships of People of this Commonwealth; but on the contrary shall be treated with all love and friendly offices, and may likewise with their Men of War—not exceeding such a Number as shall be agreed upon—sail, pass and repass through the said Seas, to and from the Countries and Ports beyond them; but in case the said States-General shall have occasion to pass through the said Seas with a great number of Men of War, they shall give three Months' notice of their intention to the Commonwealth, and obtain their consent for the passing of such a Fleet, for preventing of jealousy and misunderstanding between the States by means thereof.

The first part of this Article doth plainly set out the extent of the British Seas, and that it is not the bare Channel alone that comprehends the same, but the four Seas: and the same is further explained in the Great Case of Constable's, where the Dominion of the Queen (before the Union) as to the Seas, did extend mid-way between England and Spain, but entirely between England and France; the French never had any right or claim to the British Seas; for in the Wars between Edward the First and Philip the Fair, (all commerce on both sides being agreed to be free,) so that all Merchants whatsoever there should be industrius, which were called susefrantiæ Guerra, and Judges on both sides were appointed to take cognizance of all things done against the Trueces, and should exercise Judicium secundum Legem Mercatoriam & formam susefrantiæ it was contained in the first provision of that League, that they should defend each others Rights against all others; this afterwards occasioned the introducing that Judgment in the same King's time, (before those Judges, chosen by both the said Princes by the Cass & Inbit: Proctors of the Prelates, Nobility, and High Admiral of, F. 2 Eng.
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England, and all the Cities, Towns, and Subjects of England, &c. unto which were joined the suffrages of the most Maritime Nations, as Genoa, Catalonia, Spain, Almain, Zealand, Holland, Friseland, Denmark and Norway, and divers other Subjects of the Roman Empire) against Reginer Grimbald, then Admiral of France, for that there being Wars between Philip of France and Guy Earl of Flanders, he had taken Merchants upon those Seas, in their Voyage to Flanders, and despoiled them of their Goods; whereas the Kings of England and their Predecessors (as they all jointly do declare and affirm) without all controversy beyond the memory of Man have had the Supreme Government of the English Seas, and the Islands thereof.

Prescribendo sicut Leges, Statuta atque interdicta armorum, naviumque alio ac Mercatorii armamentis instructarum, caufiationes exigeundo, tutelam praebendo, ubicunque opus esset, atque a/a constituenda quaeque fuerint nec.nec. ad pacem, jus & equitatem conservandum inter omnimodas rates tam externas quam in Imperio Anglicano comprehenasque per illud transferint; supremam iisdem item suisse atque esse tutelam; merum mixtum Imperium in jure dicendo secundum dictas Leges, Statuta, præscripta & interdicta, aliisque in rebus que ad summum Imperium attinent in locis adjudicatis.

Which memorable Record apparently shews, that the Kings of England have had ipsum regimen & dominium exclusivum of the King of France bordering upon the same Seas, and of all other Kings and Princes whatsoever; and it was there adjudged that Grimbald's Patent was an usurpation on the King of England's Dominion, and he adjudged to make satisfaction, or if he proved unable, then the King his Master should, and that after satisfaction he be rendred to punishment.

And as to the second part of the Articles of giving notice, it was but an Act of common Prudence; their late unexpected Visit, which they then gave, put the English to some surprize; but they facing the Bataviens, soon made them know that they were as capable of beating them home, as they were then daring in coming out, and were not to be braved out of a Dominion and Right, which
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which their Ancestors had with so much Glory acquired and asserted.

XI. By the Article of the Offensive and Defensive League between France and the United Provinces, it was agreed, that if at any time the Dutch Fleet (which were to scour the French Coasts in the Mediterranean from Pirates) should at any time meet the French, the Admiral of the Dutch was to strike his Flag and lower his Top-sail at his first approach to the French Fleet, and to salute the Admiral of France with Guns, who was to return the said Salute by Guns also, as was usual when the Dutch and English Fleet did meet.

Only in this the Right of the Flag of England differs from that claimed by the French; for if there had been a failure on the part of the Dutch, of paying that respect to the French, the same would have amounted to no more but a breach of the League: but the not striking to the King of England's Flag, is open Rebellion; and the Article does so signify, for it is there mentioned as a Right and Sovereignty, not a bare Dominion only, like that of Jerusalem to the King of Spain. 'Tis very true, the refusing of it is an absolute annulling of the Treaty; for though in the League with England it is mentioned, yet there is nothing of any concession granted by the same, but only recognized there as a Fundamental of the Crown and Dignity of the Kings of England; nor was the same ever so much as mentioned in any former Treaty before Cromwell's time, as we have already mentioned, but it was always a Clause in the Instructions of the Admiral and the Commanders under him, That in case they met with any Ships whatsoever on the British Seas that refused to strike Sail at the Command of the King's Admiral or his Lieutenants, that then they should repute them as Enemies (without expecting any declared War) and destroy them and their Ships, or otherwise seize and confiscate their Ships and Goods; and these Instructions amongst others continue to this day. The like are given by the Venetians to their Captains in reference to the Adriatic Sea, and by several other Princes.

XII. The Duty of the Flag that had been so constantly paid to our Ancestors is of such advantage to the continuing the Renown of this Nation, that it serveth to
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It is no policy to attempt the change of old Customs and Usages, even errors and abuses are upon such an account legally tolerated. In omnibus rebus sicut in plurimum habet dignitatis: ita ut Massalians quorum praetantissima creditur fuisse Republica, laudentur ex nomino quo gladio ad puniendos fontes usi sunt eodem a condita Urbe, quo indicarent in minimis quaque rebus antiqua constatudinis momenta servatenda. Prima enim ad Deum accedit Antiquitas, aeternitatis quaedam indagine. Grot. de Antiq. Reipub. Basv. in Praefat.

* Vide the Earl of Shaftesbury's Speech to the Parliament, 1672. Ceteris mortales in
the indignity really extends to them, or because the Government and Authority is thereupon weakened and prejudiced, which is the greatest of Civil detriments that can befal a People, tho' ordinarily they are not aware thereof.

As Prudence doth thus distinguish betwixt the Demeanor of private and publick Persons, so doth Charity itself; for though the Gospel precepts do oblige particular Persons to bear Injuries and Contumelies with patience, and to surrender even the Coat as well as the Cloak; yet is it not so to be construed, as if even private Christians were to yield up their Civil Rights to every insolent one that would intrachop upon, and usurp them, or that they were to deprive themselves of those Reparations, which the Law and Government affords them; neither is it so to be understood as if the Civil Magistrate in Christendom might not secure himself of that Obedience and Reverence, which is due unto Dignity, but bear the Sword in vain.

XIII. This being the value which this Nation did always place upon the Right of the Flag, the which they never did regard only as a Civility and Respect, but as a principal Testimony of the unquestionable Right of this Nation to the Dominion and Superiority of the adjacent Seas, acknowledged generally by all the Neighbour States and Princes of Europe, and must be paid and acknowledged by all Princes in the World, that shall be, or pass on the same.

The Effects of this Dominion Universal, or Sovereignty which accrue to a Prince are these:

1. Not only the Regality of the fishing for Pearl, Coral, Amber, &c. but likewise the Advantage of all Fish Royal, as Whales, Sturgeon, &c. and not only those, but also the direction and disposal of all other Fish, according as they shall seem to deserve the regards of the Publick, as in Spain, Portugal, &c. is used.

2. The prescribing of Laws and Rules for Navigation, not only to his own Subjects, but unto others Strangers, whether they be Princes of equal strength and dignity with himself, or any way inferior. Thus the Romans did confine
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confine the Carthaginians to equip out no Fleets; and forbade Antiochus to build any more than twelve Ships of War: and if Tradition informs me right, Queen Elizabeth interdicted the then French King to build any other or more Ships of War than what they then had, without her leave first obtained. The Aethiopians prohibited all Median Ships of War to come within their Seas, and prescribed to the Lacedemonians with what manner of Vessels they should sail. All Histories are full of such Precedents, which Princes have enacted either upon Agreements enforced upon the Conquered, or Capitulations between them and others (their equals or inferiors) for mutual Conveniences.

3. The Power of imposing Customs, Gabels, and Taxes upon those that navigate in their Seas, or otherwise fish therein; which they do upon several rightful Claims, as protecting them from Pirates, and all other Acts of Hostilities, or assisting them with Lights and Sea-marks; for which advantages common Equity obligeth those that reap benefit thereby, to repay it with some acknowledgment, which ought to be proportioned according to the favour received, and the Expenese which the Prince is at to continue it unto them.

4. As it is incumbent on a Prince duly to execute Justice in his Kingdoms by Land, so the Sea being his Territory, it is requisite and a necessary effect of his Dominion, that he cause Justice to be administered in case of Maritime Delinquencies.

5. That in Case any Ships navigate in those Seas, they shall salute his floating Castles, the Ships of War, by lowering the Top-sail, striking the Flag (those are the most usual Courses) in like manner as they do his Forts upon Land; by which sort of Submissions they are put in remembrance, that they are come into a Territory wherein they are to own a Sovereign Power and Jurisdiction, and receive Protection from it. These are the proper Effects of a real and absolute Sovereignty over the Seas; which how they are possessed by the Venetians, this ensuing Account will declare.

The Gulph of Venice is nothing else but a large Bay or Inlet of the Sea, which entering in between two Lands, and severing them for many Miles continuance, in the end
end receives a stop or interruption of further Passage by an opposite Shore, which joins both the opposite Shores together: It is called the Gulph of Venice, from the City of Venice, situate upon certain broken Islands near unto the bottom thereof: it is also called the Adriatick Sea, from the ancient City Adria, lying not far distant from the former; from the Entrance thereof unto the Bottom it contains about six hundred Italian Miles, where it is broadest it is an hundred and sixty Miles over, in others but eighty, and in most an hundred. The South-West Shore is bounded with the Provinces of Puglia and Abruzzo in the Kingdom of Naples; the Marquifate of Ancona and Romagnia in the Pope’s State; and the Marquifate of Trevisana in the Venetian State: The North-part of it, or Bottom, hath Friuli for its bounds; the North-East is limited by Istria, Dalmatia, Albania, and Epirus; whereof Istria doth not so entirely belong to the Venetians, but that the Emperor, as Arch-Duke of Gratz, doth possess divers Maritime Towns therein; in Dalmatia, saving Zara, Spalaiio and Cataro, they have nothing of importance, the rest belonging to Ragusa and the Turks: In Albania and Epirus they possess nothing at all, it being entirely the Turks; so that he who shall examine the circuit of the Sea, which must contain about twelve hundred Miles, shall find the Shores of the Venetian Signory, not to take up two hundred of them, omitting some scattered Towns and dispersed Islands lying on the Turkish side of the Adriatick Shore.

For the securing hereof from the depredations of Pirates, and the pretences of divers potent Princes, as the Pope, Emperor, King of Spain, and the Great Turk, who each of them have large Territories, lying thereupon; also to cause all Ships which navigate the same to go to Venice, and there to pay Custom and other Duties, the Republick maintains continually in action a great number of Ships, Gallies, and Galliots; whereto also they add more, as there may be occasion, whereof some lie about the bottom of the Gulph in Istria, others about the Islands of Dalmatia, to clear those parts of Pirates, who have much infested those Seas, and others, and those of most force, have their station in the Island of Corfu and Stindia; in the first of which commonly resides the Captain.
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Baptista Nani
his History of Venice, lib. 11.
sol. 446, 447, 448.

In the Gulp, whose Office is to secure the Navigation of the Gulp, not only from the Corsairs, but to provide, that neither the Gallies or Ships of the Pope or King of Spain, nor Great Turk do so much as enter theSame, without permission of the Signiory, and upon such conditions as best please them; which they are so careful to effect, that in the Year 1638 the Turkish Fleet entering the Gulp without Licence, was affailed by the Venetian General, who sunk divers of their Vessels, and compelling the rest to fly into Valona, he held them there besieged, although the same City and Port whereon it stands, be under the Jurisdiction of the Grand Signior; and notwithstanding that a great and dangerous War was likely to ensue thereupon betwixt the Grand Signior and the Republic, because the Venetian General being not content to have chafed them into their own Ports, did moreover sink their Vessels, and landing his Men flew divers of their Mariners, who had escaped his fury at Sea; yet after that a very honourable Peace was concluded again betwixt them, wherein amongst other Things it was agreed, That it should be lawful for the Venetians, as often as any Turkish Vessels did without their licence enter the Gulp, to seize upon them by force, if they would not otherwise obey: And that it should likewise be lawful for them so to do, within any Haven, or under any Fort of the Grand Signior's bordering on any part of the Venetian Gulp: So jealous hath this Republick been in all times to permit any to fail the Gulp, that in the Year 1630, (as Palatius relates) Mary, Sister to the King of Spain, being espoused to the Emperor's Son Ferdinand, King of Hungary, the Spaniards designed to transport her from Naples in a Fleet of their own. The Venetians suspected that they had an intention hereby to interchase upon, and privily to undermine, by this specious Precedent, that Dominion of the Sea, which the Signiory had continued inviolate Time out of mind; and that they took this Opportunity when Venice was involved with a War abroad, and infested with the Plague at home, and therefore not in a condition to oppose their Progress. The Spanish Ambassador acquainted the State, that his Mafter's Fleet was to convoy the Queen of Hungary, being his Sister, from Naples to Trieste: The Duke replied, That her Majesty
Majesty should not pass but in the Gallies of the Repub-
lick; the Spaniard repined theseat, pretending that they
were infected with the Plague: The Senate being con-
sulted, came to this Resolution, That the Sitter of his
Catholick Majesty should not be transported to Friesi
any other way, than by embarking in the Venetian Gal-
lies, according to the usual manner of the Gulph; and
that, if the Ambassador would acquiesce therein, her Ma-
jestty should be attended and used with all that respect
and deference which became her Quality: but if she pros-
ed any other way, the Republik would by force affect her
proper Rights, and attack the Spanish Navy as if they were
declared Enemies, and in hostile manner invaded them. Where-
upon the Spaniard was compelled to desire the favour of
them to transport the Queen in their Gallies, which An-
tonio Pizani did perform with much State and Ceremony;
and the Courtely was acknowledged by solemn Thanks
from the Courts of the Emperor, and of Spain.

XIV. The Maritime Dominion by the Laws of Eng-
land were always accounted the Four Seas; such as are
born thereon are not Aliens, and to be within them is to
be within the Ligeance of the King and Realm of England.
The Records in the days of Edward the Third and
Henry the Fifth proclaim it, that those Kings and their
Progenitors had ever been Lords of the Sea; and amongst
those many great Instances of proving the Sovereignty of
the same, is that famous Record of Edward the First and
Philip the Fair of France, in which were the Procurators
of most Nations bordering upon the Sea, throughout Eu-
rop, as the Genoese, Catalanian. Almaines, Zelanders, 1 Ro. 4. 528.
Hollanders, Frieselanders, Danes, and Norwegians, besides pl. 2.
others under the Dominion of the Roman German Empire,
where all jointly declare, That the Kings of England,
by right of the said Kingdom from time to time,
whereof there is no memorial to the contrary, have
been in peaceable possession of the Sovereign Lord-
ship of the Seas of England, and of the Isles with-
in the same, with power of making and establishing
Laws, Statutes, and Prohibitions of Arms, and
of Ships otherwise furnished than Merchant-Men
use to be, and of taking secure, and affording safe-
guard in all cases where need shall require, and of
ordering
of the Flag.

Of the Flag.

ordering all things necessary for the maintaining of Peace, Right and Equity, among all manner of People, as well of other Dominions as their own, falling through the said Seas, and the Sovereign Guard thereof.

By which it plainly appears, That the Kings of England had then been in peaceable possession of the said Dominion by immemorial Prescription, that the Sovereignty belonged unto them, not because they were Domini utriusque riteae, when they had both England and Normandy, and were Lords of both Shores; (for Edward the First at that time had not Normandy) but that it is inseparably appendant and annexed to the Kingdom of England, our Kings being superiour Lords of the said Seas, by reason (as the very Record mentions) of the said Kingdom; and since that the Sovereignty of the Sea did always appertain unto the English King, not in any other Right than that of the Kingdom of England; no Prince or Republick ought or can doubt the Title by which our present Claim is deduced; 'tis in right of Britannia, that the same is challenged, 'twas in that right the Romans held it.

England, the Land is called the Realm, but the Sea the Dominion; and as the loss of one Province doth not infer that the Prince must resign up the rest; so the loss of the Land Territory doth not by Concomitancy argue the loss of the adjacent Seas. It is no more necessary that every Sea-Town should command an hundred Miles at sea, than that each City should command an hundred Miles by Land. *Julius Pascius de Domin. Marii Adriatici.*

The claim justified Edward the Third and his Rofe Noble, though there are other reasons regarding the Lancasterian Line, which yield a Colour for the use of Portcullis in the Royal Banners of England; yet as in reference to the Maritime Dominion, Henry the Eighth did embellish his Navy Royal therewith, and Queen Elizabeth stamped it upon those Dollars which she designed for the East India Trade, signifying her power of shutting up the Seas, if she thought fit (as by a Portcullis) with the Navy Royal; this Dominion of the British Seas did authenticate the Proclamation of King James, ordaining the Flemisht at London and Edinburgh to take Licence to fish: This justified the like Proclamation by King Charles 1. and warranted

*Anno Domini* 1600.  

*Anno Domini* 1609.  

*Anno Domini* 1636.
CHAP. V. Of the Flag.  

That Prescription is valid against the Claims of Sover-hen Princes cannot be denied, by any who regard the Holy Scripture, Reason, the practice and tranquility of the World: and that true it is, the modern Dutch have pretended, if not dared, to challenge the Freedom to fish in the British Seas, by Prescription; but it is likewise as true that Prescription depends not upon the Corporal but the Civil Possession, and that is retained, if claim be but made so often as to barr the Prescription, the which hath been always made evident; first by frequent Medals, next by punishing those that refused it as Rebels, by guarding of it, and lastly by giving Laws time out of mind on it; which evidently proves that the civil Possession is not relinquished; and our Kings constantly claiming the Dominion of the same, none else pretending, all Nations acknowledging it to be in them, and the same never questioned, till those modern Dutch (of yesterdays) arose.  

XV. The Importance of the Dominion of the Sea unto this Nation, is very great, for on that alone depends our Security, our Wealth, our Glory; from hence it is that England hath a Right to all those Advantages and Emoluments, which the Venetian Republick draws from the Adriatick Sea, where the Ships of the Grand Signior, of the Emperor, King of Spain, and Pope pay Customs, to maintain those Fleets, which give Laws to them within the Gulph; 'tis hereby that the English can shut up or open these Seas for Ships or Fleets to pass or repass them, whereof Queen Elizabeth had so special a regard, that when the King of Denmark and the Hansatick Towns solicited her Majesty to permit them free passage, they transporting Corn into Spain, she refused them; and when a Protestant Fleet of Hamburgers and others, had presumed to do so, notwithstanding her Prohibition, she caused her Navy Royal to seize, take, burn, and spoil them, when they were paffed her Maritime Territory, within sight of Lisbon; yielding this reason for her justification, That they not only relieved her Enemy with Provisions, but had presumption made use of her Seas, without obtaining her Royal Permission for so doing;
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'tis from hence that the Crown of England can justly demand an account of any Ship or Ships occurring in those Seas, what their Buffnness, and what their Intentions are; and prohibit any Prince or Republick to enter there with potent Fleets, without pre-acquainting his Majesty, and obtaining his Royal Permission; without which Dominion and Sovereignty, England can never live secure on shore; it being easy for any Foreign Fleets to amuse us with specious pretences; and in their passage to invade and surprize us. Thus while 'the Turk pretended to sail for Malta, he occasionally possessed himself of Canea, in the Isle of Candia, and after having tasted the sweet of that place, never forsook it, till he made himself Master of the whole. Many such Precedents do occur in History: And in fear of such Surprizal, the Athenians (being Lords at Sea) did exclude the Persian Monarchs from sending any Ships of War into any part of the Ægean, Rhodian, Carpathian, and Lydian Seas, and that which tends to the West, towards Abens; the like Caution was used by the Romans against Antiochus and the Cartaginians; and the Turk prohibits all Nations, saving his Vassals, to enter the Black Sea or Pontus Euxinus, and also the Red Sea; and 'tis by virtue and force of this Right that the British Nation can drive on their own Commerce, navigate themselves, and permit others securely to trade with them. 'Tis true that the Dutch have presumed some years since, to violate the security of the British Seas, by the attacking the Allies of England, not only within the British Seas, but in her Harbours, attempting to pursue a French Vessel up almost to London, and have more that once attacked the Spanish Fleets in her Roads, under the protection of her Castles, and that against the Laws of Nations, and the Peace of Ports, in which for the time they seemed to cloud the Honour of the Nation; but satisfaction for Indignities of that nature, though slow, yet are sure, and should such as those have been longer tolerated beloved Britannia must become a prostitute, by a Confederation of those States, or take Pass-ports for her Commerce; but the Royal Martyr's Goodness was no longer to be trod on, his Heart and his Cause were good, and though those unhappy Times (which were crooked to
to whatsoever seemed straight) did hinder the accomplishment of his entire intention for satisfaction; yet the whom the just God of Heaven was pleased for a time to permit as a punishment to this Nation to rule, cap. liii. iv. did not want in the fulfilling; for so soon as he was pleased to stay the fury of the Intolimate Sword, their Hearts took fire from those flames that had formerly been kindled in that Royal Breast, and having prepared a Fleet, in order to the treating as Soldiers with Swords in their Hands, they were in the like manner assaulted in their Territories in the Downs (but the Dutch found then what it was (though two for one) to assault a British Lion at the mouth of his Den) intending, if possible, to have destroyed the English Power, but were frustrated in their design, being severely beaten home to their own doors; and afterwards those that then had got the English Sword in their hands, begun to consider that the Victory must be purfued as a season fit to assert their Antient Right and Sovereignty of the Sea, and then those People thinking that the odds before was not enough to destroy the British Fleet, they equipt out a Fleet greater and far more numerous than the English, under the Admirals, Van Trump, De Wit, the two Everfons and Ruyter; but they suffered the same Fate as their former, about some thirty four of their Ships on the Coast of Flanders, burnt and taken, and the rest chased home to their Ports; and not long after followed the total defeat of their Naval Forces, accompanied with the death of Van Trump by the English, under the Admirals, Blake and Monk, who had funk and fired about thirty more of their Ships of War (no quarter being given till the end of the Battle) fix Captains and about a thousand Men were taken Prisoners, and about six thousand slain. Of their Presumptions since (amongst other things) in denying the Duty of the Flag, and what punishment and check they have had for the same, to what condition they have been reduced, and made to acknowledge that Dominion and Superiority to that Crown (under which their Ancestors humbly * besought the acceptance of the Sovereignty of the Netherlands, might be annexed and protected) is now fresh in our memories; so high and of so great Importance is this Dominion and So-

* Offered to Queen Eliz.

Cette cy entre autres merite bien une consi-

sereignty deraion speci-
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The sovereignty signified by the Duty of the Flag in the British
juncture desjits circumjacent Seas.

Pays de Hol-
lands, Ze-
lande, Friese, & des Villes de l'Esleu, & Offende en Flanders, avec les Rojaumes de
vostre Majesty, emporte & fait l'Empire de la Grande Mer Oceana; & par consequent une
assurance & Felicite perpetuelle pour les Subjets de vostre Serenissime Majeste. 
chap. 2. § 2. & 3.
CHAP. VI.

Of the Right of Seizing or Seizing of Ships or Mariners for Publick Service.

I. That such Right is excepted in the Laws of Dominion.
II. Whether the Ships of Nations who are in War at the same time, may be pressed, the danger being equal.
III. Whether this Right extends to Ships to fight, and no more, or gives a Power to trade.
IV. By the Laws of England the King may seize.
V. The reason why such a power was vested in the Admiral.
VI. That such a Right of compelling Men to serve in Naval Expeditions may be.

VII. Objections legal refuted.
VIII. Of the ancient punishment of deserters of the King's service.
IX. Concerning the several Statutes now in force touching Mariners and Soldiers.
X. Whether it be lawful for a private Man to execute Justice on such as fly and desert the service.
XI. Where a general Commission is given to Men to execute Justice.
XII. Several Cases touching the Admiralty and their Jurisdiction. Ships or Boats found at Sea, Royal Fife and Desdands belong to the Admiralty.

I. The Civil Law, though it can command nothing which the Law of Nature forbids, nor forbid what it commands; nevertheless it may circumscribe natural Liberty, and prohibit what was naturally lawful: and also by its force antevirt that very Dominion, which is naturally to be acquired. Hence it is that Princes, by the Law of Nations, may acquire a Right of use of things that do belong to private Persons; for property hath not (as hath been said) swallowed up all that Right, which rose from the common state of things; because as all Laws are to be construed as near as possible to the intention of the Makers, so we must consider what was the mind of those that first introduced singular Dominions: now the Rules to construe that must be near as possible to natural equity, and that in extreme necessity that old Right of using things should revive, as if the things had remained common, the same standing with the Interest of all human Constitutions; and therefore in the Law of Domi-
Of Pressing Ships and Mariners. Book I.

union extreme Necessity seems excepted. Hence it is that the Vessels and Ships of what nature and nation soever
† that should be found riding in the Ports or Havens of any Prince or State, may be seized on, and employed upon any service of that Sovereign that shall seize the same, being but a harmless utility, not divesting the Owners of their Interest or Property.

II. If a Ship of the King of Denmark be in the Port of London, and the Swede is in War with that Prince; and it happens at that time the King of Britain is in War with the Spaniard; now the Possessor is here pressed with an equal necessity, and by the same argument is rather obliged to the defence of his own Country than another, whether by the Law of Nations the Ship ought to be detained, hath been doubted; most certain it may. Who would not pluck a shipwrecked Man from his plank, or a wounded man from his Horse, rather than suffer himself to perish? To flight which is a sin, and to preferve, the highest of wisdom: besides, in the taking of the Vessel the right is not taken from the Owner, but only the use, which when the necessity is over, there is a condition of restoring annexed tacitly to such a seizure.

And doubtless the same Right remains to seize the Ships of War of any Nations, as well as those of private interest, the which may be employed as occasion shall present: So the Grecians seized* on Ships of all Nations that were in Ports, by the advice of Xenophon; but in the time provided food and wages to the Mariners.

III. Whether this Right extends so far as to give Princes a power to seize in order to traffick may be some question; certainly if the Traffick may be for such Commodities, as Maifs, Timber, Tar, Powder, Shot, or other Commodities or Accoutrements of Arms, or Naval Provisions of offence necessary for the defence of the Realm, it may be done (but then it is just, freight should be paid) for what hurt can it do me to let another have my Boat to pass over the Ford, if he rewards me? And if that be answered, the Owners are at no prejudice, for this is but a harmless utility.

IV. By the Laws of England there is no question, but the King may seize, and it appears by very many antient Records, that he might do it, and it was one of the Articles

† F. Navi-
bus non excuf.
C. 1. 1. tit. 3.
and Pekius on
the same Law.

Quidni enim (inquit Cicer-
ro) quando
fine detrimento
suo potest, al-
teri communici-
ets, in iis qua-
sunt accipienti
utilia, danti
non molesta?
1. de Offic. 1.

De Expedi-
tions Cyri.

10 Ed. 3. m. 16.
12.

23 Ed. 1.
Rott. 77. in
the Exche-
quer.

12 E. 3. in
the Black-
Book of the
Admiralty.
CHAP. VI. Of Pressing Ships and Mariners.

cles of Enquiry amongst others; Item, soit enquis de Nefs, que sont arrêtées pour le service du Roy, ou pour autre raisonnable cause par les Officiers du Roy, ou de l'Admiral, & débissent l'Arrêt, & par les quelles avantdiz Nefs sont enmenez, & ramener les Maritmers qui sont ordonnés pour le service du Roy; & si retracent, & en cas que homme soit en- vite qui la débisse l'Arrêt en la Nef arrêtée pour le service du Roy, & de ce soit convienc par vit. il per- dra la Nef s'il na grace du Roy ou du haut Admiral, & pour ce qu'il a esté plusieurs fois débatu en Angle- terre pour les arrêtées des Nefs, quant le Roy amande Sergeants d'Armes, ou autre Ministres pour arrêter Nefs à coqs du Roy, & les Seigneurs des Nefs sont venus devant l'Admiral, & alléguent que leurs Nefs ne soient n'ye arrêtées, ordonne écrit au temps du Roy Richard le Premier à Grimby par avis de plusieurs Seigneurs du Royaume, que quant Nefs seront arrêtées pour service du Roy, que le Roy escript par les Lettres Patentes a l'Admiral d'arrêter les Nefs plus ou moins a la vou- lonte du Roy, & selon ce qu'il a esté, & l'Admiral escript au Roy ou au Chancellor d'Angleterre les nom des Nefs ainsi arrêtées assemblement avec les nom des Seigneurs & Maistres d'icelles, & en tel cas le Seigneur de la Nef ne la Maistre ne viennent pas a dire que la Nef ne soit n'ye arrêtée ne a ce ne front ny, & that upon such Arrests broken, the Parties might be punished and fined.

Again, Inquiratur si arrestitus, ad servietum Regi fre- gat arretum, bujusmodi transgressor sit in gratia Regia &ve Admiralli sui utrum voluerint committere Carceribus manci- pandum vel sinem facere, in hac parte si arretum bujusmodi- fandum manifestum fuerit cognitum.

If the Admiral by the King's Command arrests any Ships for the King's Service, and he or his Lieutenant re- turn and certify the Arrest, or a Lift of the Ships arrested into Chancery, no Master or Owner of the Ships so ar- rested shall be received to plead against the Return, pur cego que l'Admiral & son Lieutenant sont de- record.

Item, Inquirendum de omnibus Navibus quae ad servien- dum Domino Regi super mari arrestate fuerint, & possena G 2 Domini
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Domini, possessor, seu Magistri dolo & fraude à servitio bu-
jujmodi se subtraquetur in deceptionem Domini Regis, qui
si inde posseca inditati fuerint, & convitii super boc, naves
sae Domino Regi forisfaa per ordinationem Domini Regis
Richardi Primii; & si Domini, Possessor, vel Magistri bu-
jujmodi inde coram Domino Regi & cancellario suo per ali-
quas allegationes se aut naves bujujmodi excusare voluerint, si
Admirallus vel locum tenentes sui per litteras suas Patentes de
arresto bujujmodi facto fidem fecerint pleniorem, Domini, Pos-
sessor, aut Magistri praeitii nullo modo audiri debeant, seu
eis fides quovis modo adhiberi, eo quod Admirallus & locum
tenentes sui sunt de recordo.

And if the Ship so arrested break the Arrest, and
the Master or Owner thereof be indicted and convicted
debant l'Admiral by the Oath of twelve men, the Ship
shall be conficcate to the King, which power the General
maintains in all places where he has power, and the fame
seems to be provided for in the latter Clause of 15 R. c.
Ca. 3.

IV. By King Ethelred, his Bishops and Nobles in the
General Council of Enham, Anno 1009, for the setting
out a Fleet every Year, and the punishment of those who
hurt or spoiled any Ship, or deserted the Service, espe-
cially if the King was present in the Expedition, amongst
others it was enacted, Si quis Navem in Reipub. Exped-
tionem designatam viitiaverit, damnnum integre restituito &
Pacem Regis violatam compensato; si vero ita prorsus cor-
ruperit, ut deinceps nibili baneatur, plenam luito inuriam &
leiam praetera Majestatem. So Sir Henry Spelman's Ver-
sion out of the, Saxon Copy renders it, but the antient
Copy hath it more largely.

Naves per singulos annos ob patriae defensionem & munitionem
preparentur, postque Sacrosanctum Pascalum cum cunctis
utensibus competentibus simul congregentur; quae igitur etiam
paina digni sunt, qui Navium detrimentum in aliisibus per-
ciunt? Notum esse cupimus, quinqueque aliquam ex Naviibus
per quamiam inertia vel incuriam, vel negligentiam corru-
perit; & tamen recuperabilis sit; si Naviis corruptelam vel
fracamura ejusdem per solidam prius recuperatus, Regique deinde,
ea que pro ejusdem munitionis factura sibimet pertinent, rite
perfoavit.

Most
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Most certain it is, that the Kings of England have in all Ages, by their Writs and Patents, commanded not only the Admiral, but the Wardens of the Cinque-Ports and others, to arrest and provide Ships of War, and other Vessels, and impress and provide Masters of Ships, Seamen, Mariners, and all other necessary Tackle, Arms, and Provisions for Ships, for the defence of the Sea and the Realm against foreign Enemies, or for transporting of Armies paying their Freight (if not bound thereto by tenure) as well as to elect and provide all sorts of Soldiers, Carpenters, and other Officers to be assistants in their several Expeditions.

But Fishermen or Mariners pressed for the Service, are not to be employed as Soldiers, but only as Mariners; unless it be in cases of great necessity, or bound thereunto by Tenure, Custom, or Covenant.

V. The reason why the Admirals had such power given them, was because they being sometimes called Capitanei, and Gubernatores Flotorum, they had the ordering and governing of the Ships of War, and the raising and fitting up such Ships for the Navies, as they thought fit; other times called Custodes Maritimarum partium, their duty being to provide all Naval Provisions, as well to supply the King's Navies occasions, as to gratify any other of the King's Friends, when distress should constrain them to touch in his Ports, that his Subjects might receive the like retaliation again; they were called Capitanei Navarum & Marinellorum, as in reference to the deciding all differences amongst those in the King's Service, and punishing of such as transgressed; and as the place was great, so the power was large, especially in all things belonging to the Navy-Royal; in which they had the supreme rule and government in all things belonging to it. He sate formerly in the King's House, and there kept his Court, as the French Admirals do at this day at the Marble-Table, in the King's House at Paris.

VI. And although there seems no question but the King may press Ships, yet there have been those who seem to doubt, if not to question, whether he may press Men to serve; for my own part I think he may, my Reasons are these; It is lawful for every Man to addict and yield up himself...
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himself to whom he pleaseth, as appears both out of the Hebrew Law and Roman Law; why then may not any People, being at their own dispose, give up themselves to their Prince or Sovereign, so as to transfer the right of commanding their aid and help, as often as need shall require (it is not here inquired what may be presumed in a doubtful case, but what may be done in point of right) most certain such a power may well be, and that grounded on great Reafon; as if the Commonwealth should happen to be invaded by such a one as seeks not only the subversion of the Government, but the destruction of the People, and they can find no other way to preserve themselves, but that the supreme Power should be vested with such a Prerogative, as to enforce or press the Inhabitants to serve in Arms in the Defence of the same, and the contempt of which to punish; or if they should be oppressed with want, and that supplies of Provisions can no ways be had, but by compelling another by force to exhibit the common Offices of humanity to a Nation in whose Territories a Famine rages, that the Inhabitants should on such extraordinary Occasions be compelled by force to serve in Arms.

And this Dominion may be obtained several ways, either by a voluntary Resignation to a Conqueror, as they of Capua to the Romans, Our Land, the Temples of our Gods, all Divine and Humans things we yield up unto your hands, O ye Conscript Fathers. Again, Freedom may be granted to all by a Conqueror, except Mariners, which should in Cases of necessity be excepted; or that some Prince, who will not suffer any Mariner to go out of his Dominions, without subjecting themselves to such a reasonable command, besides the Majority of Nations on such grounds may abdicate from a part of them the entire Freedom of that Member.

Nor are there examples of this kind wanting; the Germans are every one Master of his own House, but are almost on every occasion subject to their Lords, especially in their Goods. The Irish Coal-herers, which were repressions, when the Chief Lord and his Retinue came to his Tenant's House, they fed upon his Provisions till they were spent, all being solely at their Devotion. And as to
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the Sea, the King of Britain may at this day restrain Merchants or Mariners to pass out of the Realm, without Licence; and the various tenures that are introduced, which is presumed were since the Conquest, were no other but the Will of the Conqueror; for the right is not measured by the excellency of this or that form, but by the Will.

As to the impressing of Seamen, it is strange that its Lawfulness should ever be called in Question by any Person, who has read our History, or our Statute-Book. The Crown has been in Possession of it from Time immemorial: And if a new Race of People were this Day to spring out of the Earth to possess this Island; if we may at the same Time suppose them to unite under one Civil Polity, and to be confant of the Necessity of Naval Strength for their Defence; the Power of impressing them for the Sea-Service would be implied in the executive Part of their Government, let it’s Constitution be what it might; viz. limited Monarchy, Aristocracy, or Democracy, or any compound of them, or some of them. But, as was hinted above, our Legislature has frequently maintained this Power, as undoubted Law. See 2. Ann. ch. 6. concerning Protections to be granted to Apprentices to be bound to the Sea-Service. But more explicate is a former Statute, viz. 2. and 3. P. & M. ch. 16. by which Watermen on the Thames who abscond in Pressing-Time, and then return to row, are made liable to Imprisonment for two Weeks, and to be banished to row upon the River by the Space of a Year and a Day. See also 2. R. 2. ch. 4. and 5. Eliz. ch. 5. jeli. 41. 43.

VII. And though it hath been conceived by some, that the King cannot press Men to serve in his Wars, giving their Reason, that of old he was to be served either by those that held by tenure, those that covenanted by Indenture to provide Men, or those who contracted with the King’s Officers for Wages and entered into Pay, or those that were in Prison for the King’s Debts; but that only extended to those Wars that were by Land: not one word in all those Acts, or Muster Rolls, relating in the least to Mariners; and yet what vast Fleets were in those Days? But on the other Hand it hath been always accustomed...
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accustomed to press such sort of Men for the Naval Expeditions. The ancient Records that mention such Persons subject to be press'd by Law is that of 29 E. 3. commonly called *The Inquisition of Queenborough*, wherein it was expressly in charge amongst others, to enquire of those Mariners that were pressed for the King's Service, and deserted the same: So likewise by those other Articles translated by Roughton, it is in express charge to the Jury to present those that being press to serve brake the King's Arrest, in order to their Punishment; and in those days it was esteemed an high offence: and the Oath which the Jury then took being impanelled, was this:

This here fee my Lord the Admiral, that I Jonathan Naff shall well and truly enquire for our Lord the King, and well and truly at this time then serve at this Court of th' Admiralty, present as much, as I have acknowledge, 02 may have by Inquisition of any of my Fellows, of all manner Articles 02 Circumstances that touchen the Court of the Admiralty and Law of the Sea, the which shall be grate to me at this time, and thereupon sworn or charged, and of all other that may renew in my mind, and in shall 02 nothing lette, that is 02 to say, for Franchise, Lordship, Kinreden, Alliance, Friendship, Love, Hatred, Envy, Enemy, 02 died of lost of Good, me, 02 non other cale that I shall fee doe, the King's Counsells, my fellows, mine own, will and truly hele without fraud 02 malengage, so God me help at the holy dome, and by ths Book.

VIII. And as the enquiry was strict, so was the punishment very great: Item, qui fugit à Domino vel focio suo pro timiditate belli vel mortis in conductione Heretochii sui in expeditione navali vel terrestri, perdit omne quod suum est, & suam ipsius vitam, manus mittat Dominus ad terram quam ei antea dederat.

IX. In the Service of the King two sorts of persons were always capacitated to attend the Navy-Royal in their Expeditions, the one a Salt-water Land-Soldier, the other a compleat Mariner or Sailer: It was a doubt, whether such a Soldier, departing from the Service, were subject to any other punishment than that of Martial Law, which can at no time be executed in England, but when the King's Standard is in the Field; thereupon it was provided, That
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If any Soldier being no Captain immediately retained with the King, which shall be in wages and retained, or take any prett to serve the King upon the Sea, or upon the Land beyond the Sea, depart out of the King's service without licence of his Captain, that such departing be taken, deemed, and adjudged Felony. And that all the Justices in every Shire of England, where any such Offender be taken, have power to enquire of the said offences, and the same to bear and determine as they do and may do of Felony, &c. expressed in the King's Commission to them made, as though the same offences were done in the same Shire. And also that the departing of such Soldiers, and also their Retainers, if it be traversed, be tried in the same Shire where they are for such a Cause arrested and arraigned. The Justices have here a concurrent power to enquire and try, but it does not shut out the Sovereign Courts, or hinder but the King may try them upon a Commission of Oyer and Terminer, or Goal-delivery. It was a doubt conceived by some of the late Judges, if a Man had run from his Colours at Plymouth, and afterwards was taken in Middlesex, and committed to Newgate, whether after a Bill is found in Middlesex, the Justices of Goal-delivery for Newgate could try him; but it was ruled more than once by the greater number of the Judges, they might; and so have the Precedents been always since the making of this Statute, and upon the like Reason, that a Man that takes a second Wife, hath by the Statute the same directions to be tried in the same Shire where he is taken; yet if taken in Middlesex, was always tried at the Old-Baily in London.

These Statutes were made, because the Statute of 18 H. 6 cap. 19. was looked upon not to be sufficient, for that Act had reference only to the ancient Tenures, and those that covenanted with the King to provide Soldiers; whereupon a question afterwards arising, whether several who having then taken prett Money to serve the Queen against the Rebels in Ireland, and had departed and withdrawn themselves from the Service, should be within those Statutes, in regard some doubt seemed to arise on the same; but it was resolved by all the Judges of England, that those two Statutes of 7 H. 7. Cap. 1. and 3 H. 8. Cap. 5. Raftal doubt-ed in his A-doubt and question, whether the Statute of 18 H. 6. Cap.
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Cap. 19. did extend to Mariners and Gunners serving on the Seas, and taking Wages of the King, was in Parliament not long before cleared in these Words: That the said Statute made in the eighteenth Year of the Reign of H. 6. in all pains, forfeitures, and other things, did, doth, and hereafter shall extend as well to all and every Mariner and Gunner, having taken, or who hereafter shall take pref or wages to serve the Queen's Majesty, her Heirs and Successors, to all intents and purposes, as the same did, or doth unto Soldiers, any diversities of opinion, doubt, matter, or thing to the contrary thereof notwithstanding: But now Mariners defecting the Sea-service are particularly within the Provision of 13 Car.

2. Cap. 9. which hath made the Offence Death; but the Trial is by a Court Martial.

And Land-Soldiers, though in Time of Peace, are likewise within the Statute of 7 Hen. 7. Cap. 1. and 3 Hen. 8. Cap. 5. if they take any pret Money to serve the King upon the Sea, or upon the Land, or beyond the Sea, and shall defect the Service; but that is inquirable according to the Course of the Common-Law, where if the party shall depart without Licence, he shall suffer Death, without benefit of the Clergy.

X. If such Person shall so defect the Service, it hath been a Question, whether a private Person, under the same obedience meeting with such a Deferrer, might not put him to death; it hath been conceived that he might, and the act is lawful, and the party that slays him hath a true Right before God, as impunity before Men: But that is to be understood partly by the Words, and partly by the Letter of the Law: For if the Law gives indulgence to Pasion, it takes away human Punishment, and not the Fault; as in case an Husband kills an Adulterous Wife or the Adulterer. * in the Act, most certain it is a Provocation in the highest nature, and will justify the Slayer: But if the Law respect the Danger of future Evil, by delay of Punishment, it is conceived to grant right and publick power to a private Man: so that he is not then in the capacity of a private Man.

And

by all the Judges in B. R. M. 23 Car. 2. in the Case of one —— found specially at Surry Affizes before Mr Justice Twyshden, who slew the Adulterer in the very Act. Vide Auguft. de Civit. Dei citatium. C. quisunque caufla. 23. qu. 8.
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And upon that very Reason Queen Elizabeth denied the constituting of a Constable, for the Trial of Sir Francis Drake, who struck off the Head of Doughty, in partibus transeuntes.

XI. Hence it is that every Man hath a Licence given him to oppose force against plundering, and pillaging Soldiers: and the next the subsequent Law about Defectors faith, Let all men know they have a power given them against publick Robbers and Defectors that run from their Colours, and all are Ministers of Revenge, for the quiet of all, to this purpose is that of Tertullian, against Traitors or publick Enemies every Man is a Soldier: And herein differs the right of killing of Exiles and Outlaws, or those whom they call Bandites, from those kind of Laws; because there proceeds a special Sentence, the Judgment of Banishment or Outlawry being promulgated; but here a general Edit, the Fact being evident, obtains the force of a Judgment or Sentence pronounced: the Judgment of the latter must be according to the Civil Law, which yet remains still in force, as to the Trial of such Defectors; which Impunity for such killing seems allowed of at this day by that Law.

XII. Cases relating to the Jurisdiction of the Admiralty as to Matters sueable there, or at the Common Law.

The Trial shall be where the Original Contract is made, which if in England, tho' the subsequent Matter to be done be upon the Sea, the Trial shall be at the Common Law. But if the contract, and what is to be done all of it is beyond Sea, it cannot be tried at Law here, but in the Admiralty; but if part be to be done here and part beyond Sea, so as it is mixed, then it shall be tried at Law. As an Action upon the Case upon a Policy of Assurance made at London, that a Ship shall fail from Melcomb Regis in the County of Dorset to Abville in France, safely, &c. And the Plaintiff declared that the Ship in sailing towards Abville, viz. in the River of Soame in France, was arrested by the King of France, &c. and the Issue was whether the Ship was so arrested or not; the Trial was by Niff Prius in London, and resolved to be well brought, though twas objected that this Issue arising merely from a Place out of the Realm, could not be tried at Law, for the Adventure being at London was the ground and foundation of
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of the Action, and therefore shall be tried here, for otherwise it could not be tried at all. Cited in Dowdale's Café 6 Rep. 47. b. Godbolt 76. and 204.

And so if the Contract be made at Land, tho' beyond Sea, the Trial shall be at Law, tho' what is to be done, be all of it beyond Sea, by laying the Contract made at a Place in England, as in Bourdeaux apud Islington in Com. Middlesex. So is the Case of Slaney and Clobery against Cotton, where the Plaintiff sued the Defendant in the Admiralty Court upon a Promife made in Barbary, to sail from Sirborona in Barbary to Ricumpta in Brazil, &c. upon suggestion that the Contract was made in London; Prohibition was granted: for, by Jones, the performance of the consideration does not give the Action without the Contract, and this was made at Land, tho' beyond the Seas, which may be supposed to be done in a place in England. 2. Rolls Rep. 486. See Tucker and Caff's Cafe in the same Book 492. and 497. and 2 Brow. 10. 11.

A Contract was made at Newcastle that a Ship should fail from Yarmouth to Amsterdam, Debts was brought upon this Contract, in the Court of Newcastle; adjudged, that the Action would not lie there, being a limited Jurisdiction, which shall not have conuance of any matters done in partibus transmarinis, but only the Courts at Westminster, March's Rep. 3.

If one libel in the Court of Admiralty for a thing done upon the Land, and it appeareth upon the Libel, that the thing was done upon the Land, and they notwithstanding that hold Plea of it, a Præmunire lyeth upon it; but if the same do not appear within the Libel, then it is not within the 13 of R. 2. c. 5. and 15 of R. 2. c. 3. but a Prohibition shall only issue, 2 Leon. 13.


A Dutch Ship was broken by a great Tempest in a Creek of the Sea, Infra Corpus Comitatus de Dorset; the Sailors upon pretence that the Goods in the Ship were bona peritura, procured a Commission of Sale out of the Admiralty-Court to sell them; and the true Owners to prevent such Sale, brought a Superfedeas; and upon shewing the Libel to the Court, a Prohibition was granted. (1.) Because the Cause of Action accrued infra Corpus Comitatus.
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Comitatus. (2.) Because the Sale of the Goods was good, as bona peritura. Culmer against Brand. 2 Sid. 81.

One having taken a Ship as Prize which had bona peritura entred into a Recognizance with sureties before the Judges delegate to bring the Money raised by Sale of the Goods in the Admiralty-Court before such a day, if they upon a Plaintiff there depending did not adjudge the Ship and Goods to be lawful Prize, which they adjudged lawful Prize; and after at another time cited the Owner before the Judges of the Admiralty, and for his not coming and bringing the Money at the day, they threatened to sue Execution against the Bail or Sureties who were Merchants of London, Prohibition was prayed; for by their first Judgment or Sentence, their Recognizance was discharged, and they ought not by Colour of this to endanger the Credit of Men of Reputation; but the Court would not grant a Prohibition, for they said an unjust Sentence of the Admiralty, in a Cause of which they have Original Conunance, is not a Cause of Prohibition. As if Tythes which in verity are paid, are found not paid in the Spiritual Court, yet a Prohibition lies not; and here the Judges Delegate have sole Power upon this Recognizance, to make Execution or defeat it.

The Corporation of Trinity-House, under pretence of Letters Patents from Queen Elizabeth for the ballasting of all Ships within the Bridge of London and the Sea, and that no Ship should take Ballast of any other but of them, sued one Boreman (a Dutch Man) in the Admiralty for taking Ballast of another, within the Place aforefoaid. Per Curiam the Place being allledged to be at Ratcliffe, a Prohibition was granted; resolv'd that the Letters Patents were void, for that thereby a Charge is raised upon the subject for the private gain of the House, for they would not ballast a Ship under 2d. per Ton.

In the Case of Sir Richard Hawkins, Vice-Admiral of the County of Devon, who was prosecuted in the Star-Chamber, for abetting and comforting Hull, and other notorious Pirates. It was there resolved that by the Common Law the Admirals ought not to meddle with any thing done within the Realm, but only with things done upon the Sea; and also by the Statute of 13 R. 2. c. 5. 2 H. 4. c. 11.

It
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It was likewise resolved, that the said Statutes are to be intended to hold Plea, and not of a power to award Execution; for the Judge of the Admiralty notwithstanding these Statutes may do Execution within the Body of the County.

The Court of Admiralty is not a Court of Record, because they proceed there according to the Civil Law.

Where one admits the Jurisdiction of the Admiralty by pleading there; no Prohibition shall be granted. Jennings against Audley, 2 Brow. 30. 12 Rep. 77. Therefore on Motion for a Prohibition in a Suit for Seamen's Wages, there the Suggestion was, that the Court below refused to allow the Defendant's Allegation; that the Place where the Plaintiffs entitled themselves, was not a Port of Delivery: This is no Foundation for a Prohibition; if any thing it must be an Appeal.

Craddock bought divers Things within the Body of the County, which concerned the furnishing a Ship, as Cordage, &c. the Vender sued him in the Admiralty Court; a Prohibition was granted, 2 Brow. 37. Craddock's Cafe, Owen 122. 3 Keeble 552. Merryweather against Mountford.

Note, No Appeal from the Admiralty before a Definitive Sentence. Lord Raymond, 1248.

The Defendant being Master of a Ship, of which the Plaintiff was Owner, the Ship was taken by Pirates upon the Sea; and to redeem himself and the Ship he contracted with the Pirate to pay him 50 l. and pawned his Person for it; the Pirate carried him to the Isle of Scilly, and there he paid it with Money borrowed, and gave Bond for the Money at his Return; after the Redemption both of the Ship and himself he sued in the Admiralty for the 50 l. and had a Sentence for it, and thereupon a Prohibition to the Admiralty was prayed but denied, because the Original Cause began upon the Sea, and whatever followed was but accessary and consequential. Hard. 183. Prohibition was granted to the Admiralty Court on the 22d and 23d Ca. 2. cap. 26. Setl. 11. in Suit there for the Forfeit of a Ship on selling Wares in Ireland without breaking Bulk, being put into Ireland from America, by contrary Winds, this being triable in the Plantations or any

A Master of a Ship agreed with certain Merchants concerning a Voyage, and received Orders from them to lay in Provisions of Meat and Drink, and to provide Mariners, &c. and after the Voyage was finished, the Merchants refused to pay the Master of the Ship, what they had agreed for, upon which he libel’d against them in the Admiralty; Prohibition was granted upon the Statute of 2 R. 2. cap. 3. the Contract being upon Land, and denied the Case, Hill 8. Ca. 1. Cro. 296 which faith that when a Thing is in its Nature Maritime, as in the Cases of Mariners Wages, the Admiralty shall have the Conuance of it. Woodward against Bonifian, Raymond 3, and 3 Lewin. 60. Coke against Cretcher, Ecc. 2 Vent. 181.

If a Contract or Obligation be made upon the Sea, yet if it be not for a Caufe Marine, the Suit upon this, shall be at Common-Law, not in the Admiralty, Hob. II.

If the Original Contract be made at Sea, on a Marine Caufe, and after reduced into Writing at Land, the Common-Law not Admiralty shall have the Conuance. Hob. 79. 212. Palmer against Pope.

If a Charter-Party be made in England to do certain things in divers Places upon the Sea, tho’ that no Act is to be done in England, but all upon the Sea, yet no Suit shall be in the Admiralty for Non-performance of the Agreement; for the Contract is the Original and is out of their Jurisdiction, and where part is triable at Common-Law, and part in the Admiralty; the Common-Law shall be preferred. Maldonado and Slaney 1 Roll. Abr. 532. 533.

A Contract laid to be made infra fluxum & refluxum Maris, &c. is well enough laid to give the Admiralty a Jurisdiction: It was upon the high Seas, when the Water was at High-Water-Mark; and it might be at Land when the Water was at Low-Water-Mark. In that Case there is Divisum Imperium between the Common-Law and Admiralty Jurisdiction.

It was moved for a Prohibition to the Admiralty, because the Libel was to execute a Sentence of the Alcada which is the Admiralty at Malaga in Spain, upon a thing done within a Port there, and after a Rule for a Prohibition nisi, ’twas moved that no Prohibition should be, for

Prohibition does not lie for Mariners Wages.

Contract not Marine made at Sea.

Contract at Sea settled at Land.

Common Law preferred.

Lord Raymond 1453.
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This Court will not execute the Sentences of any Foreign Court, in as much that it is governed by a distinct Law, yet of the Admiralty may, and this is their use to do so, for this that all the Admiralty Courts in Europe proceed by the same Law, viz. the Civil Law, and Wibrel and Wiatr's Case 5. J. was cited, to be adjudged accordingly. But upon Reading the Libel in the Principal Case, it appears, that the Sentence was not Definitive, but Interlocutory concerning a Matter that sounds as an Action upon the Case, and no Sum set; and also the Alcade is not as an Admiralty there, and for this a Prohibition was granted. 


Motion for a Prohibition to the Admiralty, for that they libell'd against one for rescuing a Ship, and taking away the Sails from one that was executing the Process of the Court, against the said Ship, and for that in the presence of the Judge and Face of the Court, he assaulted and beat one, and spake many opprobrious Words against him. Now seeing that these Matters were determinable at Law, the Ship being infra Corpus Comitatus, and they could not adjudge damages to the Party, or Fine or Imprison, a Prohibition was prayed, but denied, for they may punish one that resifts the process of their Court, and may fine and imprison for a contempt tho' they are no Court of Record, but if they should proceed to give Damages, they would grant a Prohibition quad that. 

Sparkes, &c. against Martyn 1. Vent. 1. 

The same Doctrine Lord Raymond's Reports, 446. and 1. Vent. is there cited.

A Prohibition prayed to the Admiralty, where there was a Libel for a Ship taken by Pirates, and carried to Tunis and there sold, for that it did not appertain to the Court to try the Property of the Ship being sold upon Land. Curia in regard it was taken by Pirates, it is originally within the Admiral Jurisdiction, and so continues notwithstanding the Sale afterwards upon the Land. Otherwise where the Ship is taken by Enemies, for that alters the Property. Contrary to my Lord Hobart in the Spanish Ambassador's Case 78. 1. Vent. 308. 3. Cro. 685.
If Ships or Boats are found on the Sea or upon the Coasts, without any Living Creature therein, and no Man claiming the same within a Year and Day, the finder formerly used to have one Moiety, and the Prince the other Moiety, but now 'tis left to the discretion of the Admiral, what the finder shall have for his Travail, Charges, Danger. And if the finder conceal such Goods, whether belonging to the Ship, as Anchors, Timber or other Goods, he shall not only lose his Part, but be fined at the Will and Pleasure of the Admiral.

If Whales or other regal Fish, Ships or Boats without any Living thing in them, be driven by force of Wind or Waves only, to any Coast or Land, then all doth belong to the Admiral, Lex Mercat. 126.

See more of this Matter, 4. Inst. 134, &c. of the Court of Admiralty. 1. Roll. Abr. 528, &c. Title Admiralty.

After Sentence in the Admiralty Court for the seizing of a Ship, Trover after Sentence will not lie, Beake contra Thynebitt, Laws of the Sea, 425.

Hutchinson killed one Colfon in Portugal, and was acquitted thereof of the Murder, the Exemplification of which Acquittal he produced under the Great Seal of that Kingdom, which by the Opinion of all the Judges was such an Acquittal by their Law, that he could not be tried here again.


Cafe upon the Statutes, 13. R. 2. c. 5. 15. R. 2. c. 3. and 2. H. 4. c. 11. for sueing in the Admiralty for matters done upon the Land, and declared that the Plaintiff was going from the Port of London, with his Ship laden with Merchandizes, and that the Defendant brought a Suit in the Admiralty to stay the Ship, till caution should be given, that she should not trafficck with Infidels, within the Limits of the Charter of the East-India Company; and that they procured the Ship to be arrested by Process of the Admiralty, and to be detained, by which the Plaintiff lost the Profit of his Voyage; upon not guilty pleaded, a Special Verdict was found, viz. they found the Charter of the East-India Company of 15. Car. 2. by which they are incorporated, and had the sole Trade to the East-Indies, granted to them with a Prohibition
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to all others to traffick with Infidels there upon pain of Forfeiture of Ship and Goods, and that the Plaintiff had prepared a Ship and Goods to go to the East-Indies to Traffick with Infidels within the Limits of the East-India Company, upon this they petitioned the King in Council to stay the Ship, where an Order was made to the Admiralty to stay the Ship by their Process, which issued accordingly, and the Ship was stayed, prout, &c. all which was done by the Defendants as Agents of the Company, and they as Agents paid the Fees of the Prosecution, and if guilty, Damages for the Plaintiff in duplo 1500 l. so upon Arraignment judgment for the Plaintiff, and on Error affirmed. Sands against Sir Joias Child and others. 3. Levins 351. A like Case 1. Vent. 47. Home.

against Juve.

CHAP. VII.

Of Dominion established by Treaties of Alliance in general.

I. Of Treaties their ends. II. Of the matters considerable in the making of them, and bow the overtures are made. III. Of the various Sort of Treaties, and first of them by interview. IV. Of the pretences generally made to obtain such Treaties. V. Of Princes equal, the honour is to be paid by him in possession. VI. Of Treaties by Princes unequal. VII. Of Treaties secret and open. VIII. Of Things requisite for Princes during such Treaties. IX. Of Places proper for Treaties. X. Princes whether obliged to treat personally, and whether not. XI. Deputies, their demeanor generally considered in Treaties. XII. Of the Clauses generally to be considered in Treaties general and particular. XIII. Of the nature of Treaties generally considered as to their ends, and whether they determine by the Death or Dissolution of a Prince, and whether not. XIV. Of Treaties to what end, and how they have been infringed in England. XV. Of the Causes ordinary procuring such Leagues. XVI. Of Leagues by way of Mediation tending to the procuring of a general Peace with Warrant. XVII. Considerations on Leagues defensive and offensive, and of the Advantages and Disadvantages thereof in reference to the Estate confederate. XVIII. Leagues defensive confirmed offensive in favour of the apprest. XIX. Contribution, the difficulty in regulating
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regulating the same to the satisfaction of the Persons interested.
XX. Of Leagues concluded by Deputies, and the Difficulties used to delay, by which designs may secretly be carried on.
XXI. Confederation bad on Leagues made for carrying on some particular Enterprises.
XXII. Of the Causes that generally occasion a Rupture.
XXIII. Of the Obligation on Confederates in reference to mutual Successors.
XXIV. Of Aid granted to particular and common Allies when invaded by one another, and of Protection granted a People when oppressed, whether Aid to such may be consistent with a League.
XXV. Whether the Oath taken for the Performance of the League be personal, or binds the Successor, and of the Interpretation of the same.
XXVI. Of Leagues made with Princes when driven out of their Countries, whether they remain valid and firm.
XXVII. Whether Leagues may be entered into by Christian Princes with Infidels.

I. TREATIES are occasioned by a wise and prudent Care of inspecting the Motions of Neighbours and of their Affairs, the which are generally reduced to these Three Heads, upon the Considerations,

1. How a Prince should govern himself with his Neighbours.
2. In gaining a Credit among them, and to have a part in their Deliberations.
3. Is the main, which is to pierce into his Neighbours designs; for those Centers being discovered, a Prince easilly knows how to draw his Lines.

II. In Treaties, the first thing to be considered is the manner of making the Overture; and therefore it may so happen, that of two Princes who are Enemies, the one will not seek unto the other for an accord; therefore the general Medium is, that the motion be propounded by some greater Prince, or by some Neighbor that is a Friend to both, and sometimes the Ministers of two Princes meeting accidentally, if they are employed, yet propound an Accommodation. When a Prince or State is exasperated with another, and having gotten an Advantage, will often refuse to treat any where but in his own Country, nor that unless first sought to by a submissive Matter, names for the Death of the Marquises of Floor, made an Overture for the Treaty of Peace between Charles the Eighth and Lewis Sforza.

H 2 Request,
D* Leagues by Alliance equal. Book I.

† March 8. 1653. by order of those States, subscribed Herbert Vann Beaumont, and afterwards by a Letter from the States General praying a Neuter place, April 30. 1653. then by a Petition June after. Lea ab Aitnma, fol. 817, 818, 825.

III. Treaties are acted either by the interview of Princes, or by persons sufficiently commissioned for that purpose.

Those that are by interview, have been often disapproved, though often practised; but that depends rather on the Estate of Affairs, and the conformity and diversity of Honours, and manner of living of the Princes and their People, than of the interview: that of Lewis the Eleventh with Duke Charles of Burgundy, and of the same King with Edward the Fourth of England past fairly: And in all such Treaties they govern themselves in reference to their supplies, according to the Confidence which they repose in each other. But those interviews of Princes have ever been observed dangerous; for Princes measure their quality, not by the extent of their Dominions, but by the absoluteness of their Power: So that he that is Supreme and Independant in his own Country, counteth himself equal to any other Prince, how great soever. Perchance some youthful Kings may disport and solace themselves in one another’s Company, whilst yet Pleasure is all the elevation of their Souls; but when once they grow sensible of their own Greatnefs, (a Leffon they will quickly learn, and shall never want Teachers) then emulation will be betwixt them, because at their interview they cannot go in Equipage, but one will still be the foremost, either his Person will be more proper, or Carriage more Court-like, or Attendance more Accomplished, or Attire more Fashionable, or something will either be or be conceived to be more Majestical in one than the other: And Corrivals in Honour count themselves eclipsed by every beam of State which shineth from their Competitor; therefore some hold the best way to keep great Princes tother is to keep them aunder, accommodating their Bufinesfs by their Ambassadors, left the meeting of their own Persoms part their Affections, as it fell out between King
King Richard of England and Philip of France, and Maximilian the First and Lewis the Twelfth.

IV. It is presumed, that the Personal Treaties of Princes are not for matters small and trivial; therefore it is an undoubted Maxim, That as Jealoues may be increased amongst Neighbours, by reason of such personal interviews, so they must find out some apparent and important pretext, which being made known and published to remove the Jealoues of their Neighbours, they may then under such colour and shadow, treat the most secret of their Affairs. So Pope Clement the Seventh under the borrowed Pretext of a general Peace and League against the Turks, (which founded pleasingly in the Ears of all Princes) at Marseilleilles concluded the Marriage of his Niece with Henry the Second of France.

V. But if of two Princes, the one goes home unto the other, he is bound to do him the Honour of his House; And if the Prince be inferior to him, he commonly sends forth some of the principal Officers of his Court to receive him; but if he be his equal in Quality, as being both Kings, although there be some debate betwixt them for precedence, if he come first to the place where the Treaty is to be made, he must go in Person and not by Proxy.

In the interview that was between Lewis the Twelfth and Ferdinand of Arragon at Savona (which then belonged unto the French King) Lewis the Twelfth at the approach of Ferdinand's Galley (before he could land) enter'd into it, accompanied only with his Guard, to testify his confidence, and thereby to assure King Ferdinand of that which he had promised he should find in him; and at their going to Land, King Lewis left the Right-hand to Ferdinand, who lodged in the Castle, as the most honourable Place, and himself went to the Bishoprick.

VI. By the Laws of Treaties, when two Princes unequal in Quality parley, the inferior is to come first to the place of congreces there to attend the Greater; yet the contrary hath been most commonly observed upon this very reason, that he that is less ought first to wait on the Greater, and from thence go to the place appointed for the Parley; and this was particularly done at the interview of Pope Clement...
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Clement the Seventh and King Francis the First, although that Marseille were in the King's Subjection.

VII. Again, Treaties by those that are sufficiently commissioned for that purpose, are to act either secretly or openly. Treaties close or secret are usually made in order to the compleating or settling of Leagues between two Princes or States, sometimes by entertaining him with whom they treat under such a Pretext, to deceive him in the end; at other times to surprize an Enemy, or to allure a Prince of two Enemies, treating with one secretly, the other openly, and the like. These are the ordinary Policies among Princes, and wherewith the wisest of Kings †, and the most knowing Councils have been deceived and abused even to accept of a Treaty, when at the same time the Proposer hath no other thoughts than to betray them: the Spaniards have been famous at these Projects. Memorable was that design of theirs to interrupt the League which was ready to be made between the Princes of Italy and Pope Clement the Seventh, after the Battle of Pavia, propounding unto the Pope to treat and accord, the which not only hindred the League, and stayd the preparations of War which he might make, but also cau’d him to discharge the Troops which he had drawn unto him for his safety. So Bourbon, General of the Imperial Army, entertained the Pope with an accord, whilst his Army marched to the Walls of Rome.

† So Maximilian and Ferdinand having twice abused H. 8. proposed a third, which was that he would resign up the Imperial Crown to him; the Resignation is sent to England and approved, H. 8. is to come to Aquitaine to receive the Crown, and Maximilian is to accompany him to Rome to receive the last Right of the Imperial Dignity, and having given him the Investiture of Milan in feudo more Imperiali, then in possession of the French, and in enmity with the House of Austria: all things being thus concluded, and H. 8. having paid the Monies agreed on, and made ready his preparations. Charles the Fifth and Grandson of Maximilian, is a rub in this League, who must be first removed; thereupon the old Fox the Emperor sends a Proposal, that he would come first into the Netherlands to take off his Grandson, which while agitating, he strikes up a secret Peace with the French King, and so H. 8. is betrayed a third time and the agreement refused to be complied with; Cotton Treaty of Amity, fol. 99.

VIII. Hence it is, that during Treaties, be they open or secret, the Princes or States concerned in them, must watch the more carefully, have the diligent Eye, and by all the ways imaginable reinforce their strength; not only to frustrate their Enemies of all hopes to surprize them, but to the end the Consideration of their Force and
and Opulence may put them in a posture to obtain Conditions of more Advantage. Besides, it is an undeniable Maxim, that no treaty must be held firm, valid, and concluded, unless it be ratified by that Prince or State with whom the same is made, especially if it be with a Prince whom they detain Prisoner; for by Law the force by the which he hath been constrained to promise, will at least dispence with him so far as to re-advice, if not to break. 

\[ \text{Sacramento quidem vos testare qui potuit,}
\]
\[ \text{quum projectis fascibus & dispositis Imperio privatissimus captus ipsa in alienam possessam potestatem? Curio in Caesar, to}
\]
\[ \text{those that had been the Soldiers of Domitian, so spoke, \textit{lib. 11. de Bello Civili. Vida}
\]
\[ \text{Grat. \textit{ib. 2. cap. 13, \S. 18. Pope Clement the Seventh refused to ratify the Treaty}
\]
\[ \text{with Duke Ferrara which he made when a Prisoner, saying, That it was a dishonourable thing for a Man in Life to ratify a matter done in his Name when dead, not consistent with his Honour nor Interest. So Francis the First excused himself to ratify the Treaty of Madrid, upon the inhumanity done to him by the permission of Charles the Fifth, they being extorted from him, nor did they take place, though the King left his Children as Hostages.}

IX. Again, as in the Parlies of Princes, the place where the Interview is to be made is very considerable; so is it in Treaties which are tranacted by Embassadors, Agents, Envoys, &c. if it be to compleat a Peace, or settle a League, it must not be too far from the Confederates, but at some convenient place, to the end they may have the more speedy Answers from their Principals; but then the first is always to be in some place Neuter, or sometimes upon the Confines of Kingdoms; for that it is neither reasonable or honourable to treat a Peace in the Territory of one’s Enemy; but the latter touching Leagues may be any where. That of Edward the Fourth with Lewis the Eleventh in the Territories of the Duke of Burgundy, but that was personal: And that between France and Spain, concluded by Cardinal Marazine, and Don Lewis Mendez de Haro, Plenipotentiaries of both Crowns, was in the Isle of Pheasantis in the River Bidasoan upon the Confines of the Piranesian Mountains. And the last great Treaty which began at Cologne in the year 1673. under the Mediation of Sweden, in order to put an end to that War wherein most of the Crown’d Heads of Europe were involved, was look’d upon as a place proper, but the seizing of Prince William of Fursenberg, and the taking of forty thousand Crowns out of the Waggons of
The French Ambassador in a Neutral City, broke off that Negotiation; and though the violence committed on this Prince, by the Emperor's Ministers, and the Injury done to the French King, gave ground to fear, that there was no Peace to be expected, and that the Most Christian King would never consent to the renewing of the Treaty, unless reparations were first made for those two injuries: Nevertheless, at the instance of the King of England (whose Mediation was generally embraced by all the Princes concerned in that War) and at the solicitation of the Bishop of Strasberg, who publicly declared he preferred the Advantages of Peace before the Liberty of his own Brother; Nimeguen was pitch'd upon as a place neuter and proper for a Treaty, and thereupon the French King, 17 February, 1675, named for that Effect the Duke of Vitry, Monsieur Colbert, and the Count d'Avaux, his Embassadors.

X. Embassadors having received Orders to treat, the Prince, to whom such are sent, is not by the Law of Treaties bound to treat personally, but only to depute some of his Council for that Effect; the Reason is, for that the Dignity of a Prince may receive some detriment which cannot be maintained amidst the Contentions which happen in Conferences.

But if an Ambassador be deputed as Lieutenant to a Prince, there indeed such Commissioner is not bound to treat but only with the Prince himself: and so it was where the Bishop of Gurgia was deputed by the Emperor to Pope Julius the Second: the Pope commissioned three Cardinals to treat with him; but the Bishop having notice in what quality he was like to be received, commissioned three Gentlemen to confer with them, excusing himself upon other Affairs; which afterwards was explained, that he came not as a single Ambassador, but as a Lieutenant to the Emperor, in the which Quality he had been received at Rome by the Pope; Yet it hath so happened, that Embassadors, if not admitted to a personal Treaty, have refused the Discharge of their Commission; and so did Chancellor Marvel, Ambassador from the French King, who delivered his Message to Philip Duke of Burgundy, who delivered his Message to Philip Duke of Burgundy, was interrupted by Charles the Duke's Son. I am sent, said he, not to treat with you, but with your Father; and Mr Wade, who being commissioned by Queen Elizabeth...
CHAP. VII. Of Leagues by Alliances equal.

Elizabeth to Philip King of Spain, would by no means admit himself to be turned over to the Spanish Privy-Council, but would either have Audience from the King himself, or would return without it.

XI. The Deputies being assembled, their Seats are considerable; they having no power to quit any thing of the rank which their Masters ought to hold: and by the Law of Treaties the first place is at the head or end of the Table, (if there be one) the second is the first on the right hand, and the third is the first on the left hand of him that is at the end: and if there be many Deputies to one Prince, they usually sit at one side, to have the more facility to confer together, if it be needful.

XII. The Embassadors having concluded and settled their Places, their Commissions of each side are to be inspected and considered; and therefore it is an undoubted Maxim, That when they are general or ambiguous, the Principals have no will to conclude; or if they are fair and plain, yet there may be wanting power to conclude; or having power to conclude, it may be with a Salvo, till they are ratified.

never armed them with Power to conclude: this was to frustrate the important instance of the Consistory.

The principal Clauses generally are,

1. Either for Peace or Truce.
2. For Restitution of that which they pretend hath been unjustly taken away.
3. For the Cession of Rights.
4. For Limits and Bounds, the which if they cannot regulate, they put them in suspense, or else they make some Act which may interrupt the prescription of him which holds them.
5. For passage, with Consignation of Hostage.
6. For Forts or Cattle for Assurances.
7. For an Offensive and Defensive League.
8. For Neutrality.

In the managing of all which, and of all other matters proper for such Treaties, a special regard must be had not to move for a Person odious to him with whom the Treaty is made, nor to yield to the first demands though never
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never so just, but resist them stoutly; but if danger is imminent, then it is a certain Maxim, *Not to study so much to negotiate with advantage, as to provide for safety.*

XIII. Treaties which are made with our Neighbours as Friends, are called *Treaties of Alliances, equal or unequal.* The equal is either of single Friendship only, for the entertainment of Traffick, or for aid and succour; that of succour is for the *Defensive or Offensive,* and sometimes for both, with or against all Men, or against some certain Princes and Republicks; and their Alliances are contracted, either from *Estate* to *Estate,* and for the Preservation of the *Estates* of each other (in which case by the death of the Prince they may not be interrupted) or else they are contracted betwixt *Prince* and *Prince,* and then the death of one suspends till a new Treaty hath confirmed it, unless there is a time certain prescribed by the Treaty, to the which the Alliance must continue after the death of the *Prince,* or else they are made from an *Estate* to a *Prince,* where the death of the Prince does likewise, if not dissolve, yet at least suspend till a new Treaty of Confirmation of the precedents, although by the Laws of England, *Res non moritur.*

*Phil. Cominæs lib. 2. cap. 9. And in the very Alliance with France concluded *July 1554.* The first Article is in these words: *That there be an universal and perpetual, true, and sincere Peace and Amity between the Most Christian King and the King of Great-Britain, their Heirs and Successors, and between the Kingdoms, States, and Subjects of both,* &c. *Vide 9 El. 4. 2 a.* The League then made with the Scots, and likewise between Edward the Fourth and the Duke of Burgundy. *Phil. Comin. l. 3. c. 6.*

XIV. Sometimes *Alliances* are contracted for an Enter-prize and for one effect only, in the part in which the Allies are interested, and such are generally called *Leagues,* which in *England* have been sometimes confirmed by *All H. 5. m. 4. of Parliament*  

*Leagues are such Agreements that are made by the Command of the supreme Power, and whereby the whole Nation is made liable to the Wrath of God, if they infringe it.*

*All Leagues or Safeconducts are, or ought to be of Record, that is they ought to be inrolled in the Chancery, to the end the Subject may know, who are in Amity with the King, and who not, who are Enemies and can have*
have no Action here, and who are in League and may have Actions Personal here, 4 Inst. 152.

Leagues commonly are Offensive, but in effect they tend to attempt against some one, and in the bottom are lodged Articles of Secrecy for the Enterprize: and such was that of Cambrey against the Venetians, in which they borrowed the pretext of Religion and the Peace of Chri-ßendom.

of which were Pope Julius the Second, the Emperor, Kings of France, Spain, and Arragon, Anno 1558. Vide History of the Republick of Venice, fol. 87.

XV. The ordinary causes for which Princes and Re- publicks make Leagues, are either to facilitate a Conquest, as that that was made between Lewis the Twelfth and Ferdinand of Arragon, for the Realm of Naples; or to balance the Forces of one that is more mighty, in hinder- dering him that he grow not greater; but Arms ought not to be taken to diminish such a Neighbour's power, for that fear is uncertain; but prudent Leagues may be made for diminishing their Power.

The English made a League to succour the Hollanders, not only to balance the growing opulence of the Spanish Monarchy, but likewise to increase her own by the Alliance of the Dutch. Quid sequitur?

XVI. Again, Leagues may be made for the procuring of a general peace by way of Mediation of their Neighbours in War, and such was the Treaty of Nime- gunus mediated by the King of England, and concluded Aug. 10. 1678. between the Ambassadors and Plenipotentiaries of his most Christian Majesty on the one part, and the Ambassadors and Plenipotentaries of the Lords States General of the United Provinces on the other part; such was also the League of Union propounded by his late Sacred Majesty King Charles II. and afterwards con- cluded between him and the States General of the United Provinces, for an efficacious Mediation of Peace between France and Spain, his sacred Majesty of Britain having a Prospect to what afterwards happened, and of a War, wherein most inevitably would be involved most of the Princes in Christendom; to the effecting of which Peace, his Majesty and the States General did obtain a promise from
from the French King to the Dutch, to lay down Arms, on condition the Spaniards would formally and solemnly by a Treaty of Peace, quit to him all those Places and Forts, together with the Chastellennes, and their Appurtenances, which they by force of Arms had taken in, or fortified in the then last year's Expedition; or, otherwise that the Spaniard be brought to transfer to the French all their remainder in the Duchy of Luxemburg (or to the County of Burgundy) together with Cambrey and Cambresis, Douay, Ayre, St Omer's, Bergue, St Winox, Furnes, and Lynk, with the Bailiwickes, Chastellennes, and all other their dependencies; and the French King to restore to the Spaniard all Places, Territories, which they have by Arms taken since their entrance into Flanders, on condition that the States General do reciprocally undertake and secure to the French, to prevail with the Spaniard to consent to the same Conditions, which once effected would (as was hoped) initiate the tranquillity and be the interest not only of the two Warring Crowns, but of all other the Princes of Chrisiendum. To the effecting of which there were several Articles agreed; and likewise it was agreed, that if a peace should happen to be made, his Majesty and the States General should become Warrantees, and a place left for any other Prince or State to come into the same, who should think it their Interest to keep the Peace of Chrisiendum undisturbed, and to restore the Low-Countries to their tranquillity: there was provision made likewise by the same, for the Forces of each of the Warrantees to be used against those that should break and violate the same, obliging them to cease the violence, and repair the Party injured.

The Answer of the Ambassador from Privy-seal to the Senate:
Si bonam dederevit et fidam et perpetum, si malam hanc diuturnam, Liv. lib. 8. 21.
Chapter VII. Of Leagues by Alliance equal.

The Wisdom, Courage, Means, and Constancy of the Prince or State is to be considered; so likewise the distance of the Places, as well in regard of those with whom they unite, as of those against whom they make the Leagues.

XVIII. Leagues having no other limitation, but the end of the Enterprize for which they are made, have admitted many large debates in cases of accident: For instance, If an Enemy should take the Country, for the defence whereof the Leagues was made, the Question has been whether the Confederates be bound to assist him who hath lost it in the Recovery; some have held, that the Defensive did not extend so far; notwithstanding if there were no Treaty, which had concerned this Conquest, yet it would seem more reasonable to comprehend the Recovery in the defensive, if it be general. For as its end is to preserve the Ally in his State, and to attain it, the Forces must not only remain in the Country of the Ally to attend the Enemy; but after denunciation and other acts of Hostility done by the Enemy, they must enter into his Country, to the end to prevent him or divert him from attempting any thing against the Ally, the Offensive being judged by the aggression, and not by that which follows; by a strong reason they ought to enter into the Country conquered from the Ally, for the Recovery thereof; but Excuses in a little after, this kind proceed from those who fail in their faith, courage, or means to recover.

XIX. Contribution is one of the main ingredients in a League, and is of great difficulty to regulate. It is made either in Men or Money; the Men are entertained by all Parties, or by him only that hath need, or otherwise as the League is. Henry Eighth made a League with Francis the French King against the Emperor Maximilian and Ferdinand, for the Recovery of Milan, which he did, for the protection of his Neighbour, and Reduction of the Swisse from the Imperial side, for which he employed the Bastard of Savoy; the agreement was of reciprocal Suc-
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cour of 10000 Men, if the War were by Land, and of 6000 if it were made by Sea; and in all other occasions, the French King was bound to assist the King of England with 12000 Lances, and he the King of France with 10000 Foot at his charge that had need.

So where Contribution is concluded for Money, there are difficulties that do arise from the Person or Place where it must be kept; to deliver it into the hand of the strongest, is not safe, for fear they shall not be able to call him to account; to lay it in a weak place, were to expose it to the attempt and force of the strongest, or to him that shall first take Arms; but it has been usual for the sum not to be advanced till after the War begun.

XX. Leagues concluded by the Deputies of the Confederates, there sometimes falls out a difficulty who shall ratify and declare himself first. In the League which was made between Francis the First, the Pope, and the Princes of Italy, the King refused to ratify until the Pope and Venetians had ratified before him, and in that he so cunningly wrought, that he procured the Collegues to declare and begin the War, whilst that he treated secretly for himself, to the end he might make his Conditions with more advantage; this he declared was for fear those Italian Foxes should bewi him the like.

XXI. Leagues made for an Enterprize succeed seldom according to the hope of the Allies, if the Enterprize be long; for besides that the preparations be long, the opinions divers in the pursuit, the resolutions inconstant, the interests of Princes or States in a League may change with time, or with the practice of him against whom they are in League, in withdrawing some one of them, or making him to suffer more loss than the rest; for seeing himself ill defended or succoured by his Confederates, and that he was in a greater danger to lose than his Companions, he then studies to retire and to make his accord apart, as did the Venetians with the Turks, after the loss of Cyprus.

• If one part hath violated the League, the other may depart from it; for the several Heads of the League have every one the force of a Condition, so Grotius conceives, 1. 2. c. 13. §. 15.

Soluti sederis culpam sufi- nem, non qui defecti ad alias se conferunt.

XXII. The ordinary causes of the Rupture of Leagues are distrust and jealousy, as if one hath had conference with the Enemy, without the consent of the rest; if that which serveth
serveth for the safety of one, diminish the safety of the other, insolvency, variety, cowardice, division, usurpation, without the consent of the others.

So if he treats with the Enemy, not comprehending the other Allies, but as Adherents; so Lewis the Twelfth left the League of the Venetians, for that they had made a Truce with him, and had presumed to name him only as an Adherent. It was the opinion of Bryan, that if all the Subjects of England would make War with a Confederate Prince or Republic in League with the King of England, without the assent of the King of England, such a War was no breach of the League; and upon the same reason were the resolutions of the Judges in the Duke of Norfolk's Case, where the Question was, Whether the Lord Herise and other Subjects of the King of Scots, that without his assent had wafted and burnt divers Towns in England, and proclaimed Enemies, were Enemies in Law, within the Statute of 25 E. 3. the League being between the English and Scots, and resolved they were, and that the League remained.

XXIII. The Succours that one Confederate must afford another Confederate (according to the Law of Leagues) against a Confederate, is of great Consequence: Three Princes allied, the one makes War against the other, and demands succours from the third; in this Case, if the Treaties of Alliance be only for Friendship, it is certain he is not bound to give any succours: But if the Treaty carries an offensive League, he must succour the most ancient allied by a precedent Alliance. If the precedent Alliances have been made both at one time, he must succour him that is allied in an offensive and defensive League: But if the League be offensive and defensive of either side, he ought not to succour either; but he may mediate a Peace, and cause the difference to be judged by the Common Allies, which being propounded with a Declaration, that if one refuse, or having once submitted, will not yield to Judgment, he will succour the other, as the Swedes and Swifs, upon several occasions have done; notwithstanding in point of State on such occasions they usually balance their Estate, and looking more to safety than Justice, they succour him who being enforc'd, may weaken the powerful, who is more to be feared; yet to unjust Wars there


In fidelitate sedales dicitur: Et si sevcrum vel devies aliquem juge offendere, generaliter vel specialiter fuero requiritus, memor sit, sed pote re praebito auxilium. Orat. Domothen. de Magalopoli.

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is no obligation; then certainly he ought to be preferred, who hath a just cause of War.

XXIV. By the Laws of Alliances Princes may aid particular and common Allies, if they be wronged by one of the Allies.

But he which is not comprehended in the Treaty of Alliance, cannot be defended against him that is allied without breach of the Alliance; therefore Mediation in such cases is the only hopes of the oppressed, which not having its effect, if the oppressed put themselves into the protection of the Mediator, they then become in the nature of his Subjects, and then their Prince is obliged to their succour and defence, even against his Allies, and this is by natural Right.

XXV. By the Laws of Leagues, though the Oath binds only the Person, yet the Promise binds the Successor; for though some do hold, that Leagues do depend upon the Oath as their Firmament, though that is not so for the most part, yet the efficacy of such Leagues rests in the promise itself, to which for Religion fake the Oath is added. Hence it is, that Promises made to a Free-people are in their nature real, because the Subject is a permanent matter; although the State or Republick be changed into a Monarchy, yet the League remains, for that the body, i.e. the power is still the same, though the Head be changed. And the Person is inferred into the agreement, not that the agreement may be personal, but to shew with whom it is made; for if it be inferred into the League that it shall be perpetual, or that it is made for the good of the Kingdom, or with the Person and his Successors, or for a time limited, the same does most apparently demonstrate the thing to be real.

Addenda. Holiviiis causantur post mortem Hen. 3. apud Thuanum, lib. 97. in Lib. 1589. Vide & insinuam locum apud Cambden. in Anno 1572. ubi de Fardos antiquis Gall. & Scot. 

However, in all Leagues which tend to Peace, though there may remain somewhat, whereby words of ambiguity may arise; yet the most pious way of interpreting, hath been to account the same rather real, than personal; for all Leagues made for Peace or Commerce, admit of a favourable
favourable construction, Leagues defensive have more of
favour, offensive of burden.

XXVI. Leagues made with Princes, although they
happen afterwards to be driven out of their Kingdoms
by their Subjects, yet the League remains firm and good;
for the Right of the Kingdom remains with such an unfor-
tunate Prince, notwithstanding he hath lost his Kingdom;
the President, Canon, and Plenipotentiary for the Duke
of Lorraine at the Treaty of Nimmeguen, renewed his in-
stances with the French Ambassadors, that he might ob-
tain some moderation of the Conditions that had been
furnished for his Master; the Emperor did the like, but
without success; however the Duke would not neglect
anything that might give the French King fresh Evidences
of his desire to merit the Favour of his Majesty, he got
Sir Leoline Jenkins, and the rest of the Mediators, to de-
clare to Monsieur Colbert, that the Emperor had taken
into his Service all the Lorraine Forces; and in the pub-
lick Declaration which the Duke made at Nimmeguen, he
said, That he had delivered all his Forces to a Prince at
Peace with France, that he might make it appear to the King,
that though he was expelled his own Dominion, yet he would
do nothing that might give his Majesty ground to deprive
him of the honour of his favour: And notwithstanding all
these most submissive offers, this unfortunate but gallant
Prince was shut out of that famous Treaty, which put an
end to a War wherein almost all the Princes of Europe
were engaged. On the other hand, Leagues made with
the Invader cannot be good; for his cause being unjust,
is odious: but if the People will make him King de
faite, and invest him, the question is then out of all con-
troversy; for then he is become a King regnant, and by
the Laws of England, if Treason be committed against
his Person, and after he is beaten out, and the King
de jure comes to his Crown, the King de jure may pu-
nish those Traytors with death.

The Earl of Warwick having raised an Army in France
and Flanders, invaded England, and within five or six
days after his landing, King Edward's Forces betraying
him, the Earl became Master of the Realm; the King
flying for protection to his Kinsman the Duke of Burgundy,
he kindly in his misfortunes entertained him; yet while
he 1470.
he was in this banished estate, the Duke of Burgundy renewed the League with the English, it being agreed, that notwithstanding King Edward’s misfortune, the League remained firm and inviolable between the Duke Charles of Burgundy, and the King and Realm of England: So that for Edward they should name Henry (who was newly taken out of the Tower by the Earl of Warwick, at his chasing out of King Edward). Now the true reason that Leagues remain, and are firm, notwithstanding such a change, is, because there goes along with them a tacit condition, viz. of holding their professions; and therefore the World wondred not, that Charles II. having sworn a League with the King of Spain, expressly as he was King of Portugal, did notwithstanding receive two Ambassadors from the then new King of Portugal; and that without being judged either in England or Spain to have broken his former Oath and League.

The Duke of Guise having formed the League against Henry the Third, which was, in regard the King was so cold in the Profession of the Romish Faith, that it was in danger to be extinguished by the increase which he permitted of the Reformed Religion, especially seeing Henry the Fourth then King of Navarre was of that Religion, and was to succeed to the Crown; wherefore by the Mediation of Philip the Second of Spain, the Pope qualified the Duke of Guise, Head of that Catholick League, and (which in point of Government was to set him above the King) avowed him Protecto of the Catholick Faith in the Kingdom of France. When Henry the Fourth succeeded to the Crown, then this League for security of Religion was most violent, and the Spaniard without, hoped, by nourishing thus the division within, to carry all for himself at last. To avoid which gin, and to answer all, the King changed his Religion, and negotiated by d’Offat, to be received by the Pope as a dutiful Son of the Church of Rome, demanding absolution for what was past, and making large promises of due obedience for the time to come. The King of Spain’s interest was, that he should not be received, and thereupon he endeavoured to persuade the Pope, that King Henry did but dissemble with him, and that under this Disguise he would easiliest ruin the Romish Religion: Notwithstanding this the Cardinal obtained his Reception,
Reception, Absolution, and Benediction, through the many Promises and Presents which he made to His Holiness; whereupon the Spaniard's Designs were in a Moment all blown over from France, but fell heavily upon the United Provinces, which were sorely oppressed, for that they apprehended the Loss and Ruin of their Country; and thereupon they implored Assistance from King Henry, who received their Ambassadors very graciously, and gave them Assurance of Relief. The King of Spain, who wanted no good Intelligence in the Court of France, immediately remonstrated to the Pope, That his former Intimations concerning Henry's Dissimulations, did now appear in the Face of all the World; and that seeing His Holiness had been so credulous, he knew not now whether they should be able to save the Catholick Faith from being subjected to the Reformed Religion or no: for whereas the Hollanders had revolted from him, only because he resolved to use the true Means for the Establishment of the Romish Faith among them; and that now he was in a fair way of reducing them (which conduced so much (by His Holiness' his Opinion) to the Establishment of the Romish Faith) Henry had taken their Party against him in that Work; and that at Paris he had received their Ambassadors to that Purpose, although he knew they were his lawful Subjects, &c.

This startled the Pope not a little, who charged 'Soffat for having betrayed him, and put the Church in Danger. This Argument was as subtile on the Spaniard's side, as changing Religion was on King Henry's; and therefore the Cardinal was not a little perplexed how to answer it to the Advantage of his Master; as also coherently to the Considerations of his former Reception into the Church: But at last he replied, That His Holiness needed not wonder how in reason of State, those different Religions might join together for political Ends, without Hazard of altering Religion. Thus David fought Protection of the Philistines, and Abram redeemed the sinful Sodomites. That he took it to be upon the same Ground, that His Holiness himself, not long before, received a Persian Ambassador, who was so far from being a Heretic, that he never pretended to the Name of Christian: That it was a plausible Argument which the King of Spain used, in com-
plaining of Henry's receiving and avowing their Ambassadors, especially knowing at the same time that they were Rebels, and could pretend no Right or Title separate from his Crown: "For Princes (quoth he) when Ambassadors are addressed to them, never inform themselves of the Rights and Title of those Princes from whom they are sent; but whether they have Possession of the Force and Power of those Places from whence the Ambassadors are employed; for it would be an endless Task, and require an infallible true History of the World (which is not to be made by Man) if all the Ambassadors, before their Reception, should be obliged, first to prove clearly to the World, the just Right by which their Masters derive those Titles and Jurisdictions which they assume to themselves."

XXVII. And as Leagues are Covenants or Agreements made by command of the highest Powers, wherein the Parties are bound over to the Divine Wrath, in case they break their Faith; it hath been a famous question, Whether they may be entred into which those that are Aliens from the true Religion, whereof by the Law of Nature there is no doubt nor difficulty; for that Law is so common to all Men, that it admits not any difference of Religion; but the question is about the Law Divine, out of which it hath been discussed, not only by Divines, but famous Lawyers, as Oldradus, Decianus, Grotius; upon the whole they have agreed, that they may be entred into as well with Princes Infidels as Christians: and that is evidently proved; for that before the Law of Moses it was lawful to contract Leagues with Aliens from Religion for an inoffensive and harmless behaviour, as that of Jacob with Laban: nor did the Law of Moses make any change, the example of the Egyptians being express in the point. 'Tis true those seven Nations and other Kingdoms, as the Amalekites, that were designated by Divine Sentence to be extirpated, were excepted; but Leagues of Commerce and such as pertain to the utility of both Nations, or of either Party, are by the Law permitted with the profane. So David and Solomon made League with Hiram King of the Tyrians; and that which is very observable in the Sacred History, of that Action it is said, That the Alliance was made by Solomon according to the Wisdom which God
had given him. 'Tis very true, the Jews were generally very cautious of contracting with Idolatrous Princes, and the Reason was, for that they had express Promises of Victory, but that was conditionally, i. e. if they kept the Law, which if performed, they had the least need of human Aid. But now under the Gospel such contracts have a more favourable Admittance, according to that of Tertullian: So long as Israel only was his people, God did justly command mercy towards their Brethren alone; but after that he gave unto Christ the Nations for his Inheritance, and the Ends of the Earth for his possession; and that began to be paid which was promised in Hosea. They who were not my people shall be my people, and the Nations that had not obtained mercy shall obtain mercy; from that time Christ hath extended unto all the Law of Fraternal Benevolence, excluding none from our compassion no more than from his Vocation; and therefore as it is no evil to do good to the profane, so neither is it unlawful to implore their help, as Paul invoked the Aid of Cæsar and the Chief Captain; so that at this day there is no intrinsical or universal Privity; nevertheless those Alliances have their Circumstances or Rules of Government, as not to join with them but in extreme necessity, according to that of Thucydides: They that aretreacherously assaulted, as we are by the Athenians, are not to be blamed, if they seek for safety, and secure themselves by the aid not of Greeks only, but Barbarians.

Carthagen. l. 3. de Jure Belli Romani Pontificis c. 1. Julius secundus Pontifex Tullii, Vide Bulstrode. part. 3. fol 28. cited in Marnef's Cæse, the Cæse of Samuel Pellegrino that had been Ambassador to the States of Holland to treat with them from the Emperor of Morocco.

* Famous was the Piety of Emanuel Duke of Savoy, who when he was able to take Cyprus by the aid of the Great Turk, refused it.
C H A P. VIII.

Of Alliances unequal, and of Protection.

I. Of Alliances unequal, in reference to the acknowledging a Superiority or Protection in another.

II. Of Protections by a Prince or State voluntary or mercenary.

III. Of the Conveniences of such Alliances, how considered.

IV. Of the Duty incumbent on the protected, and the obligation in Honour and Justice on the Protector.

V. Of Alliances unequal, and of the ordinary Causes that may tend to a Rupture of the same.

VI. Of the Causes extraordinary that may occasion the Breach of such Alliances.

VII. Of Faith and Assurance implicitly discharged by the delivering of Hostages.

VIII. Of the Differences of Leagues contracted by Princes, through force or fear, differing from Contrats private.

IX. Of Ambiguity in words, how it hath given occasion to Princes to depart from the League, and of the Reputation of Princes on such occasion preferring the Alliance.

X. Of the Firmness and Assurance of Alliances, whether to be found more in Princes, or in Republicks.

XI. If one Party hath violated the League, whether it be lawful for the other to depart from the same.

XII. In the Constitution of Leagues, the Thoughts not the Words of Princes to be considered.

XIII. Of things tacitly excepted in all Leagues and Treaties, in reference to their nullity.

XIV. Of things favourable, things odious, and others of a mixt nature to be used in the interpreting of Leagues.

 unequal Alliance is that which is contracted betwixt Princes or States unequal in Honour, or in Power, with unequal Conditions, the acknowledging the other, not for Master or Lord, but by Honour as the more powerful, and the better qualified, and some for Protector; and these Treaties are made with those States, which take or give Pension, or which put themselves into Protection. And such was the League of Protection propounded to Queen Elizabeth by the States-General of the United Provinces, who by Joos Van Menin, most humbly besought Her to accept of the Sovereignty and Supreme Dominion over the said United Provinces upon certain and reasonable Conditions and Articles, &c.

Tribute
Chap. VIII. Of Leagues by Alliance unequal.

Stronger have more Honour, and the weaker have more Help: Peculus adds that such a Clause is inserted in the League, to signify the one is superior in Authority and Dignity, for both are free, but are sub patricinio, non sub ditione. Liv. lib. 37. Cicero Off. 2.


Tribute is paid by the Subject, or by him, who, to enjoy his liberty, pays that which is agreed upon to him that hath forced him to do it. But a Pension is held voluntary from him that is in Protection, or from him that is in all other things equal to the Treaty of Alliance to hinder the Pensioners that he join not with the Enemy, as the Swift to the French, or to have Aid and Succours from him.

II. But that Protection is most true and honourable, when a Prince or Republick takes upon him the defence of another, freely without Reward; though some, if not all, find it most necessary to balance Honour with Profit, from this Maxim, that A pecuniary interest obliges more to succour, than when barely obliged by Oath.

III. Again there seems to be a kind of Protection or an Alliance, which indeed is no more than a bare pecuniary retaining. Politicians have considered the Subject diversely, either Absolute or Conditional; Absolute is that which is measured by the concurrence of the greatnens of Forces, Treasure, Munitions, and other Military Preparations: Conditional is that, which although it be less than an absolute, yet is more fit to succour us or do us Harm: In this the Neighbourhood is of very great consideration; for that a Neighbour Prince of mean Forces may more easily hurt or succour us, than a great Prince that lies far off; near Succours are always sooner ready and with less Charge. And this makes the Bishop of Munster to be in that esteem with the States of Holland and the other Sovereign Princes bordering on his Territory; and the Reason why he is so much the more courted into Assistance and Friendship is, for that his Forces being at hand, if Peace be concluded, he is the more easily dispatched, whereas remote and absolute Princes their succours come often too late after the Occasions to defend us, and too soon to oppress us.
IV. By the Law of Protection, he that is protected owes all Respect and Honour to his Protector, against whom if he conspire or attempt, or strays from his duty, it is lawful for the Protector to make better assurance; nay, if he pleases, to make himself Master: But then on the other side, the Protector ought to defend and succour the protected, and use him well; for otherwise, he may withdraw himself from the Protection, and seek another. To be his Will to deprive them when he should think fit. Vide Cardinal. Thefec. P. P. Concl. 935.

V. In Alliances that are unequal, there are four kinds of Controveries may happen.

Firstly, If the Subjects of a Prince or Republick, that is under the Protection of another have committed any thing against the League.

Secondly, If the Prince or Republick be accused.

Thirdly, If the Fellows, which are under the protection of the same Prince or Republick, contend with one another.

Fourthly, If the Subjects complain of their own Ruler.

To the first, if a Fault appears, the Prince or Republick is bound either to punish the Offender, or to render him unto the Party injured, and see or endeavour that Damages may be recovered.

But one of the Associates in the League hath no Right to apprehend or punish the Subjects of his Confederate.

To the second, the Confederate hath a Right to compel his Confederate to stand to the League, and if he will not, to punish him, for that one may take satisfaction or revenge of him that hath offended; and this happens as well amongst those that have no Confederation at all.

To the third, as in Confederacies equal, the Controversies are wont generally to be brought before an Assembly of the Confederates, that is to say, such as are not concerned in the Question, or else before Arbitrators, or else before the Prince of the Association, as a Common Arbitrator.
CHAP. VIII. Of Leagues by Alliance unequal.

So on the other hand in a League unequal, it is agreed for the most part, that the Controversies be debated before him who is Superior in the League.

To the last, the Confederates have no Cognizance. In common Affairs out of time of Assembly, even where the League is equal, the Custom is for him who is chose Chief of the League, to have Command over the Confederates, according to the Speech of the Corinthians in Tucydides. It becomes them that are Princes of the League, not to seek their own particular advantage, but to content themselves with an Eminency above the rest, in taking care of the common Interest.

VI. Though that the Breach of Faith be much practised in such Affairs, yet there are few Princes found which have not found a pretext; some have pretended to be circumvented by error; others by Change of Affairs have have pleaded an excuse, as great Wrongs or inevitable Loses, and apparent danger of the ruin of their States, which are the Causes, wherein some say, that an Oath is not obligatory; the Condition, by reason of the Oath, being impossible or unjust; to these Limitations, some hold they must not keep faith with an Enemy of the Faith, nor with him that hath broken his, nor with a Subject, nor with a Thief or Pirate; certainly if it be not lawful for a Man in these cases to keep Faith, it is not lawful to give it: If it be lawful to capitulate with such Men, it is necessary to hold what we promise, that is, (we presume) when the word is given by him that may give it, and that they rely upon it.

VII. If Hostages are taken, he that gives them is freed from his Faith; for that in receiving Hostages, he that receives them hath relinquished the assurance which he hath in the Faith of him that gave them; so where a Captain for his Prince gives his Word without Commission it binds not the Prince.

VIII. Some Lawyers would judge of Treaties as particular Contracts, by which means they would stretch the Consciences of Princes; for, say they, that as a private Man is not bound by that which he hath promised by force or fear, so it ought to take place amongst Princes and in Treaties which are made betwixt Sovereigns; but that is ridiculous, for that were in effect to banish Faith from all publick...
Of Leagues by Alliance unequal. Book I.

Upon the words Etoning and Bung, to retain the Landgrave of Hesse.

public Negotiations; for there is no Treaty but what is usually made in Arms by force, or through fear to lose either Life or Goods, or Liberty, or the State; which are causes of just fear, and may shake the most constant.

IX. Some Princes desirous to shew themselves more irreligious in these Ruptures, have taken subject and occasion upon the Ambiguity of some Clauses in the Treaty, or upon Equivocation, as Charles the Fifth did; or else they seek other Occasions, as attempting against those whom their Ally is bound to defend, to the end that drawing him into the field, he may lay the cause of the Rupture on him.

But Princes, who respect such Treaties with a pious Intention of preserving them, always remain constant and firm; and though occasion may offer itself, by which they might get advantage by the Breach; yet when they remain durable, such respect is afterwards had to their Word and Honour, that fewer and lesser securities will be demanded of them, than one whose Faith is doubted.

X. But Assurances in cases of this Nature have been found more in Republicks than in Princes; for though Republicks have the same Mind, and the same intentions as Princes, yet for that they move but slowly, it will cause them to stay longer in resolving. Famous is that of the Athenians, when Themistocles in his Oration told them, That he could discover a Matter in which the Athenians would reap great Advantages, but he could not tell it, for fear the Discovery would take away the Opportunity of achieving it: whereupon the Athenians deputed Arisides, to whom he should communicate the Secret, and with him should consult about the obtaining it: They meeting, Themistocles demonstrated that it was in the Power of the Athenians to make themselves Masters of all Greece, for the Grecian Naval Army was then in their Ports and Protection; whereupon Arisides replied, The same was a Breach of Faith: But it was answered, It being for the publick, all considerations of that kind ought to be laid aside; whereupon Arisides being called by the People to give Report, told them, Themistocles’s advice was exceeding profitable, but dishonest, for which cause the People wholly refused it.

XI. If
XI. If one party has violated the League, the other may most certainly depart from it; for the Transgression of the Articles, be it never so little, makes a Breach of the Agreement, unless it be otherwise prevented by Condition, which may be, by inferring into the same, * that * Grot. l. 2. for every Offence it may not be lawful to depart from the League.

XII. In all Leagues, the Thoughts of Princes and States are to be considered, not what they said; yet because internal acts are not visible by themselves, it is necessary that somewhat certain should be determined, i.e. reduced to Heads or Writings, otherwise there would be no Obligation at all, for then every one might free himself by affixing on his own Words what Sense he pleases. Hence it is, that by the Dictates of Natural Reason, he to whom anything is promised, hath a Right to compel the Promiser to that which right Interpretation suggesteth, for otherwise the matter would have no End. And as the reducing of the Treaties into Writing makes the Agreements plain and obvious, so the mutual Advance of the Ministers proportionably hastens the Accomplishment. The Counts Avanus and Servient, being appointed for the Treaty at Munster, as they passed through Holland, they entered into a Confederacy with those States, wherein each Party reciprocally did bind themselves by Articles, not only not to treat of any thing without the Assent and Participation of the other Colleague, but that the Treaty should be carried on so equally, as if one of the Parties should see the other's Business advance further than his, it should be lawful for the one to desire the other to proceed no further, till his Affairs were equally advanced: which Articles bounding the Approaches of each other, soon hastened the End of that tedious Treaty.

XIII. Again, in all Leagues and Treaties for Peace, there is this Exception to be supposed in the Contractors, unless some new Cause intervene, or unless it be by the default

\[Qui\ promittit\ non\ offendere,\ est\ subintelligit\ exceptionem—Nifi\ causa\ sua\]
Of Leagues by Alliance unequal. Book I.

default of him with whom the League and Compact is made, or Affairs continuing in the same posture and state in which they were at the Time of the Contract: and that Saying of Ulpianus and Pomponius concerning private Compacts, viz. That an Agreement is not violated from which a Man recedes upon a just reason and motive; is by Interpreters extended to National Leagues betwixt Princes and States.

XIV. In the Interpretation of Leagues and Truces, there ought to be a very great Care had, in regard of the Sacredness of them; therefore in things promis'd or secured by such Leagues, some are favourable, some odious, some mixt, or of a middle Nature. Those that are most favourable, are those whose Words tend to Peace, not to War, whose Footsteps leave ever behind the deep Impressions of Misery, Devastation, and Poverty, but more especially when such Leagues are made for War Defensive than otherwise; but those are called odious, which burden or oppress one part only, or one more than the other, and likewise such as tend to matter of Revenge or Punishment, or to violate some former acts or obligations, or the bringing in a change or innovation of what hath been constantly

In L. non passus, sed sitio. D. de Legibus.

Vide exemplum in L. cum virum C. de fide commissae.
they are always to be construèd to those things which were probably thought on, and really intended. So Aids Grotius lib. 1: and Succours promised from one part only, is to be un-
derstood to be due at the Charges of him who shall ac-
quire them.

CHAP. IX.

Of Treaties of Truce, Neutrality, and Peace.

I. Of Treaties, the various sorts.
II. Of Rules in Cases doubtful.
III. Of Truces amounting to a Peace.
IV. Of the Advantages between Treaties of Truce and Peace.
V. When promoted.
VI. Whether it can prejudice the Pretensions of the Principal.
VII. How preferred and punished by the Laws of England.
VIII. Of Treaties of Neutrality, the various Sorts.
IX. Of the Advantages of the same.
X. In Cases of Necessity where he ought to declare, and for whom.

Treaties are either with Enemies or Friends, or with Persons which desire to continue Neuters with us, or we with them.

The Treaties which are made with our Enemies are either for a time, or perpetual.

Perpetual, as the Peace that is made to compose all differences, and the War that is undertaken for Conquests, or for Reparation of Injuries, or to restore the Commerce.

Treaties, which are made for a time with our Enemies, are called Truces; the which are either general, for all the States of the one or the other Prince, for all Persons, and for all sorts of Commerce: Or else they are particular, for certain Places, for certain Persons, and for the Commerce, and sometimes no further than a bare suspension of Arms.

A Truce is an Agreement, whereby though the War continue, yet all Acts of Hostility do for a while cease; for between War and Peace there is no Medium, it is, and may be called a War, tho' at present its Operations are intermitted. An Habit may be, tho' at present it doth not operate. A Man may be said to be wise or
Of Treaties of Truce and Neutrality. Book I.

At the request of the Lords and Commons was pardoned, he making satisfaction for the loss. Generally all Leagues and Safe-Conducts are, or ought to be of record, that is, they ought to be enrolled in the Chancery, to the end the subject may know who are in amity with the King, and who not; who be enemies and can have no action here, and who in League, and may have actions personal here.

Sometimes they have been enrolled in the Wardrobe, as being matters of state.

Maxim.

Note, In all Treaties, the power of the one party, and the other, ought to be equal; nor are they to be held firm till ratified.

Before the Statute, when any breach of Truces or Leagues happened, or was occasioned by the misdemeanors of any of the King of England's subjects, there did usually issue forth commissions under the Great Seal of England, to inquire of the infringers of the same, and to punish and award satisfaction to the injured.

VIII. Princes who neither love nor hate any thing absolutely, seem generally inclined to neutrality, and in that govern themselves in their friendships according to their interests; and reason of state, in effect, is no other but reason of interest.

Neutrality may be of two sorts; the one with alliance with either part, the other without alliance, or so much as the least tye to the one or other, which is that which properly may be called neutrality.

The first is governed by the treaty of neutrality, the latter by the discretion of the neuter prince, whose carriage ought always to be such, as that he may not give the least glimpse of inclining more to one than to another.

IX. The advantages of neutrality are, that the neuter prince or republick is honoured and respected of both parties, and by the fear of his declaring against one of them, he remains Arbitrator of others; and master of himself.

And as a neuter neither purchases friends, nor frees himself from enemies; so commonly he proves a prey to the victor; hence it is held more advantage to hazard in a conquest with a companion, than to remain in a state wherein...
Chap. IX. Of Treaties of Truce and Neutrality. 145

Wherein be is in all probability of being ruined by the one or the other.

But Princes that are powerful, have used generally to preserve a Neutrality; for whilst Petty Princes and States ruin themselves by War, he fortifies himself with means, and, in the end, may make himself Judge of their Differences.

On the other hand it hath been conceived that Republicks that are weak, what part soever they take, it will be dangerous to them, especially if they are in the midst of two more powerful States than themselves; but experience hath made it appear to the contrary, that Neutrality is more beneficial to a weak Prince or Republick, so that they that are at War be not barbarous or inhuman. For although a Neutrality does not please either Party, yet in effect it wrongs no Man; and as he doth not serve, so he does not hurt: besides his Declaration is reserved till the Issue of the War, by which means he is not obliged, by siding with either party, to gain or lose by the War.

X. But if the Neuter be press by Necesstity to declare himself, he must do it for the most powerfull of the two Parties, following that Roman Maxim, That either they must make themselves the strongest, or be a Friend to the strongest: So they of Strasbourg * declared for the Empire against the French. On the other hand, if the Neuter sees, that joining to the weaker, will balance the Power of the stronger, and by this Counterpoise reduce them to Reason; the same hath been generally followed, upon the Maxim, That the safety of States consists in an equal counterpoise of the one, and the other; for as the greatness and opulence of a Prince draws after it the Ruin of their Neighbours, it is wisdom to prevent it.

* Anno 1674.

Consul Quin-
tus ad Achaus, quod optimum effe dicant non interponi una bella: immobili tam alienum rebus ustris est: Quipe
fine gratia vel dignitate pra-

mium victoris oritis. Lucius lib. 35. Scripta Ammirat. diff. polit. l. 18.

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CHAP.
I. Of the Function of Ambassadors and Agents generally considered.
II. Of the Difference between Ordinary and Extraordinary.
III. Of the Qualifications and Matters requisite to be in such.
IV. Whether any but Sovereign Princes and States may qualify such, and who may not.
V. Of the Right of Ambassadors, how secured by the Laws Divine, and of Nations.
VI. Of Precaution, whether the same may be given to such not to come, and attempting against such interdiction, how to be dealt with; and of the punishment of those that shall violate them, by the Laws of England.
VII. How Princes and States may govern themselves in reference to their Reception or Refusal.
VIII. Whether Ambassadors may be subjected to Punishment when they offend against the Laws of Nations.
IX. Of proceeding against them by Princes and Republicks: at this day, according to the Laws of Nations.
X. Whether privileged in that State or Country thro' which they pass without leave; and of the various Proceedings against them by sever-

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A N Ambassador and Agent is the same thing, if we consider only the Function of their Charges: only in this they differ; an Agent hath charge to repre-

\[ \text{C H A P. X.} \]

Of the Immunities and Privileges of Ambassadors, and other publick Ministers of State.
Chap. X. Of Ambassadors.

sent the Affairs only; but an Ambassador ought to represent the Greatness of his Master, and his Affairs. When there is some Suspicion that the Ambassador will not be honoured as he should be; therefore the French Kings of late Years have no Ambassadors in the Emperor's Court, but Agents, because of the Competition for Proceedence betwixt him and Spain.

II. Ambassadors are in two Capacities, either Ordinary or Extraordinary: The Ordinary or Lieger Ambassadors, are those who are commanded to reside in the Place whither sent, unless they receive Letters of Revocation; and as the time of their Return is indefinite, so their Business is uncertain, arising out of emergent Occasions, and commonly the Protection and Affairs of the Merchants, is their greatest Care. The Extraordinary or pro tempore are those that are employed upon some particular great Affairs, or Condolences, or Congratulations, or for Overtures of Marriage, &c. Their Equipage is generally very magnificent and illustrious, and they may return without requesting of Leave, unless there be a restraining Clause in their Commission.

III. An Ambassador or Agent ought to be conversant in all sorts of History, reading with Judgment, and weighing all the Circumstances of Action which are there represented, by which he will be qualified to know (but especially of that Country whither he is sent)

1. The Establishment of Estates.
2. The Rights of Limits.
3. The Genealogies of Princes.
4. The Pretensions of Kings upon the Estates of others.
5. Their Forces, Means, Alliances, and manner of living. Personally he must be
1. Resolute and Courageous in that which he hath wisely deliberated.
2. Secret in Affairs of Importance.
3. Discreet in his Speech.
4. No Detractor or Evil Speaker of any King or State, but more especially of him or them with whom he remains.

K 2

5. One
5. One that will speak freely of his Master’s Pretensions, if there be a Question to maintain them.

IV. By the Laws of Nations, none under the Degree of a Sovereign Prince can nominate or send any in that Quality; nor can any Subject send or receive any Ambassador, be he never so Great; if a Viceroy doth it, it is no less than High Treason; and so it was declared when the Scots, inconfulto Principe, sent Lowden and others in Quality of private clancular Commissioners, to treat with the French King Lewis the Thirteenth, in the Name of the whole Nation for Assistance, the King would not admit or hear them. So did Queen Elizabeth when Christopher Assewville came into England in Quality of a Minister of State, sent from the Duke of Alva then Governor of Flanders, she refused to admit him, he not having any Commission or Credentials from the King of Spain. 'Tis true, the Electors and Princes of Germany have obtained the Privilege of sending, and the Reception of Ambassadors, but that is limited only to Matters touching their own Territories, and not the State of the Empire. And so likewise the Hans Towns may do the same; for they claim the like Privilege, they being free Imperial Cities, and partake of the fame Regalia’s, either by Prefcription or by Grants from former Emperors, whose Necessities enforced them to part with such Royal Flowers of the Empire; and generally they send for their Ambassadors always two Persons, one of great Birth, and that hath been a Soldier, to maintain Decency; and the other a Doctor or Lawyer, to regulate Affairs with Learning, and by the Pen.

* That the German Princes may have such a Prerogative, but it is secundarios tantum jure. Et qui jus mittendorum Legatorum secundarios tantum jure habent, mittuntur Legati non de Rebus universis concerningibus Imperii, sed tantum sui Territorii ratione; et enim in his intuere tantum datum, altrum igitur terminus non esset procedendum, fuerat enim alias prejudicii Imperatoris, &c. Kirchen's §. 25. Memorable was that of the Switzers, who sent a Message to the French King, that he should not send them an Ambassador with store of Words, but a Treasurer with Plenty of Money.† Monmouth's History of France, fol. 27, 28.

V. The Right of Ambassadors is secured both by the Safeguard of Men, and also by the Protection of the Law Divine; therefore to violate this, is not only unjust, but impious too: And as Protection is given to the Legates of Supreme Rulers by the Laws of Nations, so by the Civil Law there is a Protection likewise for Provincial Legates.
gates, Heralds, and Consuls. This Right of Legation was originally provided, faith Livy, for a Foreigner, Liv. lib. 16, not a Citizen; yet in Civil Wars, Necessity sometimes makes Place for this Right besides the Rule, as when the People are so divided into equal Parts, that it is doubtful on which Side the Right of Empire lieth, as that unhappy Spot of Flanders; or when the Right being much controverted, two contend for the Succession to the Throne; for in this Case one Nation is reckoned as two; and so was the State of England, when the Houses of York and Lancaster contended for the Crown, properly called Commissioners: Nay, this Right of Legation and deprived of their Kingdom, with other Royalties, hath been so preferred, that the very Messengers of Rebels have been protected, as were those of Holland by Philip of Spain. So great a Respect have Nations had in all times to such Men, that even Treitors, nay Pirates and Robbers, who make not a Society, nor have any Protection by the Law of Nations, and with whom neither Faith nor Oath (as some conceive) may be kept, Faith being given them, obtain the Right of Legation, as once the Fugitives in the Pyrenean Forest did.

to Rome; the Pope sent him Ambassador to the French King, of whom the King of England demands his Subject, sed non prævaluit. Coke Inst. 4. fol. 153.

VI. Ambassadors may by a Precaution be warned not to come; if they dare, they shall be taken for Enemies; but once admitted even with Enemies in Arms, much more with Enemies not in actual Hostility, have the Protection and Safe-guard of the Laws of Nations; and therefore their Quality being admitted by Safe-conduct, they are to be preferred as Princes; and so it was declared in Parliament, where the killing of John Imperial, Ambassador from the States of Genoa, was High-Treason, Crimen lege Majestatis.

† So likewise of A. de Walton, the King's Ambassador, Nuncium Domini Regis mijum ad mandatum Regis exequen
dum, who was murdered by one John Hill, which Offence was adjudged High-Treason, and accordingly he was drawn, hang'd, and beheaded.

† Legatus ejus vice fugiturus à quo definitur, & honorandus eis futil illa cura, juss vicem ge-

vit, & Legatos violare contra juss Gentium est, 22. Affreepl. 49. Note, This was three Years
Years before the making of the Statute of 25. E. 3. quae if such a Praem is within the Statute at this Day.

Quae violarit Legatum, Leg. Julia de vi publica teneatur.

And by the Julian Law, he that violates Ambassadors is guilty of publick Violence; that is of prostituted Faith of publick Authority, and of a Breach of the Laws of Nations: And by the Pontifical Law, it is no les than a Piacle, and to be interdicted from the Benefit of holy things. Pbilomela sung a fatal Requiem for the bloody Entertainment which she gave the Ambassadors of Frederick Barbarossa, the Emperor having sent them to treat in order to Peace; but they instead of that avowed the Action of those that murdered his Ambassadors: The offended Emperor having taken the City, razed it to the Ground, and executed all the People therein as Rebels and Traitors against the Laws of Nations.

VII. On the other Hand, Ambassadors may not always be received, though they ought never to be rejected without Cause; for there may be Cause from him from whom they come, as the Roman Senate would not admit of the Embassage of the Carthaginian, whose Army was then in Italy; the King of Spain, those of Holland; and the then Pope, the Ambassador of Henry the Second after the Murder of Becket Archbishop of Canterbury: So likewise from the very Persons that are sent, as Theodorus the Abbeis, whom Lysemachus would not give Audience to; and Mr Oliver, Lewis the Eleventh's Barber, whom they of Gaunt refused: Yet Mattheus Palmerius, an Apothecary of Florence, had better Fortune than the French Barber; for he being sent in Quality of Ambassador to Alphonso King of Naples, and having acquitted himself elegantly, and with much Generosity at his first Audience, the King having Information that he was an Apothecary, said, Se tali sono gli speciali di Fierenze, quali debbono essere gli Mediici? If the Apothecaries of Florence are such, what shall we think of their Physicians?

So likewise where the Cause of sending is suspected, in reference to disturb the People, or with Intentions rather to sow Sedition, than to conclude a Peace (if such be their Errand) or not honourable, or unseasonable. As for those assiduous Legations which are now in use, they may with very good Right be rejected; for the no Necessity of them appears
appears by the ancient Custom whereunto they are unknown, which made Henry the Seventh admit of none.

The Venetian having admitted Henry the Fourth of France his Ambassador, yet they interdicted him * to come with the other Ambassador to the Chapel, till the King was reconciled to the Church of Rome.

VIII. By the Laws of Nations, only unjust Force is kept from the Bodies of Ambassadors; for if the Laws of Nations be broken by him, he is subject to Punishment: Yet the Opinions of Nations, and Men eminent for Wisdom, have been doubtful in this Point, and Precedents on both Sides have been avouched: One which seems to refute that Position of punishing such Ministers of State: The Ambassadors of Tarquin, who had committed Treason at Rome, and as * Livy oberves, were in the State of Enemies; yet the Right of Nations (as he calls it) prevailed so far as to preserve them, though in a Case of Hostility. On the other Hand, † Salus oberves, that Bomilcar, one of the Cartaginian Ambassadors, who came to Rome on the publick Faith, was adjudged Guilty, rather (faith he) by the Rules of Equity, than by the Laws of Nations: Equity, that is the mere Law of Nature, suffers Punishment to be exacted where there is found a Delinquent, but the Laws of Nations except the Persons of Ambassadors; for certainly their Security out-weighs the Profit arising from Punishment, which may be inflicted by him that hath sent him (if he be willing) if unwilling, it may be exacted of him as an Approver of the Crime.

IX. Again, as Ambassadors are not to render a Reason of their Actions to any other, but to him by whom they are sent; so it is impossible, by reason of various Interests and other Secrets of State, which pass through their Hands, but somewhat may be said, which bears a Show or Face of Crime; (which perhaps may prove otherwise) yet the examining and tracing of the Truth, may be of a dangerous Consequence; and therefore if the Offence be such

Bacon's H. VII.

* Card. Ar. mid. Off. &c.


Menander Proextor Justinus.


† Fit reus magis ex equo bonoque quam ex jure Gent. Bomilcar comes est qui Romanus fide publica venerat. An Enemy is bound to whom they are sent; but their Privilege obliges not those through whose Bounds they pass without Leave; for if they go to, or come from their Enemies, or make any hostile Attempt, they may be slain. Liv. lib. 26.
such as may be condemned, it is usually to be dissembled or connived at, or else the Ambassador be commanded to depart the Realm; and if the Crime be cruel, and pub-
licly mischievous, the Ambassador may be sent home with Letters of Request to his Master, to inflict Punish-
ment according to the Offence: So likewise in the Preca-
tion of a great Mischief, especially publick, (if there be
no other Remedy) Ambassadors may be apprehended and
executed; and if they oppose by Force of Arms, they
may be slain.

In the Bishop of Roff's Case, An. 13 Eliz. the Que-

tion was, An Legatus qui rebellionem contra Principem ad

quam legatus concitat, Legati privilégii gaudent, & non ut

bofis panis subjaceat; and it was resolved, That he had

left the Privilege of an Ambassador, and was subject to

Punishment; nor can Ambassadors be defended by the

Law of Nations, when they commit any thing against

the State or Person of the Prince with whom they

reside.

X. And why Ambassadors are in Safety in their En-

emy's Countries, and are to be spared when they commit

Offences, is not so much for their own or Master's sake,

but because without them there will never be an End of Ho-

sility, nor Peace after War: Neither is the Name or Per-

son of an Ambassador so inviolable, either in Peace or in
time of War, but there may be both a convenient time

and a good Occasion to punish them, and this standing

with the Laws of Nations, as may appear by these fol-

lowing Examples.

1. The Law does not pertain to them through whose

Bounds Ambassadors pass without Leave; for if they go
to their Enemies, or come from their Enemies, or make

any hostile Attempt, they may be slain: So the Athe-

niens did to the Ambassadors between the Persians and

Spartans; the Illyrians to the Ambassadors between the

Efeans and Romans.

2. The Emperor Charles the Fifth, advertised of the
League made against him, would not dismis the Am-

bassadors
bassadors of France, England, and Venice, till his own
were in Safety, but he sets Guards upon those of France,
Venice, and Florence, causing them to be conducted thirty
Miles from his Court, with a Prohibition not to speak to
them, nor for them to write. As to him of Milan, as
his Subject, he was enjoined not to part from Court; but
as for him of England, there was no Alteration.

3. The Venetians having destroyed some of the Cor-
sairs, Amurat commanded Luigi Contarini, then Bailio
of Venice to be imprisoned.

4. The Seigniory of Venice understanding that certain
Traitors, who had revealed their Secrets to the Turk, were
fled for Protection into the House of the French Ambas-
sador at Venice, sent Officers to search the Ambassador's
House; but the Ambassador's refusing them Entrance, the
Senate commanded certain Cannon to be brought out of
the Arsenal to beat down his House, which when he
saw planted, he surrendered up the Traitors.

5. The Ambassadors of Tarquin, Morte afflictionos Ro-
mani non judicarunt, & quamquam visi sunt ut hostium loco
offent, jus Gentium tamen valuit.

6. The State of Rome, though in Case of most Capital
Crimes, exempted the Tribunes of the People from Que-
stion during the Year of Office.

7. The Ambassadors of the Protestants at the Council
of Trent, divulging therewith the Doctrine of the Church,
contrary to a Decree there, whereby it was enacted a Crime
equivalent to Treason, yet stood they protected from any
Punishment.

It is generally consented by all the Civilians, That Le-
gais de jure Gentium indidum est, & eorum corpora salva-
ificant, propter necessitatem Legationis, ac ne confundantur jura
commercii inter Principes.

8. Viva, the Pope's Legate, was restrained by Henry
Benedict. in the Second for exercizing a Power within his Realm, not
allowed or admitted of by the King, in disquiet of the
State, and forced to swear not to act any thing in prejudi-
dium Regis vel Regni.

On the other hand, it hath been answered, That they
are by the Laws of Nations exempted from Regal Trial;
all Actions of one so qualified, being made the Acts of
his Matter, or of those whom he represents, until he or
they
they disavow; and Injuries of one Absolute Prince or State to another, is factum bofilitatis, and not Treason; the Immunity of whom Civilians collect, as they do the rest of their Grounds from the Practice of the Roman State, deducing their Arguments from these Examples.

9. The Fabii Ambassadors from Rome, were returned safe from the Chados, with demand of Justice against them only, although they had been taken bearing Arms with the Etrurians, their Enemies.

10. King Edward the Second of England, sent amongst others a French Gentleman Ambassador into France; the King upon this arraigned him as a Traitor, for serving the King of England as Ambassador, who was his Enemy (but the Queen procured his Pardon).

11. Henry the Third did the like to one of the Pope's Ambassadors, his Colleague flying the Realm secretly, fearing, timens pelli sui, as the Records have it. Edward the First restrained another of the Pope's turbulent Ambassadors, till he had (as his Progenitors had) informed the Pope of the Fault of his Minister, and received Satisfaction for the Wrongs.

12. Henry the Eighth commanded a French Ambassador to depart presently out of the Realm, because he was the professed Enemy of the See of Rome.

13. Lewis de Prat, Ambassador for Charles the Fifth, was commanded to his House, for accusing falsely Cardinal Wolsey to have practised a Breach between Henry the Eighth and his Master, to make up the Amity with the French King.

14. Sir Michael Throgmorton, by Charles the Ninth of France, was so served, for being too busy with the Prince of Conde's Faction.

15. The Pope's Ambassador at Paris was arraigned, for practising certain Treason in France against the King, in the Parliament of Paris, and was found there guilty and committed to Prison.

16. Doctor Mans then Ambassador was taken from his House at Madrid in Spain, and put under a Guard to a Straiter Lodging for breeding a Scandal (as the Conde Feri said) in using by Warrant of his Place, the Religion of his Country, although he alleged the like permitted to
Chap. X. - Of Ambassadors.

Guzman de Silva, their Ambassador in England, and to the Turk no less than in Spain.

17. Francis the First, King of France, sent Caesar Precaeus and Ambrose Rinconne, Ambassadors to the Turk; they were surprized by the Armies of Charles the Fifth on the River Po in Italy, and were put to Death; the French King complained that they were wrongfully murdered; but the Emperor justified their Death; for that the one was a Genoese, and the other a Milanese, and his Subjects feared not to serve the King his Enemy.

18. Henry the Eighth being in a League with the French, and at Enmity with the Pope, who was in League with the French King, and who had sent Cardinal Poel to the French King, of whom King Henry demanded the Cardinal, being his Subject, and attainted of Treason, sed non praevaluit.

19. Samuel Pelagius, a Subject to the King of Morocco, pretended that he was an Ambassador sent unto the States General of the United Provinces; he came to them, and accordingly they treated with him, afterwards he departed; and being upon the Sea, he there took and spoil'd a Spanish Ship; and then came into England; the Spanish Ambassador here having received Intelligence of the spoliation, caused his Person to be seized upon, intending to proceed against him as a Pirate, and imprison'd him; and upon Conference with the Lord Coke, Dodridge, and other Judges and Civilians; they declared their Opinions, That the Caption of the Spaniard's Goods by the Morocco Ambassador, is not in Judgment of Law a Piracy, in regard it was apparent that the King of Spain and the King of Morocco are Enemies, and the same was done in open Hostility; and therefore in Judgment of Law could not be called Spoliatio, sed legis Capitio; and a Cause out of 2 R. 3. fol. 2. was vouched, where a Spanish Merchant before the King and his Council, in Camerá Scaccarii, brought a Bill against divers Englishmen, therein setting forth quod depredatus & spoliatus fuit upon the Sea, justæ partis Britanniae, per quendam Virum bellicosum de Britannia de quadam Navis, and so of divers Merchandizes therein, which were brought into England, and came into the Hands of divers Englishmen, naming them, and had Process
Of Ambassadors:  

Process against them, who came in, and pleaded, That in regard this Depredation was done by a Stranger, and not by the Subjects of the King, therefore they ought not to be punished; in regard that the Statute of 31 H. 6, Cap. 4. gives Restitution by the Chancellor, in Cancellaria sibi vocato unum Judice, de uno Banco vel altero; and by the Statute of 27 Ed. 3. cap. 13. that the Restitution may be made in such a Case upon Proof made, by the Chancellor himself without any Judge; and upon that Case it was resolved, Quod quisquis extraneus, &c. who brings his Bill upon this Statute to have Restitution, debet probare quod tempore captonis fuit de amicitia Domini Regis; and also, quod ipse qui eum cepisset & spoliavit, fuit eisam sub obedientia Regis, vel de amicitia Domini Regis, &c. Principis querenstis tempore spoliationis, & non inimicus Domini Regis &c. Principis querenstis, qui si fuerit inimicus, &c. cepisset bona, tunc non fuit spoliatio, nec deprehensio, sed legis captio, prout quislibet inimicus capti super unum & alium: the Judgment of which Case was held to be Law, and thereupon the Judges delivered their Opinions, that the Morocco Ambassador could not be proceeded against as a Pirate.

20. In the time of Philip the Second of Spain, the Venetian Ambassador in Madrid protecting one Bodovario, a Venetian, an offender, that fled into his House, and denying the Corregidor or Justice, to enter his House, where the Ambassador stood arm’d to withstand them; upon Complaint made, the Ambassador was removed unto another House, till they had searched, and found the Offender; then conducting back the Ambassador with all due respect, a Guard was set upon his House to stay the fury of the enraged People; the Ambassador complaining to the King, he remitted it to the Supreme Council: they justified the Proceedings, condemning Bodovario to lose his Head, and other the Ambassador’s Servants to the Gallies, all which the King turned to Banishment; and to satisfy the most Serene Republick, sent the whole Process to Inigo de Mendoza, his Ambassador at Venice, declaring by a publick Ordinance unto that State, and all other Princes, That in case his Ambassadors should commit any Offence unworthy, and disagreeing to their Qualities and Professions of Ambassadors, they should not enjoy the Privilege of those Officers, but he would refer them to be judged by the Laws of that Prince.
or State where they then resided, and where they had injured. It was a great and noble Saying.

21. In the Year 1568, Don Gubernon d’Espes was order’d to keep his House in London, for sending scandalous Letters to the Duke d’Alvao unseal’d; and in 1586, Don Bernardino de Mendoza, was restrained first, and after commanded away.

XI. The manner of proceeding against them, according to the practice in England, hath been conceived necessary to be, that some of the Chief Secretaries of State were sent to the Ambassadors, and by way of advice, that understanding that the common People having receiv’d notice of, &c. “And that they cannot but conceive a just fear of uncivil carriage towards their Excellencies or their Followers, if any the least Incitement should arise, and therefore for Quiet of the State, and securing of their Persons, they were bound in Love and Respect to their Excellencies to restrain as well themselves as Followers, till a further Course be taken by legal Examination, where the Aspersion began, the same being in their opinions the best and the only way to prevent the danger, &c.”

Sometimes, if the Parliament be sitting, the King acquaints the Lords, and then departs; who having had Conference with the Commons, conclude of a Message to be sent to the Ambassadors, (either by requiring an account of the matter or confining of them) the Persons to be sent, the two Speakers of both Houses, with some convenient number of either, having their Maces, or Ensigns of Offices born before them to the Ambassador’s Gates, and then born; and then requesting Speech with them, let them know that a Relation being made that Day, in open Parliament of, &c. they were deputed from both Houses, the great Council of the Kingdom, to the which by the Fundamental Laws of this Nation, the chief Care of the King’s Safety, and the publick Peace and Quiet of the Realm is committed; and that they were no less the High Court of Justice, or Superfedeas to all others, for the examining and punishing all Attempts of so high a nature, &c. if it carry truth; and having executed their Commission, conclude that the Houses, to shew that reverence which they bear unto the Dignity of his Master by
by their Message, declare that they two who are never employed but to the King alone, were at that time sent, &c. and if the Houses shall upon return of their Speakers conceive their Answers (if it be a Matter that requires it) are such as may justly deserve their being confined, they then make an address to his Majesty to confine them to their Houses, restraining their departure till the Prince or State, whom they represent, be acquainted with their offence: And so it was done in 44 H. 3. to the Pope’s Legates in England, and 28 E. 1.

XII. If a Foreign Ambassador, being a Prorex, commits here any Crime which is contra jus Gentium, as Treason, Felony, Adultery, or any other Crime which is against the Law of Nations, he lofeth the privilege and dignity of an Ambassador, as unworthy of so high a place, and may be punished here as any other private Alien, and not to be remanded to his Sovereign but of courtesy.

XIII. But if any thing be malum prohibitum by any Act of Parliament, private Law, or Cutfom of this Realm, which is not malum in se Jure Gentium, nor contra jus Gentium, an Ambassador residing here, shall not be bound by any of them; but otherwise it is of the Subjects of either Kingdom; for if a French Merchant or Spanish Merchant trades or imports any prohibited Goods, he must at his peril observe the Laws of England; and so it was adjudged Paf. 33 Eliz. in the Exchequer, Tomlinson, qui tam versus Henry de Vale & al. upon the Statute of 19 H. 7. Cap. 21. but if an Ambassador imports any prohibited Goods, & contra.

The Florentines having sent Ambassadors to Charles the Fifth and Clement the Seventh, being then at Bolonia, together with their Household-stuff, they brought covertly many rich Commodities to sell and traffic with, supposing that they might be free from paying the Gabel; but the Seachers of the Cutfom-house having discovered it, they became objects of laughter and mirth to the Bolonians, and for that, as unworthy of the Office of Ambassadors, were remanded home without Audience.

Sir Thomas Chaloner having been sent Ambassador to Spain by Queen Elizabeth, remitted a Complaint to the Queen, that his Chefs had been searched: upon which the Queen demanded the opinion of her Council in the
point, who upon the whole matter resolved the Action into this, Legato omnia aequi bonique ferenda dummodo Principis Honor non directe violatur, the very words of Mr Camden, An Ambassador must bear all things patiently, provided that the Honour of the Prince (whom he serves) be not directly violated.

XIV. The Office of an Ambassador does not include a protection private but publick, for the King his Master, not for any several Subjects otherwise than as it concerns the King and his publick Ministers, to protect them, and procure their protection in foreign Kingdoms, in the nature of an Office and Negotiation of State; therefore their Quality is to mediate and prosecute for them or any one of them, at the Council-Table, which is as it were a Court of State; but when they come to settled Courts, which do and must observe essential forms of proceeding, seil. processus legitimos, they must be governed by them: And therefore in the Case of Don Diego Serviento de Acoma, Ambassador Lieger for the King of Spain, who libelled in the Admiral Court as Procurator-General for all his Master's Subjects, against one Jolliff and Tucker, and Sir Richard Bingley, for two Ships and their Lading of divers kinds, of the Goods of the Subjects of the King of Spain generally, and not naming of them adduct ad Port de Munster in the Preface of the Libel generally against them all, and then proceeds and charges them severally thus; That Jolliff and Tucker Captain Pirate, in alto Mari bellici diitas Naves aggressi sunt, & per vim & violentiam took them, and that they were adductae in partes Hiberniae, and that coming into the hands of Sir Richard Bingley, he converted them to his own use, (not paying where) and refusing to render them being required, it was there held that a Prohibition should go, for the matter is Triable merely at the Common Law, and that such a Procuration was not good, though to an Ambassador.

Don Alfonso de Vallesco Ambassador from the Catholick King, attached Tobaccoes at Land here, which one Corvero a Subject of the King of Spain, brought hither, and the Ambassador by his Libel supposed to belong to his Master, as Goods confiscated, as all other his Goods were. Sir John Watts the Plaintiff in the suggestion, prayed a Prohibition, which was granted accordingly, for the property
property of Goods here at Land must be try'd by the Common Law, however the Property be guided; and it was likewise rul'd, that if any Subject of a Foreign Prince bring Goods into this Kingdom, though they were confiscate before; the Property shall not be questioned but at the Common Law, Don Alfonso vers. Corvoro, Mich. 9. Jac. Hob. 212. Hill. 9. Jac. upon the like Libel by Don Pedro Surega Ambassador for Spain.

XV. Whether an Ambassador hath Jurisdiction over his own Family, and whether his house be a Sanctuary* for all that fly into it, depends upon the concession of him with whom he resides, for this belongs not to the Law of Nations†; and it hath been seen that an Ambassador hath inflicted punishment on his own Servants and Vassals, as the Muscovite did here in England; but that must be purely by concession, as the Turk permits it to the English Ambassador at Constantinople: But Fugitives that fly into their Houses, nay, their own Servants if they have greatly offended, cannot be drawn out by force, without a Demand and Refusal; which when done, it is then become as an offence in them.

XVI. Most certain by the Civil Law, the moveable Goods of an Ambassador, which are accounted an accession to his Person, cannot be seized on, neither as a pledge, nor for a payment of a Debt, nor by Order or Execution of Judgment; no nor by the King or States leave where he resides (as some conceive) for all coaction ought to be far from an Ambassador, as well that which toucheth his necessaries as his Person, that he may have full security; if therefore he hath contracted any Debt, he is to be called upon kindly, and if he refutes, then Letters of Request are to go to his Master*; so that at last that course may be taken with him as with Debtors in another Territory; to some this may seem hard, yet Kings, who cannot be compelled, want not Creditors; but the Lord Coke seems to be of another opinion†, for as to Contracts and Debts that be good Jure Gentium, he must answer here.

* Distingui formae bac in re solent crimina. Vide Parumam, lib. 10. ubi Rex Galliae banc ob causam iratus pacatur: Vide eundem, lib. 11.
† Grat. de Jure Belli et Pacis, lib. 18. § 4, 5, 6, 7.

Rex secus magister regium non situm populi Romani: Quisquis quae comites suae; ex eo. yet an Ejecution hath been brought and left at the House of the Ambassador, and it was allowed good, and conceived no breach of their privilege in the Cafe of Mons. Colbert for York House,

Mich. 28 Car. 2. in Banc. Reg.
* Gratius, lib. 2. cap. 18.

XVII. If
nice whatsoever he expends is allowed him upon his accounts without any examination: the which no other of their publick Ministers of State have like privilege.

By the Laws of Venice there can be no extraordinary Ambassador employed, unless they have been Ambassadors formerly, and upon their return are strictly examined of their Comportment in their Legation, and are to discover what Presents they have received from the Prince or State to whom they were sent, the concealment of which is of a very dangerous consequence.

Nor may any of their Ambassadors receive any Preference from any other State during their Legation. The Patriarch of Aquileia dying, Hermolao Barbaro being there Ambassador for that Republick, the Pope conferred on him that Ecclesiastical Dignity, and made him a Cardinal, which being known at Venice, notwithstanding he was a Person of great Merit, and had given notice to the Senate, rich, well allied, and had good Friends, they sent express command that he should resign the Patriarchship, otherwise they would take from his Father the Procuratorship of St Mark, and confiscate all his Estate.

But if such Ambassadors have received any Present, Gift, or Reward, from any Foreign Prince or Republick, and such Ministers of State are thought worthy of retaining the same, such a Grace must pass by the Suffrage of the Senate, to oblige them more to the benevolence of the Republick, than to the bounty of any Foreign Prince. The consideration of which put the same generous scruple into the Breast of Sir Amias Paulet, who returning from his Ambassay in France, would not at his departure receive from the French King the Chain of Gold which is given of course, till he was half a League out of Paris. But more famous was the action of Sir Leoline Jenkins, the English Ambassador at Nimeguen, who, though after the Treaty concluded, absolutely refused the French King's Present.

XX. By the Laws of Nations, in the Reception of Ambassadors, those from a King are generally introduced by an Earl or Count, those from a Duke or Republick by a Baron; nor are they to be allowed that Honour but only at their first and last Audience.
Of Protection, &c.

XXI. Prophane Histories are full of Wars because of wrong done to Ambassadors; and in the sacred Story is extant the memory of the War which David upon that Ground waged against the Ammonites: nor doth Cicero esteem any Cause more just against Mithridates; and at this day not only Lawyers, but Divines are all of the same opinion, That a War cannot be more justly commenced than for the Violation done to their Publick Ministers.

CHAP. XI.

Of the Right of delivering Persons fled for Protection.

I. Where Superiors may become culpable for the Crimes of their Subjects.

II. Offences by whom properly punished, whether by the injured State or by into whose Territory the offender is fled.

III. Whether Kingdoms and States ought to deliver up Fugitives, if required, or not.

IV. Where Persons are fled, the places whither they come, ought to be Affirm.

V. How distinguish'd, and when to be punished or delivered.

VI. Whether an innocent Man may be delivered and delivered up to the enraged Power that demands him.

VII. Whether an innocent Person may be defended and yielded, if War be threatened.

VIII. Whether an innocent Person refused to be delivered up, ought to yield himself.

IX. If Charity in an innocent to yield himself, whether Compulsion may be used if be refuse.

X. Whether this of delivering up does extend to Sovereign Princes driven out of their Country.

XI. Persons running away with the Publick Revenue, where their Persons and Goods have been seized till reparation and satisfaction be made.

I. Athers are not bound for the fault of their Children, nor Masters for those of their Servants; nor Princes for the Actions of their Subjects, unless they become partakers in the Crime; the which may be done in two respects, by sufferance and receipt; therefore if Princes shall suffer or countenance their Subjects, by Pictures or Libels, or otherwise, to abuse another Nation or Common wealth, it is the same as if they should authorize it. Brutus to Cicero, How can you make me guilty? Yes, well enough, if it were in you to hinder it; but receipt may admit of some further scrutiny.

L 2 II. Common
Of Protection, &c. Book I

II. Commonwealths being instituted, it was agreed that Faults of Particulars, which do properly belong to their own Society, should be left to themselves and their Sovereigns, to be punished or connived at, as they judged most fit.

Yet that Right is not so absolutely left to them, but Offences, which tend to the Destruction of Society or Government, whereof Treason is the chiefest, may seem to be excepted; for if a Subject shall commit an Act tending to the Subversion of his Sovereign's Government, the fame is an Offence that's subject to an universal punishment, i.e. it is to be punished everywhere; and the Governors into whose Territory such fly, seem to have a Right of prosecuting for the Offence: In Civil Actions, which tend to Commerce that supports Society, the Subjects of foreign Nations having justly contracted Debts in their own Country, may obtain Justice in another; by a stronger Reason it is thought, that Princes or Republicks that have received publick Injuries, have Right to require Punishment for the Indignity that is offered them, at least for that which tended to the Subversion of their Government, and to have the Offenders delivered up.

III. The Question is Illustrious, Opinions grounded on several great Precedents have been both ways produced: It hath been generally held, That those Kingdoms where the Offenders are fled, ought to do one of the two, either punish them according to their Deserts being called upon, or leave them to the Judgment of the offended State; others on the contrary; most certain it is by the delivering up, is understood, to leave him to the legal Judgment of that Prince or State, whom he hath offended: And such was the Declaration of Ferdinand King of Spain, who had been often request from Henry the Seventh to deliver up Edmond de la Pool Earl of Suffolk his Subject, then fled for Protection to that Prince's Country, but was always refused; but being continually importuned by Promises that he should not be put to Death, caused the Earl to be delivered up to him, who kept him in Prison, and construing his promise to be personal to himself, commanded his Son Henry after his Decease to execute him, who in the fifth Year of his Reign in cold Blood performed the same. But the Malice of that politick Prince the Father, and the uncom
troublesome Will of the Son are Precedents but of small Force; the Example of which, not long after, gave the French King occasion to beware of trusting the latter with a Subject of his on the like occasion; for Cardinal Pool not many Years after, coming Ambassador from the Pope Frederic in the French King, they both being then in Amity, and Henry the Eighth in League with the latter, but in Enmity with the first, requested to have the Cardinal delivered up, but could not prevail, being doubly armed, as the Ambassador of a Sovereign Prince, (for such is the Pope) and in the Territory of a foreign State.

The Israelites required of the Benjamites to deliver up the wicked Men; the Philistines, Sampson. Cato gave his Vote that Caesar should be delivered to the Germans, for spoiling them without just Cause. Nor are nocent Persons injured, if they are either delivered up, or punished; yet does it not thence follow that they must be delivered up or punished: The Romans delivered up those that had done Violence to the Carthaginian Ambassadors; yet the Ambassadors of the Abassines having been traiterously murdered by one of the Templars at Jerusalem, the Offender being demanded, that to Justice might be executed on him for the Act, the Grand Master answered, that he had already enjoined him Penance, and had directed him to be sent to the Pope, but absolutely refused to deliver him up.

IV. But then, and as in this last, so in all other, the Offender must have committed some publick Offence*, as Treason; for most certainly it extends not to private Injuries, because there is no Precedent that ever a War was begun for such, though they may contribute much, but for those which tend to the Subversion or Ruin of a Country, they often have been delivered up; Jugurtha of Bocbus in Sallust, So shall thou at once free us from the sad necessity of prosecuting thee for thy Error, and him for his Treason. And by most Writers it is agreed, that such Offenders must either be delivered up or punished, the Election is left to their Choice, into whose Territory they are fled; though some have held, that in case of Protection or Sanctuary for such unhappy
forcing a fortunate Persons, Princes do make their Countries Noble Virgin. Asylums †.

Marissa, lib. 11. Charles

Duke of Burgundy delivered up to Louis the Eleventh, the Earl of St Paul, Constable of France, who flying to some of his own Cities, obtained Letters of Safe-Conduct to come and commune with the Duke, in order to the making his Peace with the King; but the Duke after he had him in Custody, delivered him to the King of France, who immediately after cut off his Head. Phil. Comines, l. 4. c. 12.

† Ludovicus Pius the Emperor received those that fled to him from the Roman Church, as appears by his Decree, Anno 817. and Luther himself did not want Princes to protect him from the Fury of St Peter's Chair. Vide his Colloquium.

T. Quintus Flaminius sent Ambassador to Prusias King of Bithynia, for the procuring the delivering up the brave but unfortunate Hannibal, who accordingly being seized on, I will now, says he, deliver the Romans of that Fear which hath so many Years possessed them; that Fear which makes them impatient to attend the Death of an Old Man: This Victory of Flaminius over me, who am disarm'd and betray'd into his Hands, shall never be numbered amongst the rest of his Heroical Deeds: No, it shall make it manifest to all the Nations of the World, how far the ancients Roman Virtue is degenerate and corrupted; for such was the Nobleness of their Fathers, as when Pyrrhus invaded them in Italy, and was ready to give them Battle at their own Doors, they gave him Knowledge of the Treason intended against him by Poisons; whereas these of a latter Race have employed Flaminius, a Man who hath before been one of their Confuds, to practise with Prusias, contrary to the Honour of a King, contrary to his Faith given, and contrary to the Laws of Hospitality, to slaughter or deliver up his own Guest. Then took a Draught of poison, and dy'd.

V. Though Kingdoms and States are looked upon as places of Refuge; yet that must be understood for those that are persecuted with causeless Hatred, not to such as have committed that which is injurious to human Society, or to other Men. Gliippus the Laconian in Diodorus Siculus, speaking of the Right of such miserable Fugitives, faith, They that introduced these Rights at first, meant the Unfortunate should expect Mercy, the Injurious Punishment—— After—These Men, if by the unjust Desire of that which is another's, they have fallen into these Evils, must not accuse Fortune, nor impose on themselves the Name of Supplicants, for
for that by Right belongs to them that have an innocent Mind, and adverse Fortune.

Carum occidisti, dum vis succurrere: nullum
Crimen habes; manus est ibi purior, ac fuit ante.

But the Life of those Men full of wicked Acts, shut up against them all Places of Refuge, and leaves no room for Compassion. Cicero hath a Saying out of Demosthenes: We must shew Compassion to those whom Fortune, not their own evil Deeds, hath made Miserable. And by the holy Law, when any one had been slain by an Ax slipping out of another’s Hand, the Cities of Refuge were open: The most holy Altar itself was no Protection for those that had slain an innocent Man maliciously, or had troubled the Commonwealth; which Law Philo explaining, faith, Unholy Men have no Entertainment in the Holy Place. Lycurgus the Orator relates that one Calistratus, having committed a Capital Fault, and advising with the Oracle, received answer, That if he went to Athens he should have Right: And thereupon, in Hopes of Impunity, he fled to the most holy Altar there, notwithstanding which he was taken from thence, and put to Death by the City most observant of her Religion, and so the Oracle was fulfilled. Princes indeed (faith Tacitus) are like Gods, but neither do the Gods hear the Prayers of Supplicants, unless they be just. Such then are either to be punished or delivered up at least; yet surely this hath been observed to extend only to those Crimes that touch the State, or at least are of a very heinous Nature; sometimes they are expressly stipulated by Leagues to be delivered up; however this is to be observed, that such fort of Fugitives and Supplicants, be they Foreigners or Subjects, are to be protected till they have been fairly tryed; and if that whereof they are accused, be not forbidden by the Law of Nature or Nations, the Cause must be tryed and adjudged by the Municipal Laws of that Kingdom or State from whence the Crime doth arise. From which it may be observed, that a Fault committed in England, and the Person flying, and Request made; yet, by Reason that none can by the Laws of that Nation be tryed but per Pares, nor then but in Person; it will thence follow, that

They of Holland lately delivered up the famous poisoning Cook that had been in the wicked Conspiracy with the Countess of Steffoni in France.
that such may seem out of the general Rule: However, it may stand with the highest Reason, that the Fact and Proof being remitted over with the Request, there may appear a just Ground for the Demand.

VI. Whatever the Opinion of those Writers have been the Practice of latter Ages hath seemed to incline otherwise. Queen Elizabeth demanded Morgan and others of her Subjects fled into France, that had committed Treason against her; the Answer of the French King was, *Si quid in Gallia machinarentur, Regem ex jure in illos animadversurum; *sic in Anglia quid machinati fuerint, Regem non posse de eisdem cognoscere, & ex jure agere; omnia Regina pro fugis esse libera; Regum interesse, ut sui quisque Regni libertates sueatur, imo Elizabetham non ita pridem, in suum Regnun Montanaerium, Principem Condaem, & alios & Gente Gallica admittisse, &c. and they were never delivered up: but the like was not returned by the King of Scotland, for he promised that he would transmit Fernibure, and the Chancellor too, if they were convicted by a fair Tryal.

*Perseus King of Macedon, in his Defence to Marsius,* speaking of those that were said to have conspired against Eumenes: *So soon as I was admonished by you, and finding the Men in Macedonia, I commanded them away, and charged them never to return into my Dominions.* The Cry of the Royal Martyr's Blood, justly procured them of Holland to deliver up the Regicides to the injured Successor. And from the Crown of Denmark it was expressly stipulated they should be delivered in these Words: *Item quod si qui eorum qui rei sunt illius nefandi Parricidii in Regem CAROLUM Primum beatissimae Memorii admittis, ac legitimè de eodem sitere attinisti, condemnasti, vel convici, &c.*

If any of them who are guilty of the horrid Murder committed upon King CHARLES the First of Blessed Memory, be either now in the Dominions of the King of Denmark and Norway, or shall hereafter come thither, that as soon as they shall be known or told to the King of Denmark, or any of his Officers, they be forthwith apprehended, put in safe Custody, and sent back into England, or be delivered into the Hands of those whom the King of Great-Britain shall order to take charge of them, and bring them home.

VII. Most
VII. Most certain it is, if War be threatened to a Nation or People, if they deliver not up the Offender, though perhaps he is innocent, and that such is the Malice of his Enemies, that they know they will put him to death, yet he may be defeated, especially if that Nation or Kingdom is inferior to others; but then the shame ought not to be done rashly. The Italian Foot that forsook the unfortunate Pompey before all was lost, being assured of Quarter from the victorious Caesar, were condemned by most that reported the Story of that day.


Pope Alexander (in the mortal Feud between him and the Emperor Frederick, who favoured Octavian the Anti-pope) fled disguising to Venice, the Duke and Senate being jealous that the Emperor would demand him, sent an Embassay to the Emperor to endeavour a Mediation and Peace, which was no sooner offered, but the Emperor broke out into a Rage, bidding them go home, saying, "Tell your Prince and People, that Frederick the Roman Emperor demands his Enemy, who is come to them for Succour, whom if they send not presently bound hand and foot, with a sure Guard, he will proclaim them Enemies to him and the whole Empire, and that there is neither Alliance or Laws of Nation which shall be able to free them from revenge for such an Injury, to prosecute which he is resolved to overturn all divine and human Laws, that he will suddenly bring his Forces before their City, and contrary to their expectation, plant his Victorious Eagles on the Market-place of St Mark." This Message being faithfully delivered, the Senate decreed Arms, Arms; and while they were preparing, News was bought that Olibo, the Emperor's Son, and General of the Cesarian Fleet, was entred the Gulf with seventy-five Gallies; the most valiant and religious Sebastiani Cyani resolved to meet him, and having encountered them on the Coast of Istra, defeated Olibo, and all his Naval Forces, taking forty-eight Gallies, Olibo their Admiral and the rest either burnt or destroyned; he returned in Triumph for Venice, and not long after Frederick became convinced, that Heaven fights the Battles of the Innocent,
and on his knees begged pardon of Alexander the Fugitive Pope.

Lewis the Eleventh of France required by Ambassadors of Philip Duke of Burgundy, the delivering up of Sir Oliver de la Marche, (who being a Burgundian, had wrote (as was conceived) somewhat against the Claim of the French to several Territories) upon a publick Audience at Lisle, they were answered by Duke Philip, That Oliver was Steward of his House, a Burgundian by Birth, and in no respect subject to the Crown of France; notwithstanding if it could be proved that he had said or done any thing against the King's Honour, he would see him punished according as his faults should deserve.

VIII. But admitting that such an innocent Person ought not to be delivered up, whether he is bound to yield himself; by some it is conceived he ought not, because the nature of civil Societies, which every one hath entred into for his own Benefit, doth not require it; from which it follows, that though such Persons are not bound to that by Right, properly so called, yet it doth not follow, but in charity he seems bound to do it; for there may be many Offices not of proper Justice, but of Love, which are not only performed with praises, but also cannot be omitted without blame; and such indeed is the Act of such a Person's voluntary yielding up himself, preferring the Lives of an innocent Multitude before his own. Cicero for P. Sextus, If this had happened to me failing with my Friends in some Ship, that Pirates surrounding us should threaten to sink us, except they would deliver me, I would rather have cast myself into the Sea to preserve the rest, than to bring my Friends either to certain Death, or in to great danger of their life.

IX. But whether such an innocent Person may be compelled to do that which perhaps he is bound to do, may be a question; rich Men are bound by the precept of Mercy to give Alms to the Poor, yet cannot be compelled to give: it is one thing when the parts are compared among themselves, another when Superiors are compared
to their Subjects; for an Equal cannot compel his Equal, but unto that which is due by right strictly taken; yet may a Superior compel his Inferior to things which Virtue commands; in a Famine to bring out Provisions they have stored up, to yield him * to Death that deserts his Colours, or turns Coward, to mulct those that wear excessive Apparel †, and the like. Phocion, pointing to his dear Friend Nicoles said, Things were come to that extremity, that if Alexander should demand him, he should think he were to be delivered up. It hath seemed that such an innocent Person might be deferted and compelled to do that which Charity requires; but the late ROYAL MARTYR seemed of another Opinion, when he came to die, in the Cause of the British Protomartyr Strafford.

he contended with Antony and Augustus about the Empire of the World; this Pompey entertaining Antony and Augustus in his Galley, the Captain which commanded it, demanded leave of him to weigh Anchor and to carry away his Guests, and to make his Rivals Prisoners: he answered him, that he ought to have done it without telling him of it, and should have made him great without having made him forsworn: Certainly an honest Person will never be of the Mind of this Captain: therefore in such extremities Counsellors, either for high advantages, or in the great necessities of their Prince should serve their Masters with their Estates and Goods, but not with their Honour and Conscience.

X. But this delivering up does in no respect extend to Sovereign Princes, who are by Divine Permission unfortunately driven out of their own Country; and therefore memorable is the great Treaty commonly called by the Flemings, Intercursus Magnus, where there was an express Article against the reception of the Rebels either of Henry VII. or of the Arch-Duke of Burgundy by others, purporting that if any such Rebel should be required by the Prince, whose Rebel he was, of the Prince Confedrate, that forthwith the Prince Confedrate should by Proclamation command him to avoid the Country, which if he did not within fifteen days, the Rebel was to stand proscrib'd, and put out of Protection. But a Prince, or one that hath a Sovereign Power, and had been containing for his Right, but Success not crowning his hopes, occasioned his flight, hath always been excepted; to deliver up such, is even against Nature and the Majesty of Power; and therefore it is very remarkable what attempts were made for E. 4. H. 7. nay in the very Treaty of

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* Leg. Deferr.  † Calis Instit. 3. fol. 199. Plutarche Phocion: Fides agi, Fides agi, uta deditus non produi. Liv. 1. 7. Statius judicemus, et pauca aliquid mala ferre, quam immensum multitudinem. The Son of Pompey was so worthy a Son of so great a Father, that

of *Intercurfus magnus* it is memorable that at that time *Perkin Warbeck* was contending with H. 7. for the Crown of England by the name of Richard Duke of York, younger Son and surviving Heir Male of Edward the Fourth. My Lord Bacon does take a particular notice, that *Perkin Warbeck* in that very Treaty was not named nor contained, because he was no Rebel, but one that contended for the Title. Afterwards when *Perkin* was fled into Scotland, and there received by the *Scotish* King, Henry the Seventh sent to have *Perkin* delivered up, and it was one of the principal Inducements of the King to accept of a Peace upon that condition, giving for an argument, that *Perkin* was a Reproach to all Kings, and a Person not protected by the Laws of Nations; but the *Scotch* King peremptorily denied so to do, saying, *That he (for his part) was no competent Judge of Perkin’s Title, but that he had received him as a Suppliant, protected him as a Person fled for refuge, espoused him with his Kinwoman, and aided him with Arms, upon the belief he was a Prince, and therefore he could not now with his Honour so unrip, and (in a sort) put a yye upon all that he bad said and done before, as to deliver him up to his Enemies.* This was so peremptorily insistfled on by the *Scotch* King, that Henry the Seventh was at length contented to wave the Demand, and conclude a Peace without that Article; notwithstanding the King of Scotland had often in private declared, that he suspected *Perkin* for a Counterfeit.

XI. Persons that have wronged or defrauded Kings of their Revenue, especially in *England*, upon Letters of Request to those Princes whither they have fled, have been delivered up.

Some *Florentine* Merchants of the Society of the *Friscobaldi*, being made Collectors and Receivers of the King’s Customs and Rents in *England*, *Wales*, *Ireland*, and *Gascoigne*, running away with those Monies, together with all their Estates and Goods, for *Rome*, the King sent his Letters of Request to the Pope, desiring that they might be arrested, and their Persons and Goods seiz’d, and sent over to satisfy him for the damages he and his Subjects had suffered by them, promising not to proceed against them to the loss of their Limbs or Lives. Upon which Letters, the Pope seiz’d on their Goods, and not long
CHAP. XII. Of Contributions in War.

long after the King writ for the seizing of their Persons, for answering of other frauds and injuries.

The like was done for one Anthony Fazons, who had received 500 l. of the King's Monies, and running away with it to Lorraine, the King writ to the same Duke, desiring that search might be made, and his Person seized upon, and his Goods secured in every place within his Territories, till he should satisfy the said 500 l.

C H A P. XII.

Of Contribution paid by Places Neuter to both Armies in War.

I. Of force used to Neuters whether lawful.

II. Of Neuters, their duty considered in reference to either of the warring Parties.

III. Considerations general touching the same, and the chief matters that are objected by those that feuple thereat.

IV. The Case stated generally in the question propounded to our Saviour of paying tribute to Caesar.

V. In the payment of Contribution to an Enemy, what is necessary to be distinguished in the beginning of a War.

VI. Of a second distinction drawn out of the first, of such payments, when a War is actually formed.

VII. Where a man pays, but mistakes the cause, whether excusable, the War not yet actually formed in place.

VIII. Where a Country is fully possessed, whether payment them is lawful.

IX. Of the state of those that live on Frontiers, their condition considered in reference to procure their Peace by Contribution.

X. Of interdicts by him to Places from whom faith is owing, Contribution notwithstanding being paid, whether the same creates an offence in them.

XI. Of the genuine Construction of such interdictions according to the true intention of the same.

XII. Of the impunity and punishment that such innocent Offenders may be subjected to, in case of being questioned for the contempt by their right Governors.

I. T is manifest there is no Right of War over Neuters in War; yet because by occasion of the War many things are usually done against such (Borderers especially) on pretence of necessity, there can be no Excuse for the act, unless it be apparent Necessity, and that the same ought to be extreme, for then it may give a Right over
Of Contributions in War. Book I.

over what belongs to another Man; for in such case, if the necessity be manifest, there may be such a proportion exacted as the necessity requires, that is, if the Custody suffices, the Use of the thing is not to be taken; if the Use, not the Abuse, be necessary, yet is the Price of the thing to be restored. Moses, when the highest necessity urged him and the People to pass through the Land of the Idumeans, first he saith, he would pass along the highway, and not divert into their Corn-fields or Vineyards; if he had need but of their Water, he would pay a price for it. The worthy Captains, both Greek and Roman, have done the like: In Xenophon the Greeks with Clearchus, promise the Persians to march away without any damage to the Country, and if they might have necessaries for Money, they would take nothing by force. This Virtue is often commended in * Belisarius by Procopius his Companion and Witness of his Actions.

II. And as the Law doth preserve the Estates and Territories of such Neuters, or those that abstain from War, so on the other hand such ought to do nothing for either Party, but especially for him who maintains a bad Cause, or whereby the Motions of him who waggeth a just War may be retarded; and in a doubtfull Case they ought to shew themselves equal (as we have mentioned elsewhere) to both in permitting passage, in affording Provision for the Legions or Navies, and in not relieving the Besiegéd. It is the duty of the Athenians, if they would not side with any Party, either to prohibit the Corinthians from raising Soldiers out of Attica, or permit them to do the like. So the Emperor and Confederate Princes of the Empire, with the Cantons of Switzerland in the late German War, and fo of the King of England, who was so careful to preserve the Neutrality, that he issued forth his Proclamations to prohibit all Persons, of what Condition soever, to become Soldiers in the Service of any of the warring Princes. It was objected by the Romans against Philip King of the Macedonians, That the League was violated by him two ways, both because he did injuries to the Fellows of the Roman People,
CHAP. XII. Of Contributions in war.

People, and because he assisted the Enemy with Aids and Money. The same things are urged by Titus Quintus in his Conference with Nabis. Yet thou sayest, I have not violated you, nor your Friendship and Society, how often shall I prove the contrary? In short, wherein is Friendship violated? By these two things especially: If thou hast my Friends Precept. Gotb. for Enemies: if thou art a Friend to my Enemies: he is reckoned an Enemy who supplieth them with what is useful for the War.

III. But now there are many things that are useful for the War worthy of some consideration, the which are not so accounted at this day by the Laws of Nations; understand me. That I call the Laws of Nations, which is at this day universally practiced, as namely the supplying either or both of the warring Parties with Monies, or that which is called Contribution. Now if the Minds of the Subjects cannot be satisfied by the declaration of the Cause, it will certainly be the Office of a good Prince or General rather to impose upon them Contribution than Military Service, especially when that Prince or General hath an Army sufficient to prosecute his Designs, the which a just Commander may use as God doth the ready Service of the Devil.

The most excellent Grotius having most incomparably treated on, and cleared all the important Objections against a just War, together with the Incidents of the same; yet this main one of Contribution or paying to both Armies, whether lawful, he hath not touched in any other words but these, Quod sub tributo utrique parti praebendo factum dix in Belgico, Germanico bello nuper vidimus, eisque id conscientia morti veteri Indorum: and so cites a saying in Diodorus Siculus*, of the Peace that those People maintained in their Possessions by reason of such Contributions. But to many Persons this Instance, without further scrutiny, proves insufficient; for there are many, who not finding this Liberty in their Consciences, unnecessarily chafe rather to give up their Bodies to restraint, and to abandon their whole means of Subsistence in this World, both for themselves and their Children, (which ought not fondly to be done, unless we would be worse than Infidels, as St. Paul faith) they ground their Resolution on this Reason, that they know not whether the Monies they give may not

Sil. in Verbo bellum p. 1. n. 7. circa

got in Finem.

* Grat. de Jure Bell. ac Pac. lib. 3. cap. 12. § 4. n. 2. Lib. 2.
not furnish to the Destruction of many Innocents, and perhaps the just Magistrate; yea, and the total subversion and ruin of their Country, Liberty, and Religion: and therefore though Men give and bestow their own where they please, yet in such Cases they may not; therefore it may not be impertinent to examine whether these be necessary Scruples in themselves, and such as admit of no exception of Liberty, or whether those Scruples be reasonable, or indeed mere scandal.

IV. The Scribes and Pharisees sought two ways to entrap Our Saviour; one was if he had blasphemously taught a new Religion, and a new God, (viz. himself) they hoped the People would be provoked to stone him for this, according to the Hebrew Law: The other was, to bring him within the compass of Treason, as if he could not lead great Multitudes after him without traiterous designs; but this Gin failed too, because the Multitudes which followed him were always ready to defend him. However, when he was at Jerusalem, where the Roman Troops and Pretor were, they thought they had him sure, by propounding this Subject to him:

*Is it lawful to pay Tribute to Cæsar?* Which was as much as to say, We who are descended from Abraham, and are the peculiar People, to whom God hath given the large Privileges of the Earth at home, to bathe ourselves in Rivers of Milk and Honey, to have full Barns and many Children; yea, that God himself would be adored in no other place of the World but at this our Jerusalem, and that abroad we should triumph over the Barbarous and uncircumcised World by virtue of that Militia, which he never ordered for any but ourselves; how are we then in Duty or Conscience to submit now to the Ordinances of the Uncircumcised Romans? Or what Right can he have to exercise supreme Jurisdiction over us, the privileged Seed of Abraham, by levying of Taxes on our Estates and Lands, which God himself laid out for us, by which means the Emperor and Senate hold this very Temple in slavery, and infult over our very Consciences and Religion, by defiling our very Sacrifices with the mixture of impure Blood; which as they are the price of our Blood, and a Tribute far above Cæsar's, (payable in no other Place but this Temple, which God himself built) to our Blood
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Blood ought not to seem too dear to be sacrificed for the Liberty of these: and though the Roman State could pretend, yet what can this Caesar pretend? Every man's Conscience knows that it was but the other day he usurpt over the Senate, in which resides the true Jurisdiction of Rome; and if that were otherwise, yet how can he pretend to a Title unless Poison be a Pedigree, or violent Usurpation a just Election, by which he who is but the greatest Thief in the World would now pass for the most Sovereign and Legitimate Prince? How then are we in Conscience obliged to pay Tribute to this Caesar? Though those Lawyers thought in their Consciences that they were not to pay it, and that Our Saviour likewise, as a few, thought so too; yet they supposed he durst not say so much in the crowd; nor yet deny it by shifting it off with Silence, lest the Roman Officers should apprehend him: But when Our Saviour shewed them Caesar's Face upon the Coin, and bade them Render to Caesar that which was Caesar's, and to God that which was God's; His Answer ran quite otherwise, not as some would have it, that by a Subtilty he answered not to the Point proposed, for then the sense of the whole Text would found very ill in such Terms, viz. If there be any thing due to Caesar, pay him it, and if any thing is due from you to God, then pay it likewise; This had been a weakening of God's Right for Caesar's, and to have left a desperate doubting in a necessity: 'Tis beyond all cavil that Our Saviour's Opinion was positive for paying of Tribute to that Caesar, because de facto he did pay it; and the plain Reason of it appears evidently in this his Answer: Caesar's Face was upon the Coin, that is to say, Caesar by Conquest was in Possession of that Coin, by Possessing the place where he obliged them to take it; coining of Money being one Prerogative of Sovereign Power.

V. But to come more close to the Question, whether Contribution may lawfully be paid: First, we are to make a Difference betwixt perferre & inferre bellum; the one is active, and properly at the beginning of a War, and in a place where yet no War is, and where its Caufe only, and not its Effects can be considered; in this Case every thing ought to be very clear for Warrant of a Man's Conscience, because of the Calamities which he helps.
helps to introduce, and is in some manner the Author of: the other is passive, and there where War, or the Power of War is actually formed, which is the Case of this Difcourse.

VI. Secondly, we are to distinguish betwixt that which cannot be had, nor the Value of it, unless we actually give it, and that which may be taken by the Law of War whether we contribute or no.

VII. Most certain it is, though a War be not yet actually formed in a place, yet a scrupling Conscience, which likes not the Cause, may be excused in contributing to it in this one Case, viz. If some number of Men, able to take what they ask, demand (with an armed power) the payment of a certain sum to be employed in War, then in such a case, the Man, whom we suppose, may pay it as a Ransom for his Life, or give it as a Man doth his Purse, when he is surprized in the Highway, because to this Man it is as much as if the whole Country were possessed with an armed Power. So several Dutchies and Seigniories dependent on the Empire, did in the War between them and the Crown of France, pay Contribution.

Priscopius in the third of God. of Totila when he besieged Rome, faith, Agricola.

interim per omnem. Italiana nihil mali intulit; sed jussit eos ita, ut soliti erant, terram perpetuo securos colere, modo ut ipsa Tributa perferrent: This, faith Cassiodore, is the greatest Praise. 12. 15.

But if the Person or Country be not for the time in full Possession of him whose Cause he scruples at, and that he or they have not a probable fear of extreme danger, nor as probable assurance, that without his help the thing demanded nor its value can be taken from him or them, then there is little Excuse remains for the Act, because the very Act (which his Conscience dislikes) participates more of Action than of Passion.

VIII. But where a Man or City is fully possessed by an invading Power (be the same just or unjust) from whom he or they cannot fly, nor remove their Substance, most certain the payment of Contribution is no gift, any more than he (as above) who with his own Hands being set upon by Pirates or Robbers, puts his Purse into their Hands; for the Laws calls not that a Gift, nor excuses the
the Party from taking it: And altho' the Parties may employ the same to the Destruction perhaps of Innocents, and the like; yet that is an Action out of their Power that give, as far as Winds and Tempests are, to which two, as we contribute nothing, so we cannot be scrupulous in our Consciences concerning their bad Effects; nor is the fame repugnant to the Canon Law, (which teaches us humanity, and the imitation of all their virtues) and therefore Persons, whose Lives are innocent and harmless, ought not to be subjected to danger or plunder, which hardly can be avoided without Contribution or Tribute.

IX. Again, those that live on Frontiers, whose condition is more ticklish and deplorable, because they are not fully possed nor taken into the Line of either Party, these live as it were in the Suburbs of a Kingdom, and enjoy not the Security or Privileges of others, yet such Persons may lawfully contribute to both; for though they be but partly possed by one, and partly by the other, in respect of their sudden abandoning them, yet both Parties have the Power of destroying them wholly; wherefore those former Reasons which justify those fully possed, do also acquit the Payments of these; for their condition here is more calamitous, seeing they are really but Tenants at Will, exposed to a perpetual Alarm, and that both Parties wound one the other only through their sides, as those this day that are situate between France and Germany; for being perhaps Neuters in the War, they are in that case by the Law of Arms to shew themselves equal to both, in permitting of Passage, in affording Provisions for the Armies, and in not relieving the Besieged.

X. Nor can the Interdiction of him to whom such owe Faith and Obedience, any ways create the same an Offence, since the declared Wills of our Governors cannot make all those of our Acts Sins, when we obey or submit to that Power, which against our Wills (as much as against theirs, and it may be with more of our Misery) hath divested them of the Power of their Rights, and deprived us of the Power of their Government; and by the Laws of War, they who have overcome, should govern those whom they have overcome; and therefore what

The quiet of the World cannot be had without Arms, no Arms without Soldiers Pay, nor Pay without Contribution. Tacit. Hist. 4.

Exemplum mobile vide apud Paratum, lib. 8. Grat. l. 3. c. 17.

Grot. de Jure Belli at Paelit. 1. 3. c. 8. § 11.

M 2

foever
ever is exacted by the Conquerors, may justly be paid by the Conquered.

And since Princes by their Commands cannot change the nature of human Condition, which is subject naturally to those fore-mentioned Changes, it would seem exceeding hard to oblige us to almost moral Impossibilities; and though those Political Commands were as Laws, yet doubtless they ought not to be obliging, but according to the Legislative Rule, which is *cum senso humane imbecillitatis*, this is that which is called the presumed Will of a Governor, or the Mind of a Law: for in extreme necessity it is to be presumed, that both their Wills proceeding from the Rigour of what they have declared, rather than by holding to that which is their supposed Right, introduce certain Miseries and Confusion without receiving any Benefit thereby to themselves. Nor could they of Utrecht, and others of the conquered Cities in Holland, abandoned afterwards by the French, and entirely preserved from Destruction, be condemned by their Confederates, for the Sums by them promised to the Enemy for the Preservation of the same.

Neither are such Commands or Interdictions without their sense and profit, though they be not positively obeyed; for thereby Governors shew to all the World, that they renounce no part of their Right, no, though it be there where they cannot exercise any part of their just Power.

And that is apparently evinced by the Laws of Leagues; for such being made, the same remains, although the same King or his Successor be driven out of his Kingdom, for the Right of the Kingdom remains, although he hath lost the Possession. *Greius, lib. 2. cap. 17. § 19.*

XI. Now the true Intention of such Commands or Interdictions is, that the Enemy should not by any means be assisted or strengthened; but if such Prohibitions should be obeyed, nay at such a time, when they and all their substance are absolutely possess of the Enemy, most certain such Commands daith against themselves, and the one countermands the other; for if they refuse to submit in such a case, then they do that which advantages their Enemies, because at that time they will take all, whereas in Case of Submission they ask but a part.

XII. In
CHAP. XIII. Of the Naval Military part.

XII. In all Wars there are always some, by whose Disaffections Enemies gain more than by their Compliance, just as Physicians do by Distempers.

And although, by variety of Successes, the just Governor should after recover that place, which so submitted to the Power of their Enemies, and for that reason should punish those that were pliable to extreme Necessity; yet it follows not upon that, that they who so conformed, sinned, or did that which was absolutely unlawful; for we well know that reason of State often calls for Sacrifices where there is no fault to expiate: Ostracism and Jealousy may make away those who are known to deserve most, but in strict Right (which is the Term of this Question) the just Governor ought to look upon them as more Unfortunate than Faulty.

C H A P. XIII.

Of the Naval Military part.

I. The Advantage that Princes have by a good Commander.

II. The Love that naturally proceeds from the Mariners to those that are valiant and generous.

III. Princes in prudence ought not to listen too much to the Complaints against Commanders.

IV. Of the Faults generally considered in Soldiers and Mariners.

V. Of the punishments that generally wait on such Offenders.

VI. Of Drunkenness, Swearing, and other such sorts of Impetities, not to be suffered in Fleets.

VII. Spies, 'tis lawful to use them by the Laws of Nations, but being detested, are to suffer Death; and how they are to be dealt withal by the Laws of England.

VIII. It is not lawful for a Friend or Nester to relieve an Enemy, and Persons so offending, how punished.

IX. Ships taken as Prizes, the Ship, Papers, and other matters concerning the same, are to be prefered.

X. Of things taken and acquired in War; how the Right of them becomes vested in the Captors, and how that is to be understood by the Law of Arms.

XI. To steal the Cables or other Furniture of the King of England's Ships, how punishable at this day.

XII. Ships surrendered or voluntarily yielded, how to be dealt with, and to those that shall refuse, if entered by force, whether quarter may be refused.

XIII. Ships of War generally ought not to be yielded; but if entered or disabled, whether they may accept of Quarter, standing with the Oath called Sacramentum Militare.
XIV. Of obeying Orders, the same ought punctually to be followed; and if broken, though the act succeeds well, whether the same subjects not the Affair to punishment.

XV. Of the Obligation incumbent on Commanders and Soldiers, to behave themselves valiantly, and the right of slaying an Enemy, where lawful.

XVI. Ships how obliged by the Laws of Arms to the Assistance of one another; and of the duty of those that have Fleets under their Command.

XVII. An Enemy beaten ought to be pursued, and how far it is lawful to slay such flying with their lives in their hands, by the Law of Arms, and how the reeking sword ought to be governed.

XVIII. Persons exempted from the sword by the Laws of Nature, Nations, Civil and Canon, and by the Municipal Laws of some Countries.

XIX. Mutinying how esteemed, valued, and punished at this Day by the practice of Armies, and by the Laws of England.

XX. Whether it be lawful to decoy the Subjects, Soldiers, or Mariners of an Enemy to forsake his Prince or General, and to bring over his Men, Ships or Arms, and

whereby Laws they may be received; and how such Deserters may be punished by the Laws of Nations and of England.

XXI. Of Seducers, Message-carriers and Decoyers of Soldiers, how to be handled by the Law of Arms.

XXII. Of those that shall disobey or strike their superior Officers, how punishable.

XXIII. Of mutinying, and those that shall act in the same, how punished, though they have a just Cause of Complaint.

XXIV. Of the Care incumbent on Commanders and Masters of the Great Ships, in reference to their safety, and the punishment of wilful burning and destroying them.

XXV. Of the general Offences at Sea, how punished.

XXVI. Court Martialts how erected, and what operation their judgments have, and upon whom.

XXVII. Judges and Advocates Power in reference to giving an Oath, and the Admiral's Power how limited in the punishing of Offences.

XXVIII. Of maimed Soldiers and Mariners, and the Prejudices that the Laws make for them at this Day.

XXIX. Of Triumphs.

I. An excellent General is an Evidence of the Fortune of a Prince, and the Instrument that occasions the Happiness of a Kingdom; and therefore when God makes choice of a Person to repair the Disorders of the World, or the Good of a particular State, then is his Care shewed in the furnishing him with necessary Principles to undertake great Matters; the Thoughts are put in his Soul by that eternal Commander to execute, he troubles and confounds his Enemies, and leads him as by the Hand to Victories and Triumphs: And one of the greatest Expedients whereof he serves himself for this Purpose, is to raise unto him excellent Men, both in Courage and Conduct.
dues, to whom he communicates his Care, and who help
him to bear the Weight of Affairs. Alexander had never
conquered Asia, or made the Indies to tremble, but for
Euphrasius, Parmenio, and Clitus; Caesar gained many a
Battle by his Lieutenants; and the fairest Empire of the
World, which Ambition and the Evil of the Times had
divided into three Parts, was reduced under the Dominion
of Augustus by the Valour of Agrippa; Justinian triumphed
over Persia, and destroyed the Vandals in Africa,
and the Goths in Italy by the Aid of Belisarius and Narses:
And it is most certain, that Noble Commanders are the
Glory of their Princes, and Happiness of the People; on
the other Hand, Base, Cowardly and Treacherous Ge-
erals are the Shame of the one, and the Despair of the other.

II. Hence it is, that Soldiers and Mariners draw their
Lines of Love, even to the Mouths of Cannons with a
good General, but Mutiny and Hate to the main Yard
end against one that is Bad; for to obey them who
are not their Sovereigns when they do them Hurt,
when they insult and are cruel in cold Blood, and Base,
Cowardly or Treacherous in Battle, is a sad Necessity
for them, and a hard Essay of Patience; yet must they
be obeyed, and the Soldiers and Mariners must not rebel
or repine, but submit till their Sovereign redresses their
Misfortunes.

III. Again, Princes ought not to listen too much to the
mutinous Demands of the Crew, or any others whose
Ambition watches their Ruin, whereby to conceive An-
ger against their Commanders; for it is easier to purge out
the Choler and Discontent that is got under the Hatches,
than to provide Commanders of Conduct, Courage, and
Faithfulness to govern their Expeditions, Belisarius, that
most excellent Commander, who had no other Crime than
his Reputation, and was not culpable, but that he was
Powerful, having conquered Persia, subdued Africa, hum-
bled the Goths in Italy, led Kings in Triumph, and made
appear to Constantinople somewhat of Old Rome; an Idea
of the antient Splendor of that proud Republic; af-
after all his eminent Services, this great Person is aban-
doned to Envoy: A Suspicion, ill grounded, destroys the
Value of so many Services; and a slyple Jealousy of State,
wipes them out of the Memory of his Prince: but he

Procopius Hist. Vandal. in Vi-
ta Belisarii.

Pride Sir Wal-
ter Ralegh's
Hist. Vol. II.
p. 782.
Ed. 1736.
The Ingratitude that hath been shewn by Princes to many Brave Generals and Commanders, there particularly enumerated.

rests not there, for the Demeanor had been too gentle, if Cruelty had not been added to Ingratitude; they deprive him of all his Honours; they rob him of all his Fortune; they take from him the Use of the Day and Light, they put out his Eyes, and reduce him to the Company of Rogues, and the miserable Belisarius demands a Charity; even that Belisarius the chiefest General of his Age, and the greatest Ornament of the Empire, who after so many Victories and Conquests, accompanied with so high and clear a Virtue, and in the midst of Christiendom, was reduced to so abject and low a Misery.

Nor was this cruel and hasty reckoning of Justinian let slip without a cruel Payment; for Narfes, who was as well a Successor in Merit as in Authority to Belisarius, having notice of a Disdain, conceived likewise against him upon a single Complaint, resolved not to expose himself as a Sacrifice to their Malice; and therefore thinking it better to shake off the yoke, than stay to be oppressed, soon spoiled the Affairs of Justinian, for the Goths revolted, and Fortune would not forbear to be of the Party which Narfes followed, nor to find the Barbarians where so brave a Captain was engaged. Therefore not one or many Faults are to be listened to against Commanders, but patiently heard and redressed, not to disgrace or lose them; for such having committed a Fault, yet being admonished by love, may endeavour by future Services to make recompence by some noble Exploit; but disgraced, become Instruments often of Danger and Ruin to their Superiors.

IV. Soldiers and Mariners Faults are either proper to themselves, or common with others.

Those are common with others which other Men fall into, and are corrected with like ordinary Proceedings as other Crimes of like Nature, as Man slaughter, Theft, Adultery, and such like.

Those are proper which do purely appertain to the Naval Military part, and are punished by some unusual or extraordinary Punishment: As are these; Not to appear at the over-musters or calling over the Ship; to serve under him he ought not to serve; to vage or wander long from on Ship-board, altho' he returned of his own accord; to forfake his Fleet, Squadron, Ship, Captain, Commander,
mander, or Officer; to leave his standing to fly over to the Enemy; to betray the Fleet, Squadron, or Ship; to be disobedient to his superior Officers; to lose or sell his Arms, or to steal another Man’s; to be negligent in his Officer’s Command, or in his Watch; to make a Mutiny; to fly first out of the Battle, and the like, which are very frequently set forth in the Titles of the Digest and Code of Military Affairs, and other like Titles which accompany them.

Arrian, who wrote the Life of Alexander the Great, observes, ‘Every thing is counted an Offence in a Soldier, which is done contrary to the common Discipline, as to be neglectful, stubborn, and slothful.

V. The Punishment wherewith Soldiers and Mariners are corrected, are those corporal Punishments, or a pecuniary Mulk or Injunction of some Service to be done, or a motion and removing out of their Places, and sending them away with shame.

By capital Punishment is understood for the most part Death, or at least beating with Cat with Nine Tails, as they commonly term it, Ducking, Wooden-Horse, Gauntlet, and such like, unless happily it be pardoned, either for the unskillfulness of the Mariner or Soldier, or the Mutiny of the Crew or Company, being thereto drawn by Wine, Wantonness, or for the Commiferation or Pity of the Wife and Children of the Party offending; all which is left to the Discretion of the Lord Admiral, and others the Supreme Commanders or Captains.

VI. It is necessary that in Armies and Fleets, all manner of Impiety should be prohibited, especially that of Swearing and Curfing; for such Sins are so foolish, that they unawares trip Men into Damnation, rending Men worse than Beasts, by how much the more they court that Vanity of Sin, without any of the appendent Allurements which other vitious Actions are accompanied with, the same in the end teaching Men to disavow GOD in their discourse and actions, by their intemperate and inconsiderate invoking him in their Oaths. Against such, as also against those that shall give themselves up to Curfing, Excrations, Drunkenness, Uncleanness, or other scandalous Actions in Derogation of God’s Honour, and corruption of Good Manners; Fines and Imprisonment, or such other Punishment may...
may be inflicted on them by a Court Martial, which is now reduced to the Forfeiture of one day's Pay; but for Drunkennes, the same extends not to Commanders, or other Commission and Warrant Officers, for they upon Conviction before the Admiral, shall be rendered incapable of their Command.

And a Lyar convicted on Ship-board, shall be hoisted upon the main Stay with four Brace, having a Broom and Shovel tied to his Back, where he shall continue an Hour, every Man crying, A Lyar, A Lyar, and a Week following, he shall clean the Ship's Head and Sides without board, according to the antient practice of the Navy; if he receives greater Wages than for an able Sea-man, then half a day's Pay.

VII. By the Laws of Nations, Spies may be sent to survey the Enemy's Force, Fleet, Station, or Squadron, and make discovery of whatsoever may give advantage to the Persons sending: So Moses and Joshua did into the Holy Land. On the other hand being apprehended, they are to be put to death, as Appian faith. But whether it be lawful to make Spies of the Subjects of that Prince with whom the War is begun, hath been some doubt: It is not lawful for a Subject to kill his King, nor to yield up his Ships of War without publick Council, nor to spoil his fellow Citizens, to these things it is not lawful to tempt a Subject that remains such; nor may any reply, That to him who impelleth such a Man to a wicked Act, that Act, as namely the betraying of his Enemy, is lawful; no body doubts, he may indeed do it, but not in that manner; but yet if a Subject will voluntarily desert his Prince and Country, i.e. to enter into a Correspondency with the Enemy of it, without any impulse but his own covetous or revengeful Mind, surely it cannot be unlawful for the other to receive him. We receive a Fugitive by the Law of War, faith Celsus, that is, it is not against the Law of War to admit such, even a Traitor, who having deserted the Enemy's part, elest our's; however such Persons ought not to be rendered, unless expressly stipulated *, but ought to be pardoned. By the Laws of England, if any Officer, Soldier or Mariner, in actual Service, and in the Pay in his Majesty's Fleet, or any other Person in the same, shall give, hold, or entertain any Intelligence to or with any King,
King, Prince or State, being Enemy to, or any Person in Rebellion against his Majesty, his Heirs and Successors, without Leave or Authority from the King, Admiral, Vice-Admiral, or Officers in Chief of any Squadron, they are to suffer Death. Now the bare receipt of a Letter or Message from an Enemy, will not make a Man subject to the Penalty of this Article; and therefore the subsequent Article explains the precedent, in which it is provided, That if any inferior Officer, Mariner, or Soldier, shall receive any Letter or Message from any King, Foreign Prince, State, or Potentate, being an Enemy, or on their behalf; and if such Person doth not reveal the same within Twelve Hours, having opportunity so to do, and acquaint his Superior Commander with it, such Person is to suffer Death; so likewise, if such Superior Officer or Mariner being acquainted there- with by an Inferior Officer, Mariner, or other; or such Superior Officer, Commander or Mariner, in his own Person, receiving a Letter or Message from any such Enemy or Rebel, and shall not in convenient time reveal the same to the Admiral, Vice-Admiral or Commander of the Squadron, be shall suffer the like pain of Death, or such Punishment as a Court Martial shall inflict. Now Spies are put to Death sometimes justly by those that manifestly have a just cause of Warring by others, by that licence which the Law of War granteth; nor ought any Person to be moved with this, that such being taken, are punished with Death; for that proceeds not from their having offended against the Law of Nations, but from this, that by the same Law every thing is lawful against an Enemy; And every one, as it is for his own Profit, determineth either more rigorously or gently: But that Spies are both lawful and practicable, there is no Question; for at this day by the general Instructions of Fleets, there are always out of each Squadron some Frigates or Ships appointed to make discovery of the Enemy; and upon sight to make Sail, and to stand with them, in order to take cognizance of their Force, as well Ships of War as Fire-Ships, and in what posture they lay; which being done, those detesting Frigates are to speak together, and to conclude on the Report they are to give, which done, they return to their respective Squadrons; such Ships in such Service are not obliged to fight, especially if the Enemies Force exceed them.
them in number, or unless they shall have an apparent Advantage.

VIII. Again, it is not lawful for any, be he Friend or Neuter, to relieve an Enemy, much less for a Soldier or Mariner in pay, to supply him that conspires the destruction of my Country, is a liberality not to be allowed of: He is to be accounted an Enemy that supplies the Enemy with Necessaries for the War; and therefore by the Laws of War is so to be esteemed; and by the Laws of England, If any Person in the Fleet relieve an Enemy or Rebel in time of War, with Money, Victuals, Powder, Shot, Arms, Ammunition, or any other Supplies whatsoever, directly or indirectly, he shall suffer Death.

IX. Ships being assaulted and taken as prize, all the Papers, Charter-Parties, Bills of Lading, Bills-ports, and other Writings whatsoever that shall be taken, seized, or found aboard, are to be duly preserved, and not torn or made away; but the very Originals are to be sent up entirely and without fraud to the Court of Admiralty, or to the Commander appointed for that purpose, in order to the Condemnation of the Prize, upon pain of the Captors losing their Share in the Prize, and also subject to such other Punishment as a Court Martial shall think fit.

X. The Right of taking of Spoil was approved of God, within those natural Bounds which have been already mentioned, as is further evinced by the Appointment of God in his Law concerning the Acquisition of Empire over the conquered, after refusal of Peace, All the spoil thereof shall thou take unto thyself, and thou shalt eat the spoil of thine Enemies, which the LORD thy GOD hath given thee. Hence it is, that things taken from the Enemy, presently become theirs that take them by the Law of Nations, and such Acquisition is called Natural, for not any cause, but the naked fact is considered; And thence a Right ariseth; for as the Dominion of things began from Natural Possession, and some print of the same remains in the things taken in the Land, the Sea, and the Air, so likewise of things taken in War; all which instantly become theirs that first become Captors: and from the Enemy are judged to be taken away those things also which are taken away from the Subjects of the Enemy. But though this gives a Right to the Captors, yet that
must be understood to the Soveraign, or to the State that
employed them, and not to themselves; but if they have
any share of the Prize, the same proceeds by the conde-
sencion or grant of the Soveraign, which may be en-
larged or abriged as occasion serves; and therefore by
the Laws of England, Ships of War having taken a Prize, Artic. 7.
the Goods and all manner of Lading is to be preserved, till Ad-
judication shall pass; but that is to be understood, where
the Ship voluntarily yields: but Ships whom they shall
assault, and take in fight as Prize, the pillage of all man-
ner of Goods and Merchandizes (other than Arms, Am-
munition, Tackle, Furnitures or Stores of such Ships) as
shall be found by the Captors, upon or above the Gun-Deck
of the Ship, become theirs; but this is to be understood
where such Prize may lawfully be possest; for there are
times when such are not to be meddled with; and there-
fore it is against the Rules of War in Fight, if some of the
Enemies Ships are there disabled; yet those Ships that
did so disable them, if they are in a condition to pursue
the Enemy, cannot during the Fight take, possest, or
burn such disabled Ships, and the reason is, left by so do-
ing some more important service be left, but they are to wait
for such Booty, till the Flag-Officers shall give command
for the same.

Vluzzali, King of Algier, in the famous Battle of Le-
panto, having behav’d himself very valiantly there against
the Chrisians, so that he destroyed several of their Gallies,
and others, he took amongst the rest of the Gallies of Pietro
Bua of Corsa, of the Prior of Messina, and Ludovico Ti-
pico of Trabu, and Benedet Soranzo, the which he tow’d
after him before the Battle was compleated; but that
getting proved the los’s both of the one and of the other;
for the Turks out of Covetousness of the Plunder, or
otherwise thriving into them, occasioned their tak-
ing fire, in which the Victors, in those Flames became
Victims, and after followed the total Rout of the Ottoman
Power.

XI. It is almost impossible, but that in Ships of War,
which in these days carry so considerable a force of men,
there will be some amongst them that have Heads of kna-
very, and Fingers of Lime-Twigs, not fearing to fete
that from their Prince which is applicable only for the
Good
Artic. 8.

Good of their Country; such sort of Night-wolves when caught, are to be severely punished; and therefore to be put to death, or taken away any Cables, Anchors, Sails, or any of the Ship's Furniture, or any of the Powder or Arms, or Ammunition of the Ship, subjects the Offender to the pains of Death, or to such other Punishment as the Quality of the Offence shall be found by a Court-Martial to deserve.

Artic. 9.

Crispus per- swading Cris- not to give up Lydia to be pillaged by his men, tells him, Non me- am, inquit, non melius me- ris quam nihilominus me jam ipsa pertinens: tuam fætus, tua illii perdunt. Herod. lib. 1.

* Vict. de Juv. Bell. n. 49. & 60.

D. & C. de Juv. rei & sci Pu- morantia.

Princes indeed are Gods, but neither do the Gods hear the prayers of suppliants, except they be just.

The Syracuseans were accused for that they slew the Wives and Children of Hyetias, because Hyetias had slain the Sister and Son of Dion. Plutarch. Timon, & Dion.
taken, destroyed; and the reason why the extremity of War is used to such, is that by how much the Mischief is the greater by the Act of such Men, if executed, by so much the Punishment is aggravated, if taken, and Quarter denied them by the Law of War.

XIII. Every Captain or Commander upon signal or order of Art. 10. Battle, or view, or fight of any Ships of the Enemy, Pirate, or Rebel, or likelihood of Engagement, are to put all things in the Ship in fit Posture for a Fight, as the breaking down the Cabins, clearing of the Ships of all things that may impede the Soldiers in the preserving the Ship and themselves, and endamaging the Enemy; and every such Commander or Captain are in their own Persons, and according to their Place, to hearten and encourage the inferior Officers and Common Men to fight valiantly and courageously, and not to be above themselves jointly, under the disgrace of being cabalized; and if be or they yield to the Enemy, Pirate or Rebel, or cry for quarter, be or they do so, shall suffer the pains of Death, or such other Punishment as the Offence shall deserve. Now, tho' Soldiers or Mariners have obliged themselves faithfully to serve in the Expedition or Navy; yet that is to be understood no further than his or their power to do their utmost in his or their Quality; for though the Obligation for the Service be taken in the strictest Terms of undergoing death and danger; yet it is to be understood always conditionally as most Promises are, viz. if the action or passion may be for that Fleet or Prince's advantage; and therefore if the Fleet or Squadron is beaten and the Ships are disabled, and left scarce without any to defend them, now the Soldiers or Mariners remaining can do no more for their Prince than die, which indeed is to do nothing at all, but to cease for ever from doing any thing either for him or themselves; in those straits therefore it is not repugnant to their Oath, called Sacramentum Militare, to ask quarter or to strike, and having begg'd a new Life and taken it, they are bound in a new and just Obligation of Fidelity to those whom they were bound to kill few hours before; neither can the Prince or General expect by virtue of their former Obligation to him, they should kill any in the place where the quarter was given: However, this Fidelity hath not its inception from the time of taking quarter; but when the Battle is over, and that time which
which is termed cold blood; for without all controversy,
if a Ship be boarded, and Quarter is given, yet if while
the Fight lasts, the Persons Captives can by any possi-

bility recover their Liberty and Ship, they may by the

Law of Arms, justly acquire the same.*

Sir Thomas
Chichely did
to aboard the Katherine in the War with Holland.

And since Impunity is granted to such unfortunate
Defectors, yet it must be apparently evident and fully
proven, that they were reduced into a Condition beyond
all hope in the Battle: and therefore the Foot that for-
sook the Unfortunate Pompey before the Field was lost, were
justly condemned for the breach of the Roman Discipline
and Law of Arms: and therefore the Article hath not
positively declared Death only, but added, or such other
Punishment as the Offence shall deserve, which Provi-

sion leaves the Action to be judged and punished by a
Council of War, who know best what's to be done in
Cafes of that nature; however, a base or cowardly yielding,
or crying quarter, is to be punished with Death, and that
without Mercy.

XIV. The obeying of Orders hath in all Ages been in
mighty esteem: Chrysantus, one of Cyrus's Soldiers, being
upon his Enemy, withdrew his Sword, hearing a Retreat
founded; but this comes not from the external Laws of
Nations; for as it is lawful to seize on the Enemy's Goods,
so likewise to kill the Enemy, for by that Law the En-
emies are of no account; but such Obedience proceeds
from the Military Discipline of several Nations. By the
Romans it was a Law noted by Modephinus, That who-
ever obeyed not his Orders, should be punished with death,
though the matter succeeded well: Now he also was sup-
posed not to have obeyed, who out of Order, without
the Command of the General, entred into any Fight. For
if such liberty were lawful, either Stations would be de-
ferred, or (licence proceeding) the Army, Fleet, or Squad-
ron would be engaged in unadvised Battles, which by all
means is to be avoided. M. Capello, a Venetian Gentle-
man of an antique Extraction, having the Charge of the

guarding the Venetian Gulpb*, met with the Barbary
Fleet, whom he so assaulted, that he burnt and took
divers
divers of them; amongst the rest the Admiral Galley of Algier, (a Vessel of vast bigness) which he brought with him away, and she remains at this day a Trophy in the Arsenal of Venice; the Service, although Noble and Honourable, and such as brought renown to the Republick, yet in regard it was an Action exceeding his Commission, he was adjudged to punishment (but his great Merit and Alliance preserved his Life;) such an exact Obedience that Signory expects to be paid to her Orders, be the Success never so glorious. And by the Eleventh Article, Every Captain, Commander, and other Officer, Seaman or Soldier of any Ship, Frigate, or Vessel of War, are duly to observe the Commands of the Admiral, or other his Superior, or Commander of any Squadron, as well for the assaulting and setting upon any Fleet, Squadron, or Ships of the Enemy, Pirate or Rebels, or joining Battle with them, or making defence against them, as all other the Commands of the Admiral or other his Superior Commander, the disobeying of which subjects him to the pains of Death, or such other Punishment as the Quality or Neglect of his Offence shall deserve.

XV. Again, Every Captain and all other Officers, Mariners and Soldiers of every Ship, Frigate, or Vessel of War, shall not in time of any Fight or Engagement withdraw or keep back; but on the other hand, they are to come into the Battle, and engage, and do their utmost endeavour to take, fire, kill, and endamage the Enemy, Pirate or Rebel, and assault and relieve all other his Confederate Ships; and if they shall prove Cowards, they are to be dealt with as Cowards ought by the Law of Arms, which is to suffer Death: But circumstances of things may make alteration of Matters, therefore there is added other punishment, as the circumstance of the Offence shall deserve, or a Court Martial think fit. By the word Captain the General or Admiral is not included, but all Flag-Officers and others under them, are within the purview of the Statute by the denomination of the word Captain, &c. and the Reason wherefore such Commanders in Chief are not within the Law, is, because the Weapon of a General is his Truncheon, but of
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all other Officers is the Sword; a General is only to command, and the rest to execute, for in the latter is the danger only of one Man’s life, but in the first is the hazard of all; therefore by the Law of Arms no General or Admiral in Chief ought to expose their Person to apparent Peril, but in case of a general Overthrow and manifest Defeat, Peter Capponi, the Famous General for the Florentines besieging Soiana, and encamping on the River Casina †; being in a Place of danger, extremely industrious about planting his Battery, was shot with a Harquebus, immediately upon which the Siege was raised; yet, on the other hand, let it be examined where any famous battle hath been obtained, and the same was not got, not only by the Conduct, but likewise by the single and personal Courage of the General.

There are some Offices to be done, even to them from whom you have received an Injury; for Revenge and Punishment must have a measure; and therefore the Issues of the Roman Wars were either mild or necessary: Now when killing is just in a just War, according to internal Justice, may be known by examining the Causes or End of the War, which may be for the Confirmation of Life and Members, and the keeping and acquiring of things useful unto Life; now in the assailing of Ships, it happens that one is slain on purpose or without purpose; on purpose can no man be slain justly, unless either for just punishment, as if without it we cannot protect and defend our Life, Goods, and Country, &c. That such Punishment may be just, it is necessary that he who is slain have offended, and that so much as may be avenged with the punishment of Death in the Sentence of an equal Judge. Now we must note, between full Injury and mere Misfortune often intercedes some mean, which is as it were composed of both, so that it can neither be called the Act of one knowing and willing, nor merely the act of one ignorant or unwilling.

This Distinction by Themisius is fully illustrated: You have made a difference between an Injury, a Fault, and a Misfortune; although you neither study Plato, nor read Aristotle, yet you put their Doctrine in practice; for you have not thought them worthy of equal punishment, who from the beginning persuaded the War, and who afterward were carried
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ried with the stream, and who at last submitted to him, that now seemed to have the highest Power; the first you condemned, the next you chastised, the last you pitied. Most certain, to spare Captives or Prisoners of War, is a command of Goodness and Equity; and in Histories they are often commended, who when too great a number prove burdensome or dangerous, chose rather to let them all go than to stay them, or detain them, though for Ransoms; as in the last Flemish Wars with England. So for the same causes, they that strike or yield up themselves are not to be slain (though there is no Provision made by Covenant). In Towns besieged it was observed by the Romans, before the Ram had smitten the Wall; Cæsar * denounceth to the Aquatii, he would save their City, if before the Ram had touched the Wall, they yielded; which is still in use in weak Places, before the great Guns are fired; in strong Places, before an Assault is made upon the Walls; and at Sea, by firing one or two Guns, or hanging out the Bloody Flag, according as the Instructions are; however till there be an absolute yielding or quarter cried, by the Law of Arms, as well as the abovementioned Article, every Commander and Soldier is to do his utmost to take, fire, kill, and endamage the Enemy, or whatsoever may tend thereunto.

Prisoners all put to Death. Phil. Comin.

XVI. By the Law of Arms, he deserves punishment who doth not keep off force that is offered to his Fellow Soldier; and though it hath been conceived, if there be manifest danger, that he is not bound to come into his Relief; for such Commander may prefer the lives in his own Ship before those in another, yet that suffices not; for every Soldier by the Law of Arms is not only bound to defend, but also to assist and relieve his Companion: now Companions are in two respects, either those that are in actual service with such Soldiers, or those that are not, but only committed to their Protection or Convoy, which are to be defended and guarded at the same peril and charge that a fellow Soldier is; and therefore all Ships that are committed to Convoy and Guard, They Artic. 13.

are diligently and carefully to be attended upon without delay, according
Of the Naval Military part. Book I.

according to their Instructions, in that behalf: And whofoever shall be faulty therein, and shall not faithfully perform the same, and defend the Ships and Goods in their Convoy, without either diverting to other parts or occasions, or refusing or neglecting to fight in their defence, if they be set upon, or assailed, or running away cowardly, and submitting those in their Convoy to Hazard and Peril, or shall demand or exact any Money or other Reward from any Merchant or Master, for conveying of any such Ships or other Vessels belonging to His Majesty's Subjects, shall be condemned to make reparation of the Damage to the Merchants, Owners, or others, as the Court of Admiralty shall adjudge, and also be punished criminally according to the quality of their Offences, be it by Pains of Death or other Punishment, according as shall be adjudged fit by that Court Martial.

Protection of Convoys by the Laws of Nations, is of a great Utility to a Kingdom or State; therefore when Violence is offered to those Ships under Convoy, they are not said to be done to them, but to those Ships of War under whose Guard they pass; and therefore when Violence is offered to such, publick Revenge is let in, according to that of Tacitus, He should provide for their Security by a just Revenge. Now that such Ships may not suffer Wrong from their Invaders, two ways may be taken by their Convoys: first, by destroying him or them that shall have attempted and committed any hostile Act against any thing under their Protection; secondly, by all ways imaginable endeavour the weakening his or their Force, that he or they may not be able to do any other or further Hurt; therefore there is no doubt but Vindication to these Ends is within the Bounds of Equity, though this is no more than private; yet if he respect the bare Law of Nature, abstract from Laws Divine and Human, and from all not necessary Accidents to things, it is not unlawful, whether the Satisfaction or Revenge is taken by Convoy Ships themselves, or the wronged ones under his or their Guard or Protection, seeing it is conscientious to Nature, that Man should receive Aid from Man; and in this Sense may be admitted that saying of Cicero, The Law of Nature is that which comes not from Opinion, but innate Virtue: Among the Examples of it is placed Vindication, which he opposes to Favour; and that none might doubt
doubt how much he would have understood by that name, he defines Vindication, whereby, by defending or revenging, we keep off Force and Contumely from us and ours, who ought to be dear unto us, and whereby we punish Offences.

Now those Ships that are not under Convoy, but engaged in Fight, are faithfully to be relieved, and therefore if a Squadron shall, happen to be over-charged and distressed, the next Squadron or Ships are to make towards their relief and assistance upon a Signal given them. Again, Ships that are disabled by loss of Masts, shot under Water, or the like, so as they be in danger of sinking or taking, the distressed Ships generally make a Sign by Waft of their Jack and Ensigns, and those next to them are bound to their Relief; but yet this does not always hold place; for if the distressed Ship is not in probability of sinking, or otherways encompassed with the Enemy, the Reliever is not to stay under pretence of securing them, but ought to follow his Leader and the Battle, leaving such lame Ships to the Sternmost of the Fleet, it being an undisputed Maxim, That nothing but beating the Body of the Enemy can effectually secure such disabled Ships.

XVII. It is not enough that Men behave themselves valiantly in the beating of an Enemy, for that not all, but the reducing of them into a condition to render right either for Damage done, or to render that which is right, which can’t well be done without bringing him to Exigences and Straits; and therefore if the Enemy, Pirate, or Rebel be beaten, None, through Cowardice, Negligence, or Disaffection, ought to forbear the pursuit, and those of them flying; nor ought such either through Cowardice, Negligence, or Disaffection, forbear the assistance of a known Friend in view, to their utmost Power, the Breach of which subjects the Offenders to the Pains of Death, or at least such Punishment as a Court Martial shall think fit.

Empires are got by Arms, and propagated by Victory; and by the Laws of War, they that have overcome, should govern those they have subdued. Hence it is, that Generals having compleated a Conquest in a just War, and in chafe or otherwise have taken the Ships or Goods of the Enemy, have absolute Power over the Lives, Estates, Ships and things that they by Force of Arms have acquired by the Laws of Nations.
But yet in such Conquests where the reeking Sword knows no Law, that is, they are done impune, without Punishment, (because co-active Judges do grant them their Authority) yet such Power may be exorbitant from that Rule of Right called Virtue; and though by the Law of War Captives may be slain, yet what Law forbids not, Modesty prohibits to be done. Hence it is that Generals do often restrain that Power of killing; for though such Prisoners of War do fight for the Maintenance of an unjust Cause, and although the War is begun by a solemn Manner; yet all Acts that have their rise from thence, are unjust by internal Injustice, so that they who knowingly do persist in fighting, * yet ought they not always to be slain, according to that of Seneca: Cruel are they, says he, † that have Cause of Punishment, but have no measure. For he that in punishing goes further than is meet, is the second Author of Injury; and the principal Reason why Mercy is often shewed, is for that Soldiers of Fortune offend not out of any Hatred or Cruelty, but out of Duty.

XVIII. Again, Generals in the Measure of killing, look commonly no further than the Destruction of those who by Force of Arms oppose them; and though Ships or Cities are taken by Assault, the which by the Laws of War subjects every individual to the Mercy of the Conqueror, yet Children, Women, old Men, Priests, Scholars, and Husbandmen are to be spared; the first by the Law of Nature, according to that of Camillus: We have Arms, says he, not against that Age which even in taking Cities is spared, but against armed Man: and this is the Law of Arms amongst good Men; by which we are to note, that by the Words good Men, as is observed, we mean the Law of Nature, for strictly by the Law of Arms, the Slayers of them are without Punishment.

Pretences may be found out against Men of mature Age, but against Infants, Calumny itself can find nothing to say, as being clearly Innocents.

Now that which hath always place in Children that have not attained the use of Reason, for the most part prevails with Women; that is, unless they have commit-
ted something peculiarly to be avenged, or do usurp manly Offices, as flinging of Stones from the Wails, pouring down burning Pitch, Brimstone, and the like bituminous Stuff, firing of Guns, and the like; for it is a Sex that hath nothing to do with the Sword, that are capable of that Clemency.

The like for Old Men, who, Papinius observes, are not to be slain; so for Ministers of sacred things, even barbarous Nations have had them in Reverence and Preservation; as the Philistines, Enemies of the Jews, did to the College of Prophets, to whom they did no Harm: and with those Priests are justly equalled in this Respect, they that have chosen a like kind of Life, as Monks and Penitents, whom therefore as well as Priests, the Canons following in natural Equity will have spared: to these are deservedly added those that give themselves to the study of good Learning and Sciences useful to Mankind, be it in Universities, or other publick Schools or Colleges. But yet if any of these be taken in actual Service, they then may receive the common Fate of others. So our King Richard the First, having taken the Martial Bishop of Beauvais Prisoner, received a Letter from the Pope, that he should no longer detain in Custody his dear Son; the King sent the Pope back the Armour wherein he was taken, with the Words of Jacob's Sons to their Father, See whether or no this be the Coat of thy Son.

To these are added Trade-men, so likewise Merchants, which is not only to be understood of them that stay for a time in the Enemy's Quarters, but of perpetual Subjects; for their Life hath nothing to do with Arms, and under that Name are also contained other Workmen and Artificers, whose Gain loves not War but Peace.

Again, Captives, and those that yield, are not to be slain, for to spare such is a Command of Goodness and Equity, says Seneca; however it may so come to pass, that though the military Power may exempt a Prisoner of War from the Execution of the Sword, yet it may be out of their Power to exempt or discharge a Delinquent or Traitor from the Execution of the Magistrate, as if the Fleet were prepared, and the War principally begun for the Suppression of such; and the Reason of this is, if it should be in the Power of one Soldier, who takes a Trai-

\[ N 4 \]
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It would {pari ratione} be in the Power of all to pardon; not that the Article hath no effect, for the Traitor is by that freed from the immediate Execution of the Sword: Sure it is, that if the yielding be in \emph{aperto praedio}, methinks absolute Pardon is implicitly in the Contract: however this is undeniable, that having yielded himself Prisoner of War, if he escape, he forever loses the Benefit of the Promise. Nor are Hostages to be destroyed, according to that of Scipio, who said: \textit{He would not shew his Displeasure on harmless Hostages, but upon those that had revolted; and that he would not take Revenge of the unarmed, but of the armed Enemy.}\! Tis very true by the Law of Arms, if the Contract be broke for which they became Hostages, they may be slain, that is, the Slayer is without Punishment: But yet some conceive the Slayer is not without Sin, for that no such Contract can take away any Man's Life; that is, I suppose, an Innocent's Life; but without Controversy, if those that become Hostages be, or were before, in the number of grievous Delinquents, or if afterwards he hath broken his Faith given by him in a great Matter, the Punishment of such may be free from Injury.

XIX. Where Offences are of that nature as they may seem worthy of Death, as Mutiny, and the like, \\&c. it will be a Point of Mercy, because of the multitude of them, to remit extreme Right, according to that of Seneca: \textit{The Severity of a General shows itself against Particulars, but Pardon is necessary when the whole Army is revolting: What takes away Anger from a wise Man? the multitude of Transgressors.} Hence it was, that casting of Lots was introduced that too many might not be subjected to punishment.

\footnotesize{\textit{de Ira cap. 10. Quicquid multis peccator inultum est. Magis monendo quam minando sic enim agere dum est cum multitudine peccantium, severitas autem excercenda est in peccata paucorum. Vide Gaiium de Pace publ. lib. 11. cap. 9, 36. \* Vide Grot. lib. 3. cap. 11. § 17.}}

However all Nations have generally made it a standing Rule in the Punishment of Mutineers, as near as possible, to hunt out the Authors, and make them Examples. \footnote{\textit{Vit\'or. de Jure Belli, n. 55. lib. 2.}}

\footnote{And
And therefore by the 15th Article. If any Man at Artic. 15.
any time, when Service or Action is commanded, shall pre-
sume to stop, or put backwards or discourage, the said Ser-
vice and Action, by pretence of arrears of Wages, or upon
any pretence of Wages whatsoever, they are to suffer Death;
and indeed the same ought to be without Mercy, by how
much the more they may raise a Mutiny at a time when
there is nothing expected but an Action, and the shewing
the most obsequious Duty that possibly may be; the
Breach of which may occasion the Damage of the whole
Fleet, and being of such Dangerous Consequence, ought
to be severely punish'd. Gustavus Adolphus upon his
first entrance into Germany, perceiving how that many
Women followed his Soldiers, some being their Wives,
and some wanting nothing to make them so but Marriage,
yet most passing for their Landresses (though com-
monly defiling more than they wash) the King coming
to a great River, after his Men and the Wagons were
passed over, caused the Bridge to be broken down, hop-
ing so to be rid of these feminine Impediments; but
they on a sudden lifted up a panicke Shrick which pierced
the Skies, and the Soldiers Hearts on the other side of
the River, who instantly fell into Mutiny, vowing not
to stir a Foot further except with Baggage, and that the
Women might be fetched over, which was done accord-
ingly; for the King finding this ill Humour so generally
dispers'd in his Men, that it was dangerous to purge it
all at once, smiled out his Anger for the present, and
permitted what he could not amend. So likewise the Artic. 19,
uttering any Words of Sedition or Mutiny, or the endeav-
ouring to make any mutinous Assemblies upon any Pretence
whatsoever, is made Death: And the very Concealers of
any traiterous and mutinous Practises, Designs, or Words,
or any Words spoken by any to the Prejudice of His Majesty
or Government, or any Words, Practises, or Designs tend-
ing to the Hindrance of the Service, and shall not reveal them,
subject them to such Pains and Punishments as a Court
Martial shall think fit. And whereas in any of the Of-
fences committed against any of the Articles for the Go-
vernment of any of His Majesty's Ships of War, within
the narrow Seas, wherein the Pains of Death are to be
inflicted, Execution of such Sentence ought not to be
made
made without leave of the Lord Admiral; this of Mutiny is totally excepted, for such may be executed immediately.

XX. It is not lawful for Princes or States to make of their Enemies Traitors, or cause them to desert the Service of their Prince, or to bring over their Ships, Ordnance, Provisions, or Arms; for as 'tis not lawful for any Subject to do the same, so neither to tempt him; for he that gives a Cause of sinning to another, sins also himself; but if a Man will voluntarily, without any other Impulse than his own, bring over the Ships or Armies, or desert the Service of his Prince to serve another, this, though a Fault in the Defender, is not in the Receiver: We receive a Fugitive by the Law of War, (faith * Celsus) that is, it is not against the Law of War to admit him, who having deserted his Prince's part, elected his Enemy's; nor are such to be rendered, except it shall be agreed, as in the Peace of * Lewis the Eleventh. However such forts of Gamesters, if caught, are to be severely punished; and therefore it is provided, That if any Sea-Captain, Officer, or Seaman, shall betray his Trust, or turn to the Enemy, Pirate, or Rebel, or run away with their Ship or Ordnance, Ammunition, or Provision, to the weakening of the Service, or yield the same up to the Enemy, Pirate or Rebel, they shall be punished with Death; so likewise, If any desert the Service or the Employment which they are in on Ship-board, or shall run away or entice any other so to do, they are subject to the like pain of Death. And by the Law of Nations, such Defectors that run away from their Colours or Fleet before Peace proclaimed and concluded, all Persons of that Prince from whom they fled, have a Right indulged to them to execute publick Revenge.

XXI. By the Laws of Nations, Spies may be sent to view and survey the Enemy's Force, Fleet, Station, and make discovery of whatsoever may give Advantage to the Persons sending, as is mentioned above; but being apprehended they are put to Death; and therefore if any Person shall come from or be found in the nature of Spies,
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To bring any seducing Letters or Messages from any Enemy or Rebel, or shall attempt or endeavour to corrupt any Captain, Officer, Mariner, or other of the Navy or Fleet, to betray his or their Trust, or yield up any Ship or Ammunition, or turn to the Enemy or Rebel, he shall be punished with Death.

XXII. Soldiers and Mariners owe all Respect and Duty to their Superior Officers; and therefore when they are in Anger, they ought to avoid them: But above all, not to quarrel with, or give them any provoking Language: And therefore by the Law of Arms, a Soldier who hath refilshed his Captain, willing to chastise him, if he hath laid hold on his Rod, is cahier'd, if he purposefully break it, or laid violent Hands upon his Captain, he dies: * And by the Laws of England, if any Perfon shall presume to quarrel with his Superior Officer he shall suffer severe Punishment; and if he strikes him, he shall suffer Death, or otherwise as a Court Martial shall adjudge the Matter to deservf †.

XXIII. And though Mariners and Soldiers may have just Cause of Complaint, as that their Victuals or Provisions are not good, yet must they not mutiny or rebel, whereby to distract or confound the whole Crew, but must make a civil and humble Address to their Commander, that the same may be amended; and if the Case be such, that the Commander cannot redress the same, by going to Port to supply the Exigencies, without Detriment of the Fleet, (as if ready to engage, or the like) they must, like Men and Soldiers, bear with the Extremity, considering that ’tis better that some Men should perish, may the whole Crew in one Ship, than the whole Fleet; nay, perhaps the whole Kingdom be destroyed: And therefore if any in the Fleet find Cause of Complaint of the Unsubstantiality of his Victuals, or upon other just ground, he shall quietly make the same known to his Superior or Captain, or Commander in Chief, as the Occasion may require; and the said Superior or Commander is to cause the same to be presently remedied accordingly; but no Perfon upon any such or other Pretence, shall privately attempt to stir up any Disturbance, upon pain of such severe Punishment as a Court Martial shall think fit to inflict.

XXIV. And
XXIV. And as the Law doth provide that there be no waste or spoil of the King's Provision, or imbezzelement of the same; so likewise that care be taken, the Ships of War neither through Negligence or Wilfulness be stranded, split or hazarded, upon severe Penalties. In Fights, and when great Fleets are out, there are generally Instructions appointed for all Masters, Pilots, Ketches, Hoyes, and Smacks, who are to attend the Fleet, and to give them notice of the Roads, Coasts, Sands, Rocks, and the like; and they have particular Stations allotted them, and Orders given, that if they shall find less Water than such a proportion, they then give a Signal as they are directed to give, and continue their Signal till they are answered from the Capital Ships.

But in time of Fight they generally lay away their head from the Fleet, and keep their lead; and if they meet with such a Proportion of Water as is within their Directions, they are to give such Signal as they receive Orders for, and stand off from the danger; but the wilful burning of any Ship or Magazine-store of Powder, Shipboat, Ketch, Hoy, or Vessel, or Tackle, or Furniture thereof belonging, not appertaining to an Enemy or Rebel, shall be punished with Death.

XXV. There are other faults often committed by the Crew, the which the Law does punish, as a quarrelling on Ship-board; using provoking Speeches tending to make quarrel or disturbance; Murthers; wilful killing of any Man; Robbery; Theft; and the unnatural Sin of Sodomy and Buggery, committed with Man or Beast: all which, and all other Faults and Misdemeanors are punished with Death, or according to the Laws and Customs in such places used at Sea; and when any Persons have committed any of the Offences particularly mentioned in the Statute of 13 Car. 2. Cap. 9. and contained in the Articles, or any others, and for the which they shall be committed, the Provost Martial is to take them into custody, and not suffer them to escape, and all Officers and Seamen are to be aiding and assisting to Officers for the detecting and apprehending of Offenders.

Touching the Punishments that the Roman Generals used to their Soldiers, when they were at a Court Martial found faulty, they were commonly proportioned according
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In the Offence committed: Sometimes they were easy, of which sort were those which only branded the Soldier with disgrace; others were those that came heavy on the Person or Body. To the first belonged a shameful discharging or calthing a Mariner or Soldier from the Army, and generally looked on as a matter of great disgrace, which punishment remains at this day for offences as well in England, as in most parts. A second was by stopping of their Pay; such Soldiers which suffered this kind of mule, were said to be ΄Ερε διρεσί, for that ΄Ες illud diruebatur in fiscum, non in Militis sacculum; the which is and may at this day be inflicted, especially on such as shall wilfully spoil their Arms, and for the like sort of offences. A third was a Sentence enjoined on a Soldier to resign up his Spear; for as those which had achieved any Noble Act, were for their greater Honour conferred up that Military Weapon of Honour. A fourth sort of punishment was, that the whole Cobort, which had lost their Banners or Standards, either in the Fields or at Sea, were inforced to eat nothing but Barley-bread, being deprived of their allowance in Wheat, and every Centurion in that Cobort had his Soldier’s Belt or Girdle taken from him, which was no less disgrace among them than the degrading (among us) one of the Order of the Garter: for petty Faults they generally made them stand bare-footed before the General’s Pavilion, with long Poles of Ten Foot in length in their Hands, and sometimes in the sight of the other Soldiers to walk up and down with Turf, on their Necks, and sometimes carrying a Beam like a Fork upon their Shoulders round the Town. The last of their Punishments was, the opening of a Vein or letting them Blood in one of their Arms, which generally was inflicted on them who were too hot and bold.

The great Judgments were, to be beaten with Rods, which was generally inflicted on those who had not discharged their Office, in the sending about that Table called Teffera, wherein the Watch-word was written, or those who had itoln any thing from the Camp, or that had forfaken to keep Watch, or those that had born any false Witness against their Fellows, or had abused their Bodies.
Bodies by Women, or those that had been punished thio for the same Fault, sometimes they were sold for Bond slaves, beheaded and hanged. But the last, which was in their Mutinies, the punishment fell either to Lots, as the Tenth, Twentieth, and sometimes the Hundredth Man, who were punished with Cudgelling; and with these Punishments those in England have a very near affinity as cleansing the Ship, losing Pay, ducking in the Water, beaten at the Capson's-head, hoist up the main Yard end with a Shovel at their Back, hanged, and shot to Death and the like.

XXVI. The Admiral may grant Commissions to inferior Vice-Admirals or Commanders in Chief of any Squadron of Ships, to assemble Court Martials, consisting of Commanders and Captains, for the Trial and Execution of any of the Offences or Misdemeanors which shall be committed at Sea; but if one be attained before them, the same works no corruption of Blood or forfeiture of Lands; nor can they try any Person that is not in actual Service and Pay in His Majesty's Fleet and Ships of War. But in no case where there is Sentence of Death can the Execution of the same be without leave of the Lord Admiral, if the same be committed within the narrow Seas. Yet this does not extend to Mutiny, for there in that case the Party may be executed presently.

All Offences committed in any Voyage beyond the narrow Seas where Sentence of Death shall be given upon any of the aforesaid Offences, Execution cannot be awarded nor done, but by the Order of the Commander in Chief of that Fleet or Squadron, wherein Sentence of Death was passed.

XXVII. The Judge-Advocate hath Power given by the words of the Statute, to administer an Oath in order to the Examination or Trial of any of the Offences mentioned in the Statute of 13 Car. 2. Cap. 9. and in his absence the Court Martial hath power to appoint any other Person to administer an Oath to the same purpose. This Statute enlarges not the Power and Jurisdiction of the Admiral, any further than only to the abovementioned Offences, in any case whatsoever, but leaves his Authority as it was before the making of this Statute. Nor does it give the Admiral any other or further Power to inquire and
and punish any of the above-mentioned Offences, unless the same be done upon the main Sea, or in Ships or Vessels being and hovering in the main Stream of great Rivers only beneath the Bridges of the same Rivers nigh to the Seas, within the Jurisdiction of the Admiralty, and in no other place whatsoever.

XXVIII. As Soldiers and Mariners for the Honour and Safety of the Realm, do daily expose their lives and limbs, so the Realm hath likewise provided for them, in case they survive and should prove disabled or unfit for Service, a reasonable and comfortable maintenance to keep them; the which the Justices of the Peace have power yearly in their Easter Sessions to raise by way of a Tax, for a weekly relief of maimed Soldiers and Mariners.

The maimed Soldier or Mariner must repair to the Treasurer of the County where he was pressed, if he be able to travel; if he be not, then to the Treasurer of the County where he was born, or where he last dwelt by the space of Three Years; but if he prove unable to travel, then to the Treasurer of the County where he lands.

He must have a Certificate under the chief Commander, or of his Captain, containing the Particulars of his Hurt and Services.

The Allowance to one not having been an Officer, is not to exceed Ten Pounds per Annum;

Under a Lieutenant —— 15 
A Lieutenant —— 20

Till the Mariner arrives at his proper Treasurer, they are to be relieved from Treasurer to Treasurer, and when they are provided for, if any of them shall go a begging or counterfeit Certificates, they shall suffer as common Rogues; and lose their Penions: Over and above this Provision, His Sacred Majesty hath provided a further Supplement for his maimed Mariners and Soldiers disabled in the Service, which is issued out at the Chest at Chatham, and constantly and duly paid them; and for his Commanders, Officers, and others that served abroad, he, of his Royal Bounty, hath given to those that bear the Character of War, and purchase the same by their Fidelity and Valour, a pious Bounty called smart-Money, over

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over and above their Pay; and laid the Foundation of an Hospital at Chelsea, in his Life-time, which his Sacred Majesty hath compleated, and endowed, both with Beauty and Magnificence, excelling all in Christendom.

Nor must we forget that noble Hospital at Greenwich, which for a further Encouragement for Marine, maimed or worn out with Age or any other Infirmities, the Sea Service, our late most glorious Deliverer King William the Third, was graciously pleased to give a Royal Bounty a stately Palace at Greenwich for an Hospital, which is since so enlarged as to receive a thousand Seamen; and when compleat will be able to receive four hundred more, which for Stateliness and Grandeur, may venture to say, will exceed any thing of its Kind in Christendom can produce.

And it must not be omitted a very laudable Undertaking is very lately set on Foot, it being a generous and voluntary Subscription by all the Officers of the Navy allowing Three-pence in the Pound to be deducted out of their Wages for the Maintenance of the Widows and Orphans of such Commission and Warrant-Officers, who died since the 30th of August 1732, from which time it commences; which his present Majesty King George II. was graciously pleased to encourage by the granting him Royal Commission, bearing Date the 30th of August 1732, by which a comfortable Maintenance is secured by the following Allowance.

\[
\begin{align*}
\text{Captain} & \quad 45 \text{. per Annum.} \\
\text{Lieutenant} & \quad 30 \\
\text{Master} & \quad 20 \\
\text{Widow of the} & \\
\text{All other Warrant Officers} & \\
\end{align*}
\]

The greatest assurance of a Fleet is in the prudent Government of the Admiral; the greatest weakning of it is by discontent, which generally proceeds from two things, want of good Victuals at Sea, and Pay when come home; these are the poor Mariners Aqua viva; but want of them is such an Aqua fortis as eats through all manner of Duty and Obedience: That Prince that expects to be well served and obeyed, (especially by an Englishman) must take care that he suffer not a greater Power in his Flee
han his own; this Commander is Necessity, which breaks Discipline at Sea, and creates Discouragement at Land.

XXIX. The Wisdom of the Romans was mightily to \textit{vidit Salmuth.} commendéd, in giving of \textit{Triumphs} to their \textit{Generals in Pancer. Leg. rerum depraed. Ca. de Tri- umphb. Dion Halicarnas.} after their Return, of which they had various forts; but the greatest was when the \textit{General} rid in his Chariot adorned and crowned with the Victorious Laurel, the \textit{Senators} with the best of the \textit{Romans} meeting him, his Soldiers (especially those who by their Valour had purchased Coronets, Chains, and other Ensigns of reward for their Conduct and Courage) following him: But what alas! could these to the more sober represent any other but horror, since the Centers from whence the Lines were drawn, could afford nothing but Death, Slaughter and Desolation on those who had the Souls and Faces of Men; and if it were possible, that the Blood which by their Commissions was drawn from the sides of Mankind, and for which they made those Triumphs, could have been brought to \textit{Rome}, the same was capable of making of a Source great as their \textit{Tiber}; but \textit{Policy} had need of all its Stratagems to confound the Judgment of a Soldier by excessive Praisés, Recompences and Triumphs, that so the Opinion of Wounds and wooden Legs might raise in him a greater Esteem of himself, than if he had an entire Body. To allure others, something also must be found out handsomely to cover wounds and frightments of Death; and without this \textit{Cesar} in his Triumph, with all his Garlands and Musick, would look but like a Victim; but what sorrow of Heart is it to see passionate Man, a Ray of Divinity, and the Joy of Angels, scourged thus with his own Scorpions? The cholerickeks of War (whereby the lustful heat of so many Hearts is reduced) stirs up the Lees of Kingdoms and States, as a Tempest doth weeds and flimy sediment from the bottom to the top of the Sea, which afterwards driven to the Shore, together with its foam, there covers Pearls and precious Stones: and though the Cannon should seem mad by its continual firing, and the Sword reeking hot by its daily slaughters, yet no good man doubts but they, even they, shall weather out those Storms, and in the midst of those merciless In-
Of Salutations.

Of Salutations by Ships of War, and Merchant Men.

I. Of Salutations paid in all Ages as an undoubted Mark of Sovereignty of this Empire.
II. Of those Seas where this Right is to be paid to the King of England's Flag.
III. In what manner the King of England holds this Right, and by whom to be paid.
IV. Of those that shall neglect or refuse to do the same, how punished and dealt withal.
V. Where His Majesty of Great Britain's Ships are to strike their Flag, and where not.
VI. Of the saluting of Ports, Castles, Forts, how the same is to be done, and on what Terms.
VII. Of Ships of War their saluting their Admiral and Commanders in Chief.
VIII. Of Ambassadors, Dukes, Noblemen, and other Persons of Quality, how to be saluted coming Aboard and landing.
IX. The Admiral of any Foreign Nation, if met withal, how to be saluted and answered.
X. Of the Men of War or Ships of Trade of any Foreign Nations, saluting His Majesty's Ships of War, how to be answered.
XI. Of the saluting of His Majesty's own Forts and Castles, and when the Salute ceases.
XII. Of the Objections that seem to be made against the necessity of such Salutations.
XIII. Why Kingdoms and States attribute the Effects, not the cause of Rights, to prescription.
XIV. That Kingdoms and Republics ought not to be disordered for the Defeat of Right, in presumption, and the objection in the XII. §, answered.
XV. The Inconstancy of War, and the causes justifying the same.
XVI. Of the causes not justifiable in War.
XVII. Of Moderation, and the utility of Faith and Peace.

It is evident by what hath been said, that the British Seas, before the Roman Conquest, ever belonged to the Isle of Great Britain, they always claiming and enjoying the sole Dominion and Sovereignty of the same, which afterwards accrued to the Romans by Conquest, and from them translated with its Empire to the succeeding Saxon, Danish, and Norman Kings; and in the Reigns of those Princes there were always some marks of Sovereignty.
raignty paid, wherein the right of the same was evinced and acknowledged.

II. Now those Seas in which this Salutation or Duty of the Flag are to be paid, are the four circumjacent Seas, in which all Vessels whatsoever are to pay that Duty, according to the Custom of the same, and the Ordinance of King John. How far this Right is payable, appears in the Fourth Article in the Peace between His Majesty and the States-General of the United Provinces, in these words:

— That whatever Ships or Vessels belonging to the said United Provinces, whether Vessels of War or other, whether single or in Fleets, shall meet in any of the Seas from Cape Finisterre to the middle point of the Land Van Staten in Norway, with any Ships or Vessels belonging to His Majesty of Great Britain, whether those Ships be single or in great number, if they carry His Majesty of Great Britain's Flag or Jack, the aforesaid Dutch Vessels or Ships shall strike their Flag and lower their Top-sail, in the same manner, and with as much respect as at any time, or in any place, been formerly practised, towards any Ships of His Majesty of Great Britain, or his Predecessors, by any Ships of the States-General, or their Predecessors.

III. Now His Majesty holds not this Salutation or Respect, by virtue of the League of the Article, but as the same is a RIGHT inherent to the Empire of Great Britain; and therefore in the first part of the Article it is declared in these Words:

— That the aforesaid States-General of the United Provinces, in due acknowledgment on their part of the King of Great Britain's RIGHT to have his Flag respected in the Seas hereafter mentioned, shall and do declare, and agree.

Now this Right extends and subjects all Nations whatsoever that shall pass through those Seas, and between those Places meeting with any of His Majesty's Ships of War, bearing his Flag, Jack, or Cognizance of Service, to strike their Top-sail, and take in their Flag in acknowledgment of His Majesty's Sovereignty in those Seas; and if any shall refuse to do it, or offer to resist, they may be compelled vi, & manu forti, for His Majesty's Honour is by no means to receive the least Diminution.
IV. If therefore any of His Majesty's Subjects should be so negligent or forgetful to pay that Obedience, when it may be done without loss of the Voyage, they are to be seized on, and brought to the Flag, to answer the Contempt, or else the Commander may remit the Name of the Ship, Commander or Master, as also the Place from whence, and the Port to which she shall be bound, to the Admiral; however, before she is dismissed, she must pay the Charge of the Shot that her Negligence or Forgetfulness occasioned, and afterwards may be indicted for the same, and severely punished.

V. In His Majesty's Seas, none of his Ships of War are to strike to any; and in no other Part is any Ship of His Majesty to strike her Flag or Top-sail to any Foreigner, unless such Foreign Ship shall have first struck, or at the same time have struck her Flag or Top-sail to His Majesty's Ships.

VI. But if any of the King of England's Ships of War shall enter into the Harbour of any Foreign Prince or State, or into the Road within shot of Cannon of some Port or Castle, yet such Respect must be paid, as is usually there expected, and then the Commander is to send ahore to inform himself what return they will make to his Salute; and that if he hath received good Assurance, that His Majesty's Ships shall be answered Gun for Gun, the Port is to be saluted, as is usual; but without assurance of being answered by an equal number of Guns, the Port is not to be saluted: And yet in that very respect before the Port is to be saluted, the Captain ought to inform himself, how Flags (of the same quality with that he carries) of other Princes have been saluted there, the which is peremptorily to be insisted on, to be saluted with as great Respect and Advantage as any Flag (of the same quality with the Captains) of any other Prince hath been saluted in that place.

VII. A Captain of a Ship of a second Rate, being neither Admiral, Vice-Admiral, nor Rear-Admiral, at his first coming and saluting his Admiral or Commander in Chief, is to give Eleven Pieces, his Vice-Admiral Nine, and his Rear-Admiral Seven, and the other proportionably less by two, according to their Ranks; but the Commander or Captain of a Ship is not to salute his Admiral or
CHAP. XIV. Of Salutations.

or Commander in Chief, after he had done it once, except he hath been absent from the Flag Two Months.

VIII. When a Ship of the second Rate shall carry any Ambassador, Duke or Nobleman, at his coming aboard he is to give Eleven Pieces, and at his Landing Fifteen; and when he shall carry a Knight, Lady or Gentleman of Quality, at their coming aboard he is to give seven, and at their Landing eleven; and the other Ships are to give less by two, according to their Ranks and Number, of Ordnance.

IX. When an Admiral of any Foreign Nation is met with, he is to be answered with the like Number by all the Ships he shall salute; if a Vice-Admiral, the Admiral is to answer him with twelve less; but the Vice-Admiral and Rear-Admiral, and as many of the rest as he shall salute, shall give him the like number; if a Rear-Admiral, then the Admiral and Vice-Admiral to answer him with two less; but if he shall salute the Rear-Admiral or any other, they are to answer him in the like Number.

X. When a Man of War or Merchant Man of another Nation, or of our own, salutes any of the King's Ships, he is to be answered by two less.

XI. When any of the Captains of his Majesty's Ships shall have occasion to salute any of the King's Castles, he is to give two Guns less than they are directed to give upon saluting their Admiral or Commander in Chief, as aforesaid: But this extends only to time of Peace; for if War is begun, no Guns ought to be fired in Salutes, unless to the Ships or Castles of some Foreign Prince or State in Amity.

XII. Those Duties or Obligations being laid on Commanders, they consist of two parts; the one is that antient prescription, which the Crown of England claims by virtue of the Sovereignty of that Empire; the other is but that Respect which is paid as visible Marks of Honour and Esteem, either to Kingdoms or Persons publick or private, to whom these several Commands are to be observed; and yet in these which are both innocent and harmless of themselves, we want not those, who being empty of all that may be called good, want not malice to start up words, Wherefore should the Lives of Men, even Christian Men
Of Salutations. Book I

Men, be exposed to death and slaughter for shadows (as they call them) the Right of Salutation or Compliment being no other in their Opinion.

XIII. Admitting therefore that the Evidence of original Compacts and Rights stand at such remote distances from us, that they are hardly discernable, and that the principal of Civil things, as well as natural, is sought for in a Chaos or Confusion, so that the Evidence of antient facts vestigia nulla rerorsum, there being no infallible marks of their pre-existence (one step doth so confound and obliterate another) and that time itself is but an imagination of our own, an intentional, not a real measure for actions, which pass away concomitantly with that measure of time in which they were done, for which reason we talk of antient things, but as blind Men do of Colours: Notwithstanding prescription is supposed by most to hold out such an Evidence, that as they say, it ought to silence all Counterpleas in all Tribunals, and by the present allowance which is indulged to it, it either proves a good or cleanses a vitiated Title; and hath this power in the civil Constitution of the World, that for Quietness sake what it cannot find, we grant it a power to make.

And if we examine all this strictly at the two great Tribunals, the external and the internal, and argue the jus of it, as Statesmen and Lawyers do, we can then raise the Argument of it no higher in the external or temporal Court, than only this — That it is very convenient it should have the effects of Right; that Properties and Dominion of things should be uncertain, and by the apparent negligences of Time Owners should be punished; and that Controversies may have a speedy end: States looking more after publick repose and quiet than after strict Virtue; and more after those things which are ad alterum, than that which concerns a Man's own self; for, say they, The Gods look well enough after their own Injuries: States meddle not so much with great Prodigalities as in petty Larcenies, our chiefest Liberty, Privileges, or Prerogative in this World, consisting only in an uncontrovertible Right, which we have to undo ourselves, if we please. Certainly if we plead at the other Tribunal, as conscientious Lawyers, we must give our ultimate Resolution out of that Law, Que inciditur.
INCIDITUR NON ARE, JED ANIMIS: which is not engraved in Tables of Bras, but in the Tables of our Souls; for the Rule of Law tells us, Quae principio vitianur, ex post facto reconvalcscat, and that prescription or usu-caption (which is but the lapse of so much Time) hath the power to make Wrong a Right; yea, to change the morality of an Action, and turn Quantity into Quality: Upon the Refult of all which taking for granted, what those stubborn People do hold, that instead of being a right, or a certain Cause or Proof of it, it only makes a shadow or an opinion of right.

XIV. And when we have taken those People by the hand, and with eagerness run with them to the very bottom and end of the line, and there find nothing, we are but in Pompey's Atonishment, when after his Conquest of Jerusalem, when he had with such reverence and curiosity visited the Santum Sanctorum, and found nothing there but a pair of Candlesticks and a Chair, in which there was no God sitting; yet for all this Mistake, he would not (as Josephus faith) disorder or rob the Temple, which he took by force of Arms, because the very Opinion of Religion hath something of Religion; (which made Jacob accept of Laban's Oath by an Idol) so ought not we for defect of giving the Causes of the Inception of Prescription, or of the Right in Prescription disorder a State, or be the occasion of setting of two Nations at enmity; nay, though in Conscience we are satisfied that it contains but the Opinion or Shadow of Right: And as to the involving the Lives of the Innocent, there is no such thing in the matter, for there is not required any thing which they do not owe, nor are they designed to Death; but if the Cause be such, that they that are Innocent must perish, that is, be exposed to Death by their Rulers because they obstinately will not yield that which is right, but will involve the Lives of their innocent Subjects by Force, to defend that which is wrong, such guilty Governors must answer for the Defect of their own evil Actions: on the other hand, there can be no doubt made, but he that hath an undoubted Right, being a Sovereign, the Subjects partake in the same, and the Indignity offered to him, they immediately become Partakers in the Suffering, for the Satisfaction of which they may, yea, are obliged.
obliged both by the Law of God and Nations to seek
Reparation (if their Prince shall command) vi, & manu
fortis, by the Hazard of their Blood and Lives.

XV. On the other Hand, as War introduces the great-
eft of Evils, viz. the taking away of Men's Lives, and
that which is equivalent to Life; so right Reason and
Equity tells us, that it ought not to be undertaken without
the greatest Cause, which is the keeping of our Lives, and
that without which our Lives cannot be kept; or if they
should be kept, yet they would not be of any value to us,
seeing there may be a Life worse than Death, even Capti-
vity; wherefore as we are forbidden to go to Law for a
little Occasion, so we are not to go to War but for the
greatest. Now those things that are equivalent to a Man's
Life, are such to whom Almighty God appointed the same
equal Punishment as to Murderers, and such were break-
ers into Houses, breakers of Marriage-fidelity, Publish-
ers of false Religion, and those who rage in unnatural
Lufts, and the like.

However, before Men's Persons or Goods are to be
invaded by War, one of these three Conditions is re-
quise.

1. Necessity, according to the tacit Contract in
the first dividing of Good, as hath been already ob-
served.

2. A Debt.

3. A Man's ill Merits, as when he doth great Wrong,
or takes part with those who do it.

Against which if any thing is committed, War may be
commenc'd, nor is the same repugnant to the Laws of Na-
ture; that is, whether the thing may not be done unjust-
ly, which hath a necessary Repugnance to the rational and
social Nature; amongst the first Principles of Nature,
there's nothing repugnant unto War; on the other hand
there is much in favour of it, for both the end of War,
the Conservation of Life and Members, and the keeping
and acquiring of things useful unto Life, is most agreeable
to those Principles; and if need be, to use Force to that
Purpose is not disagreeable, since every living thing hath
by the Gift of Nature Strength, to the end it may be able
to help and defend itself. Besides, Reason and the Nature
of Society, inhibits not all Force, but that which is repug-

Ulfius Leg. 1.

vi. vi.

vi, &

na.
niant to Society, that is, which depriveth another of his Right; for the end of Society is, that every one may enjoy his own; this ought to be, and would have been, though the Dominion and Property of Possessions had not been introduced; for Life, Members and Liberty would yet be proper to every one; and therefore without Injury could not be invaded by another: To make use of what is common, and spend as much as suffices Nature, would be the right of the Occupant, which Right none could without Injury take away. And this is proved by that Battle of Abraham with the four Kings, who took Arms without any Commission from God, and yet was approved by him; therefore the Law of Nature was his Warrant, whose Wisdom was no less eminent than his Sanction, even by report of Heathens, Berosus and Orpheus; nor is the same repugnant to the Hebrew Law or Gospel, as the same is most excellently proved by the Incomparable Grotius*. 

* Lib. 1. cap. 1.

XVI. On the other hand, the Fear of uncertain Danger, as building of Forts, Castles and Ships, and the like, though the former be on Frontiers, the refusing of Wives (when others may be had) the changing of Countries either Barren or Moorish for more fertile or healthful which may justly be done; as in the Case of the old Germans, as Tacitus relates; So likewise to pretend a Title to a Land, because it was never found out or heard of before; that is, if the same be held by a People that are under a Government; nay, though the Government be wicked or think amis of God, or be of a dull Wit; for Invention is of those things that belong to none; for neither is moral Virtue, or Religion, or Perfection of Understanding required to Dominion; but yet if a new Place or Land shall be discovered, in which are People altogether destitute of Reason, such have no Dominion, but out of Charity only is due unto them what is necessary for Life; for such are accounted as Infants or Mad-men, whose Right or Property is transferred, that is, the use of the same, according to the Law of Nations; in such Cases a charitable War may be commenced.

XVII. To prevent all the sad Calamities that must inevitably follow the ungoverned Hand in War, Faith must by all Means be laboured for; for by that, not only every
every Common-Wealth is conserved, but also that greater Society even of Nations, that once being taken away, then farewell Commerce, for that must be then taken away from Man; for Faith is the most Sacred thing that is seated in the Breast of Man, and is so much more religiously to be kept by the supreme Rulers of the World, by how much more they are exempted from the Punishment of their Sins here than other Men: Take away Faith, and then Man to Man would be (as Mr Hobbes observes) even Wolves; and the more are Kings to embrace it, first for Conscience, and then for Faith and Credit sake, upon which depends the Authority of their Government. The Ambassadors of Justinian addressed their Speech to Chosroes after this manner: Did we not see you here with our own Eyes, and pronounce those Words in your Ears, we should never have believed that Chosroes the Son of Cabades, would bring his Army, and enter forcibly into the Roman Bounds, contrary to his Leagues, the only Hope left to those that are afflicted with War? For what is this, but to change the Life of Men into the Life of wild Beasts? Take away Leagues, and there will be eternal Wars, and Wars without end will have this Effect, to put Men besides themselves, and divest them of their Nature. If then a safe Peace may be had, it is well worth the releasing of all or many Injuries, Losses, and Charges, according to that in Aristotle: Better it is to yield some of our Goods to those that are more Potent, than contend with them and lose all; for the common Chances of War must be considered, which if so, the Scope of the principal part of this First Book may be avoided, and we let into the peaceable Track of Traffick and Commerce.

The End of the First Book.
BOOK II.

CHAP. I.

Of the various Rights and Obligations of Owners and Partners of Ships in Cases private.

I. Of Navigation in general.

II. Of Owners their several Powers over those Vessels they are Partners in. Trespass for a part of a Ship.

III. Where Ships are obliged to make a Voyage before they can be sold; and what may be done when part protest against a Voyage.

IV. The Master how brought in by the Owners, and the reason why in such a Manner.

V. Where the Owners ought to be repaired for the Damages of the Master.

VI. Where Ships broke in pieces determine the Partnership as to the Vessel, and Shibboleth not.

VII. Where a Ship shall be the Builder’s, and Shibboleth only his whole Materials for was wrought with.

VIII. Where Property of the Vessel altered changes not that of the Boat.

IX. A Ship for the all of Piracy becomes forfeited; yet if bona fide sold, where the Property may be questioned.

X. Monies borrowed by the Master, Shibboleth the same obliges the Owners, and Shibboleth not.

XI. Whether he that obtains an unlawful possession of a Ship, shall answer the full Freight to the Owners.

XII. And Shibboleth the Owners shall have their Freight, though they lost their Lading.

XIII. Where a Ship may become a Deducted, and Shibboleth not. Not forfeited till Condemnation.


XV. Foreign Ship natural’d upon first needs not to make Oath again upon the New Act.

XVI. Forfeitures for delivering Goods without paying the Duties.

In the precedent Book having observed something of the Rights of Persons and of Things in a state of Nature, and how necessarily they came at first to be appropriated, and how equitably they are now continued in the possession of those to whom they are consignified by the donation of others, by the Laws of Nations, and maintained
Of Owners and Partners of Ships. Book II.

...tained or destroyed by the equity of those various Laws which rule and govern them in reference to matters public, all which is justified by the Scripture itself: It may not now seem improper to examine the private causes changing the same, and of the contingencies and advantages that wait on that which we properly call Commerce.

The Great Creator having finished his Mighty Work, and given Man that Dominion which he now enjoys, as well over the Fifth in the Seas, as the Beasts in the Field, he was not forgetful of bestowing on him those things which were necessary for the Government and support of the same, creating at the same time Trees which grow as it were spontaneously into Vessels and Canoos; which wanted nothing but launching forth to render them useful for his accommodation, which afterwards he by his Divine Genius (inspired by that Mighty One) finding Materials, hath since so completed and equipped, as to render it the most beautiful and stupendous Creature (not improperly so called) that the whole World can produce, which being not retarded by lett of Winds, or other contingent accidents, submits itself to plow the unknown paths of that vast Element, to brave all Encounters of Waves and Rocks, to fathom and survey the vast immensities of the very World itself, to people, cultivate, and civilize uninhabited and barbarous Regions, and to proclaim to the Universe the Wonders of the Architecs, the Skill of the Pilot, and, above all, the Benefits of Commerce; so that it is no wonder at this day to find Nations contending who should surpass each other in the Art of Navigation, and to monopolize if possible, the very Commerce and Trade of the World into their hands; and that, all by the means of this most excellent Fabrick.

II. Hence it is, that Ships and Vessels of that kind being originally invented for use and profit, not for pleasure and delight, to plow the Seas, not to lie by the Walls, to supply those of the Mountains as well as thosc on the Sea Coasts.

Therefore upon any probable design the major part of the Owners may even against the consent, though not without the privyty and knowledge of the rest, freIGHT out their Vessell to Sea.
Chap. I. Of Owners and Partners of Ships.

If it should so fall out that the major part protest against the Voyage, and but one left that is for the Voyage, yet the same may be effected by that party, especially if there be equality in Partnership.

But the Admiralty compels them to give Security for her safe Return; and the Recognizance may be sued there.

But, where two Part-Owners sent out the Ship, without the Consent of the third, and she was lost; the third must bear his Proportion of the Loss, because he would have had his Share of the Profits, if any. L. Raym. 223; S. P. iibid. 1285.

But note in this Case there had been no previous Application to the Admiralty, as there ought to have been.

The Account of the Voyage settled by a major part of the Part-Owners, binds the rest.

As an encouragement to the Building of Ships being of that universal Advantage to the Publick in point of Trade, and Commerce, to contrive and vest the Owners propriety in them, both by the Common Laws of this Realm, and the Maritime Laws, it is provided that in case a Ship be taken away or the Owners dispossessed, they may maintain an Action of Trover and Conversion for an 8th, a 16th, or any other Part or Share of the same.

In an Action on the Case, the Plaintiff declared that he was Owner of the 16th part of a Ship, and the Defendant Owner of another 16th Part of the same Ship, and that the Defendant fraudulently and deceitfully carried the said Ship ad loca transmarina, and disposed of her to his own use, by which the Plaintiff lost his 16th part to his damage: On not guilty pleaded, and verdict for the Plaintiff, it was moved in Arrest of Judgment, that the Action did not lie, for tho' it be found deceptive, yet this did not help it, if the Action did not lie on the subject matter; and here they are Tenants in Common of the Ship, and by Littleton between Tenants in Common there is not any Remedy, and there cannot be any fraud between them, because the Law supposes a trust and confidence betwixt them; and upon these Reasons Judgment was given quod Querens nil capiat per billam.

Graves
Of Owners and Partners of Ships. Book II.

Graves against Sawyer, Raym. 15. 1 Leuzin 29. and 1 Keeble 38. 3 Leon. 228. Bennington against Bennington.

III. Owners by Law can no ways be obliged to continue their partnership without suffering; but yet if they will suffer, the Law Marine requires some considerations to be performed before they can do so. And therefore if the Ship be newly built, and never yet made a Voyage, or is newly bought, she ought to be subject to one Voyage upon the common out-read and hazard, before any of the Owners shall be heard to suffer and discharge their parts; but by the Laws of England the Owners may, before any such Voyage, sell or transmit their Right.

If it falls out that one is so obstinate that his consent cannot be had, yet the Law will enforce him either to hold, or to sell his proportion; but if he will set no price, the rest may out-rigg her at their own costs and charges, and whatsoever Freight she earns, he is not to have any share or benefit in the same. But if such Vessel happens to miscarry or be cast away, the rest must answer him his part or proportion in the Vessel.

But if it should fall out that the major part of the Owners refuse to set out the Vessel to Sea, there by reason of the inequality they may not be compelled; but then such Vessel is to be valued and sold: The like where part of the Owners become deficient or unable to set her forth to Sea.

IV. The Master of the Vessel is eligible by the Part-Owners in proportion, not by the majority, and he that is most able is to be preferred. The Wisdom of the latter Ages have been such, that few have gone out in that condition, but those that have commonly had shares or parts in the same Vessel. In the preferring therefore of a Master, his ability and honesty is to be considered, since on him rests the charge not only of the Vessel, but of the Lading; their very actions subjecting the Owners to answer for all damage that shall be sustained by him or his Mariners, be it in the Port or at Sea, to the Lading or Goods of the Merchant or Laders, and they are made liable as well by the Common Laws, of England, as the Law Marine.

V. If
V. If the Master commits offences either negligently or wilfully, he shall be responsible over to his Owners for the reparation of damage; nor are they bound to join, but may sever and sue apart as well by the Common Law as the Marine: So likewise if the Ship hath earned Freight, and part of them receive their parts, the rest may bring their Action for their share without joining with the others.

The Defendant and seven other Persons were proprie-
tors of a Ship, in which Goods were usually transported for hire, and the Plaintiff onerat Goods upon the Ship to be carried for hire, from London to Topsham in Comitatus Devon, and that the Defendant received them, and undertook to bring them to Topsham, but that he not being careful of his Duty but neglecting it, tam improvidenter placed and carried the said Goods, that tho' the Ship safely arrived at Topsham, yet the Goods were spoiled. And upon non culp. pleaded. The Jury found a special Verdict, viz. That the Defendant and seven other Persons were Proprietors and Part-Owners of the Ship, that the Ship had a Master locat in her by the Part-Owners who had 60 l. Wages for every Voyage between Topsham and London, that the Goods were delivered to the Master, none of the Part-Owners being present, and that there was not any Contract made with them or any of them by the Plaintiff, that the Ship arrived safe to Topsham but the Goods were spoiled. Et si pro Quer' pro Quer' si non pro Def.

And two points were made.

1. If the Proprietors are chargeable no Contract being made with them, and there being a Master that is chargeable in respect of his Wages, according to the Case of Morse and Slue, yet per Holt Ch. Justice clearly, that tho' the Master be chargeable in respect of his Wages, so are the Proprietors in respect of their Freight that they receive for the carriage of the Goods, at the Election of the Plaintiff.

2. If the Action lay against the Defendant alone, it appearing that there are other Part-Owners not made Defendants; and held that the Action did not lie against him sole, but ought to have been against all the Part-Owners,
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Owners, for all the Part-Owners are chargeable in respect of the Profit they make by the carriage of the Goods, and that in point of Contract upon their undertaking, be it implied or express, and are not chargeable as Trespassers, for then one might be chargeable alone, but in point of Contract upon their Receipt of the Goods to be carried for hire. Judgment pro Defen. as by 3 Mod. 321. Boson con. Sanford 3 Levinz. 258. where it is with a Cur. advisare, mes le Reporter ut audivit Judgment pro Defen.

VI. If a Ship be broken up or taken in pieces, with an intent to convert the same to other uses; if afterwards upon advice or change of mind, she be rebuilt with the same Materials, yet this is now another, and not the same Ship, especially if the Keel be ript up or changed, and the whole Ship be once all taken asunder and rebuilt, there determines the Partnership quoad the Ship. But if a Ship be ript up in parts, and taken asunder in parts, and repaired in parts, yet she remains still the same Vessel and not another; nay though she hath been so often repaired that there remains not one stick of the Original Fbrick.

VII. If a Man shall repair his Ship with Plank or other Materials belonging to another, yet the Ship maintains and keeps her first Owners.

But if a Man take Plank and Materials belonging to another, and prepared for the use of Shipping, and with them build a Ship, the property of the Vessel follows the Owners of the Materials and not the Builder.

But if a Man cut down the Trees of another, or takes Timber or Planks prepared for the erecting or repairing of a Dwelling-House; nay, though some of them are for shipping, and builds a Ship, the Property follows not the Owners but the Builders.

VIII. If a Ship be sold together with her Tackle, Furniture, Apparel, and all other her Instruments thereunto belonging, yet by these words the Ship’s Boat is not conveyed, but that remains still in the Owners; so it is if the Ship be freighted out, and afterwards at Sea she commits Piracy: The Ship is forfeited, but the Boat remains still to the Owners.

And
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And though Ballast is generally used in Shipping by those Ships that are freighted outwards, in order to bringing home of Goods, yet is not the same any part of the Furniture of the Vessels; and so it was adjudged in debt on Bond, The Condition was, that whereas the Plaintiff had bought of the Defendant a Ship, if the Plaintiff shall enjoy the said Ship with all the Furniture belonging to the same, without being disturbed for the Ship or any Furniture appertaining to it, that then, &c. And the case fell out to be, that after the sale of the Ship, a stranger sued the Plaintiff for certain monies due for Ballast bought by the Defendant for the same Ship, in which Suit he obtained Sentence, upon which the Ship was seized, The Question was, If Ballast be Furniture for a Ship or not, it was resolved that it was not; for though it may be as necessary as Sails, yet it is not always so, for sometimes they fail without Ballast, for the Merchandize itself may be sufficient to answer that purpose.

IX. If a Ship commits a Piracy, by reason of which the Bingley's Case, becomes forfeited, if before seizure the be Bona fide sold, the property shall not be questioned, nor the Owners divested of the same.

A Mortgagee of a Ship, by Deed, intrusts the Mortgager with the original Bill of Sale; the Mortgager indorses thereon subsequent Mortgages or Bills of Sale of several Parts of the Ship, the first Mortgagee acquiesces, he shall be postponed.

X. If a Master shall take up Monies to mend or victual his Ship where there is no occasion, though generally the Owners shall answer the fault of the Master, yet here they shall not, but only the Master. But if there were cause of mending the Ship, though the Master spend the Money another way, yet the Owner and Ship become liable to the satisfaction of the Creditor; for it were very unreasonable that the Creditor should be bound to take upon him the care of repairing the Ship, and supply the Owners room, which must be so, if it should be necessary for him, to prove that the Money was laid out upon the Ship; so on the other hand, it stands with reason that he be sure that he lends his Money on such an occasion as whereby the Master's fault may oblige the Owners, which he cannot do otherwise, unless he knows that the Money borrowed was necessary.
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necessary for the repair of the Ship; and therefore if the
Ship wanted some repairs, and a far greater and more
extravagant sum was lent than was needful, the Owners
shall not be liable for the whole.

P. Williams
395.

The East-India Company's Agent in the Indies bought
a Ship and her Cargo of the Commander, who had no
Power to sell her; the Owner had the Value decreed for
Ship and Cargo (the Value being found by a Jury) and
Indian Interest, viz. 12 l. per Cent.

XI. If a man gets possession of a Ship having no Title to
the fame, by the Law Marine, he shall answer such dam-
age as the Ship in all probability might have earned;
and the reason of that is, because the only end of Ship-
ing, is the employment thereof: but if a Warrant be
directed out of the Admiralty to the Marshal, to arrest
such a Ship and Salvo Custodire, who by force of the fame
enters into the fame Ship, though the Warrant does not
mention that the Officer should carry away the Sails of
the fame Ship, yet he may justify the taking the fame,
for that he cannot Salvo Custodire the fame Ship, unless
he carries away the Sails.

XII. A Ship is freighted out, accordingly she receives
in her Lading pursuant to agreement, afterwards an Em-
bargo happens, and the Lading is taken as forfeited, yet
the Owners shall notwithstanding receive Freight, for
here is no fault in them, but only in the Merchant.

XIII. In Aqua dulci a Ship may become a Deodand,
but in the Sea, or in Aqua salta, being an Arm of the
Sea, no Deodand of the Ship or any part of it, though
any body be drowned out of it, or otherwise come by their
death in the Ship; because on such waters, Ships and
other Vessels are subject to such dangers upon the raging
waves in respect of Wind and Tempest; and, this diver-
Sity all our antient Lawyers do agree in, and it does more
especially appear in the Parliament Rolls, where upon a
Petition it was desired, That if it should happen that any
Man or Boy should be drowned by a fall out of any Ship,
Boat, or Vessel, they should be no Deodands: Whereupon
the King, by great advice with his Judges and Council
learned in the Laws, made answer, The Ship, Boat or
Vessel, being upon the Sea should be adjudged no Deodand,
but being upon a fresh River it should be a Deodand—
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but the King will shew favour. There are abundance of other Petitions upon the like occasion in Parliament.

A Ship lying at Rotheshit, in the County of Kent, near the shore, to be careen’d and made clean, it happened that one of the Shipwrights being at work under her at low Water, the Vessel (then leaning aside) fortuned to turn over the contrary side, by means of which the Shipwright was killed: Upon a Trial at Bar, where the Question was, Whether this Deodand did belong to the Earl of Salisbury, who was Lord of the Manor, lying contiguous to the place where the Man was slain, or to the Almoner as a matter not granted out of the Crown? In that case it was resolved, That the Ship was a Deodand, and the Jury thereupon found a Verdict for the Lord of Salisbury, that the same did belong to his Manor.

On Importation of prohibited Goods, the Ship cannot be seiz’d as forfeit till a Condemnation in the Exchequer thereon. Horne against Irye 2 Keeble 604.

XIV. Thus Men from their necessitie and safety having from hollow Trees, nay Reeds, Twigs and Leather (for such were the rude beginnings of those stupendous things we now admire) advanced the Art to that degree, as to render it now the most useful thing extant; and as the Mathematicks, Astronomy and other Sciences have added to its security, so have succeeding Ages from time to time, provided Privileges and Laws by which it hath always been regulated and governed, the which upon all occasions, and in all Courts have generally had a genuine construction as near as might be to the Marine-Customs; and therefore at this day, if a Ship be taken away, or the Owners disposset, they may maintain an Action of Trespass and Conversion for an eighth or sixteenth part of the same, as well by the Common Laws of this Kingdom, as the Law Marine, and they need not join with the rest of their Owners.

XV. Upon an information tam quam, grounded upon the Act of Navigation, for importing Goods in a Foreign Ship contrary to that Act, The question was, whether or not, if a Foreign Ship naturalized by the new Act, being a Prize taken in the late War with Holland, be afterwards sold to a Foreigner, who sells her again to an English Man, whether or not the Oath must be taken again according
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to the Act? *Per Curiam* it need not, because that the Ship was once lawfully naturalized. *Hardres 511. Martin against Verdue.*

XVI. Stat. 4th and 5th Will. and Ma. cap. 15. §. 14. All persons who by way of Insurance, or otherwise, shall undertake to deliver any Goods imported from beyond Sea without paying the Duties payable for the same, or any prohibited Goods, shall forfeit 500 l.

And all who shall agree to pay any Money, for the insuring or conveying any Goods imported without paying the Duties, or any prohibited Goods, or shall receive such prohibited Goods, or such other Goods before the Duties are paid, knowing thereof, shall also forfeit for every Offence 500 l.

§ 16. And if the Insurer or Manager of such Fraud be the discoverer, he shall not only keep the Insurance Money given him, and be discharged of the Penalties to which he is liable, but shall have one half of the Penalties imposed upon the Parties making such Insurance or receiving the Goods as aforesaid: And in case no discovery be made by the Insurer, and the Party Insured shall make discovery thereof, he shall recover back his *Premium*, and have one Moiety of the Forfeitures imposed upon the Insurer, and be discharged of those imposed upon himself.

§ 17. The said Penalties and Forfeitures to be recoverable according to the Course of the Exchequer.

§ 18. No Penalty to be recoverable; unless prosecuted within 12 Months after the Fact committed.
C H A P. II.

Masters of Ships their Action considered in reference to cases private and publick.

I. A Master or Skipper his condition considered, in reference to his Interest and Authority generally. The Master only liable to Deviation and Barratry.

II. If Goods be lost or imbezelled, or any other detriment happens in a Port, who shall answer. Master chargeable to pay the Duty of no weight.

III. The Duty of Masters of Ships, as if they shall set Sail after an Embargo, who shall answer?

IV. Of Faults ascribed to him before departure in tempestuous Weather, staying in Port, &c.

V. Over-charging or over-lading the Ship above the Birth-mark; or receipt of such Perfume on Ship-board as may hazard the Lading.

VI. Of Lading aboard in the Ships of Enemies, his own proving disabled.

VII. Of shipping Goods elsewhere than at the public Ports or Keys; and the taking in prohibited Goods.

VIII. Of wearing unlawful Colours or Flags, and of yielding up his Ship cowardly, if assaulted, where liable, and where excused.

IX. Of carrying seditious Coquets and Papers, and refusing payment of Customs and Duties.

X. Of setting Sail with insufficient Tackle, and of taking in and delivering out with the like; and of his Charge of Goods till safely delivered.

XI. Of departing without giving notice to the Customer.

XII. Of Faults committed by Master and Skipper at Sea.

XIII. Rules in Law in the charging him for repairation of damage. Infant Master of a Ship sued in the Admiralty, for wasting or spoiling Goods.

XIV. Of the Power and Authority that the Master hath in disposing Hypothecating or Pledging the Ship, Furniture and Lading.

XV. Where Masters are disabled, though in necessity, to impair the Vessel.

XVI. Where they may dispose of Vessel and Lading, and where not.

XVII. What Vessels and Mariners the Master must have for importing in or exporting out of His Majesty's Plantations in Asia, Africa, and America.

XVIII. What Ships may go from Port to Port in England.

XIX. Ships not to import the Goods of any Country, but of that from whence they are brought.

XX. What time the Master shall he coming up after arrived at Gravelend, or at any other Port within the Realm, in order to his discharge.

XXI. Of going from Port to Port within the Realm bow provided.

XXII. Of Goods prohibited to be imported from the Netherlands or Germany in any Ships whatever.
I. A Master of a Ship is more than one, who, for his knowledge in Navigation, fidelity and discretion, hath the Government of the Ship committed to his care and management; and by the Common Law, (by which Properties are to be guided,) he hath no Property either general or special, by the constituting of him a Master; yet the Law looks upon him as an Officer, who must render and give an account for the whole charge, when once committed to his care and custody; and upon failure to render satisfaction: And therefore if misfortunes happen, if they be either through negligence, wilfulness, or ignorance of himself or his Mariners, he must be responsible.

In Chancery. A Master of a Ship, so appointed by B. Owner, treats with the Plaintiff to take the Ship to Freight for 80 Tuns to fail from London to Falmouth, and so from thence to Barcelona, without altering the Voyage; and there to unload at a certain Rate per Tun. And to perform this the Master obliges the Ship and what was therein, valued at 300 l. and accordingly a Charter-party was made and sealed between the Master and the Merchant; but the Owners of the Ship were no Parties thereunto. The Master deviates and commits Barrestry, and the Merchant, in effect, loses his Voyage and Goods, for the Merchandise, being Fish, came not till Lent was past, and were rotten. The Merchant's Factor thereupon sueth the Master in the Court of Admiralty at Barcelona, and upon an Appeal to a higher Court in Spain, hath Sentence against the Master and the Ship; which coming to his Hands (viz. the Merchant's Hands) the Owner brings an Action of Trover for the Ship; the Master sues in Chancery to stop this Suit, and another Suit brought for the Owner for Freight, claiming deductions out of both, for his Damages sustained by the Master, for the breach of the Articles by the Master, for if the Owner gives Authority to the Master to contract he shall bear the loss, but in Case of Bottomry after a Voyage begun the Master cannot oblige the Owner beyond the Value of the Ship: But this Case is on Contract.

Lord-Chancellor. The Charter-Party values the Ship at a certain rate, and you shall not oblige the Owners further,
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ther, and that only with relation to the Freight, not to the value of the Ship; the Master is liable to the Deviation and Barretry, but not the Owners; else Masters should be Owners of all mens Ships and Estate, Mich. 29. Car. 2.

But where the Master of the Ship took Beef, Sails, &c. on Credit, and failed, the Owners were obliged to pay; and not allowed to defend themselves by infesting that the Master was liable only, and that they had given him Money to pay the Plaintiff. He is but their Servant, and where he buys, they are liable, and continue so if he has not paid the Creditor, though they gave him Money for that Purpose.

II. If the fault be committed in any Port, Haven, River, or Creek, or any other place which is infra Corpus Comitatus, the Common Law shall have Jurisdiction to answer the party damnedified, and not the Admiralty; but if the same be committed super altum mare, the Admiralty shall have Jurisdiction of the same; yet if it be on a place where there is divisum imperium, then according to the Flux or Reflux the Admiralty may challenge; the other of Common Right belonging to the Common Law.

The Common Law is the over-ruling Jurisdiction in this Realm; and they are to intitle themselves well who would draw a thing out of it.

And therefore so soon as Merchandizes and other Commodities are put aboard the Ship, whether she be riding in Port, Haven, or any other part of the Seas, he that is Exercitor Na vis is chargeable therewith; and if the same be there lost or purloined, or sustain any damage, hurt or loss, whether in the Haven or Port before, or upon the Seas after she is in her Voyage, whether it be by Mariners or by any other through their permission, he that is Exercitor Na vis must answer the damage, for that the very lading of the Goods aboard the Ship, does subject the Master to answer the same: And with this agrees the Common Law, where it was adjudged, That Goods being sent aboard a Ship, and the Master having signed his Bills of Lading for the same, the Goods were stowed, and in the night divers Persons, under the pretence that they were Prefeats-masters, entered the Ship and robbed her of...
Masters of Ships.  Book II.

those Goods; the Merchant brought an Action at the
Common Law against the Master; and the Question was,
Whether he should answer for the same; For it was al-
ledged on his part, That there was no default or negli-
gence in him, for he had a sufficient guard, the Goods
were all lock’d up under Hatches, the Thieves came as
Pres-Basters, and by force robb’d the Ship; and that
the same was vis major †, and that he could not have
prevented the same. And lastly, That though he was
called Master or Exercitor Navis, yet he had no share in
the Ship, and was but in the Nature of a Servant, acting
for a Salary. But notwithstanding it was adjudged for
the Plaintiff, for at his peril he must see that all things
be forth-coming that are delivered to him, let what ac-
cident ever happen; (the act of God, or an Enemy,
perils and dangers of the Seas only excepted) but for Fire,
Thieves and the like, he must answer, and is in the na-
ture of a * Common Carrier; and that though he re-
ceives a Salary, yet he is a known and publlick Officer,
and one that the Law looks upon to answer, and the
Plaintiff hath his Election to charge either Master or
Owners, or both at his pleasure, but can have but one
Satisfaction.

† The which the Civil Law
does sometimes allow.

* Rev. 105.
  F. N. B. 104 b.
  Inf. 89.
  4 Ca. 84. a.
  Mo. 876.
  Hob. 17, 18.
  Popb. 178.
  179.
  Cro. Jac. 188.
  189, 330, 331.
  Sal. 388.
  1 Sid. 36.

Debet Exerci-
tor omnium
nautarum su-
orum, sive liberis sive servis, faciam praefare, nec immere faciam eorum praefatum, cum
ipsa sive suo periculo adhibuerit: Sed non alias praefatum quam si in ipsa nave damnum datum
Sc. 7. debet Exercitor.

Eod. Leg. de-
bet Exercitor.

If a Master shall receive Goods at the Wharf or Key,
or shall send his Boat for the same, and they happen to
be lost, he shall likewise answer both by the Marine Law
and the Common Law.

Mayor & Com. de London against Hunt.

Error of a Judgment in B. R. in Assumpsit brought by
the Mayor and Commonalty against Hunt, where they de-
clared of a Custom, That they and their Predecessors, Ma-
jors, &c. had of every Master of a Ship 8 s. per Tun for
every Tun of Cheese brought from any place in England
to the Port of London, ab oriente de London-Bridge, in the name of Weighage; and that the Defendant being Ma-

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fter of a Ship, had brought to the Port of London so many Tuns, which at that rate came to so much, which he hath not paid; upon non Assumpsit, Verdict and Judgment for the Plaintiff. Upon which Hunt the Defendant, brought a Writ of Error, and two Errors were assigned.

1. That the Action did not lie against the Master, but that the Duty was due from the Merchants, Owners of the Goods; but the Judgment was affirmed, for that the Master is intrusted with the Goods, and hath a Recompence from the Merchants for bringing the Goods, and is responsible for them, and therefore shall be charged for the Duty; and it would be infinite to search for the Owners of the several Goods, which are all in the Custody of the Master who brought them into Port, and therefore he shall be charged. 3. Levinz 37.

III. If Goods be laden aboard, and after an Embargo or Restraint from the Prince or State comes forth, and then he breaks Ground, or endeavours to sail away, if any damage accrues, he must be responsible for the same. The reason is, because his Freight is due and must be paid; nay, although the very Goods be seized as bona contrabandos.

A Ship was hired to J. S. in England to freight at 3 l. 10 s. per Tun to Bourdeaux; then an Embargo is laid; the afterwards proceeds to Bourdeaux; the Master, not discovering his first Agreement, agrees with the Correspondents there of J. S. to allow him 6 l. 10 s. per Tun; upon this last Agreement he recovered at Law; and Equity would not relieve; because the Performance of the first Agreement was hindered by the Embargo.

IV. He must not fail in tempestuous Weather, nor put forth to Sea without having first consulted with his Company; nor must he stay in Port or Harbour without just cause when a fair wind invites his departure.

V. He must not over-charge or lade his Ship above the Birth-mark, or take into his Ship any Person of an obscure and unknown Condition, without Letters of safe Conduct.

VI. Nor ought he to lade any of his Merchant's Goods aboard any of the King's Enemies Ships (admitting his own Vessel leaky or disabled) without Letters of safe Conduct; otherwise the same may be made Prize, and he...
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he must answer the Damage that follows the Action.

Nor shall he come or sneak into the Creeks or other places, when laden homewards, but into the King's great Ports, (unless he be driven in by Tempest) for otherwise he forfeits to the King all the Merchandise, and therefore must answer.

VII. Nor ought he to ship any Merchandizes, but only at the Publick Ports and Keys.

He must not lade any prohibited or unlawful Goods, whereby the whole Cargo may be in danger of Confiscation, or at least subject to seizure or surreption.

He may not set sail without able and sufficient Mariners both for quality and number.

By 5 G. 2. ch. 20. Masters of Vessels outward-bound are not to receive on board their Gunpowder, either as Merchandise or Ammunition (the King's Service excepted) before they be at, over-against, or below Blackwall, on forfeiture of 5 l. for every 50 lb. Weight, &c.

By the same Act the Masters of Ships coming into the Thames shall land their Powder before their Arrival at Blackwall; or within twenty-four Hours, if Weather permit, after they come to anchor there, or at the Place of unloading; forfeiture as in foregoing Section.

Keeping Guns shotted, firing a Gun above Blackwall before Sun-rising or after Sun-setting, are also prohibited by the same Act, but under smaller Penalties, viz. A Gun shotted 5 s. a Gun fired 10 s. melting Pitch there on board is liable to a Penalty of 5 l.

Search may be made by an Elder-Brother of Trinity-House, impowered under the Corporation Seal; and not permitting him to make due search is liable to a Penalty of 5 l.

VIII. He may not use any unlawful Colours, Ensigns, Pendants, Jacks or Flags *, whereby his Ship or Lading may incur a Seizure, or the Cargo receive any detriment or damage.

He must not suffer the Lading to be stolen or imbezzeled; if the same be, he must be responsible, unless it be where there is vis major; as if he be assaulted at Sea either by Enemies, Ships of Reprize, or Pirates, there, if no Fault or negligence was in him, but that he performed the part of an honest, faithful, and valiant man, he shall be excused.
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Cufed. Yet it hath been adjudged, That if a Merchantman lies in a Port or Haven, and a Pirate, Sea-Rover, or other Thieves enter her and over-power her Men, and then rob her, yet the Master must be responsible; but if an Enemy enter and commit the depredation, there the Master is excused. 2 Kebl. 366, 3 Kebl. 72, 112, 132, 135.

IX. He must not carry any counterfeit Coinquetts or other fictitious and colourable Ship-Papers to involve the Goods of the Innocent with the Nocent.

Nor. must he refuse the payment of the just and ordinary Duties and Port-charges, Customs and Imports, to the hazard of any part of his Lading; yet if he offers that which is just and pertains to pay, then he is excused.

X. He must not set sail with insufficient Rigging or Tackle, or with other or fewer Cables than is usual and requisite, respect being had to the burden of the Vessel: And if any damage happens by the delivery of the Goods into the Lighter, as that the Ropes break, and the like; there he must answer; but if the Lighter comes to the Wharf or Key; and then in taking up the Goods, the Rope breaks, the Master is excused, and the Wharfinger is liable.

If fine Goods, or the like, are put into a close Lighter, and to be conveyed from the Ship to the Key, it is usual there, that the Master send a competent number of his Mariners to look to the Merchandize, if then any of the Goods are lost and imbezelled, the Master is responsible; and not the Wharfinger; but if such Goods are to be sent aboard a Ship, there the Wharfinger, at his Peril, must take care the same be preserved.

XI. After his arrival at Port, he ought to see that the Ship be well moored and anchored; and after reladed, not to depart or set sail till he hath been cleared; for if any damage happens by reason of any fault or negligence in him or his Mariners, whereby the Merchant or the Lading receives any damage, he must answer the same.

XII. And as the Law ascribes these things and many more to him as faults, when committed by him or his Mariners in Ports, so there are other things which the Law looks upon to be as faults in him in his Voyage, when done:

As
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As if he deviates in his course without just cause, or steers a dangerous and unusual way, when he may have a more secure passage; though to avoid illegal impositions, he may somewhat change his course; or may he fail by places infested with Pirates, Enemies, or other places notoriously known to be unsafe; nor engage his Vessel among Rocks or remarkable Sands, being thereto not necessitated by violence of Wind and Weather, or deluded by false Lights.

The Master shall not be answerable for the Contracts of their Mariners; but they may be detained for their Crimes.

XIII. By the Marine Law, he that will charge a Master with a Fault, as in relation to his Duty, must not think that a general charge is sufficient in Law, but he ought to assign and specify the very fault wherewith he is so charged.

So he that will infer, that such or such a sad disafter hath happened or been occasioned by reason of some fault in the Mariners; must not only prove the fault itself, but must also prove that that fault did dispose to such a sad event; or that such a misfortune could not have happened without such a fault precedent.

If an Infant being Master of a Ship, by Contract with another, take upon him to bring certain Goods from St Christopher’s to England, and there to deliver them, but delivers them not according to agreement, but wasteth and consumes them, he may be sued in the Admiralty Court, altho’ he be an Infant; for this Suit is but in Nature of a Detinue or a Trover and Conversion at the Common Law; and a Prohibit denounced for that Cause. Furnes against Smith. 1 Rolls Abr. 530.

XIV. When Voyages are undertaken, the Master is there placed in by the Owners, and they ought to make good the Master’s fact and deed; and therefore as the whole care and charge of Ship and Goods are committed to the Master, it is the prudence of the Owners to be careful who they will admit Commander of their Ship, since their actions subject them to answer the damage, or whatever other Act he shall do in reference to this Imploy; and therefore he can freight out the Vessel, take in Goods and Passengers, mend and furnish the Ship; and to that effect,
effect, if need be, in a strange Country he may borrow Money, with advice of his Mariners, upon some of the Tackle, or sell some of the Merchandize. If part of the Goods shall be sold in such necessity, the highest price that the remainder are sold for, must be answered and paid to the Merchant; after which the Merchant must pay for the Freight of those Goods as well as for the remainder, Leg. Oleron. 1. But if the Ship in the Voyage happens to be cast away, then only shall be tendered the price that the Goods were paid for.

By the Common Law, the Master of a Ship could not impawn the Ship or Goods, for any Property either general or special was not in him, nor is such power given unto him by the constituting of a Master.

Yet the Common Law hath held the Law of Oleron reasonable. That if a Ship be at Sea and takes leak, or otherwise want Victualls or other Necessaries, whereby either herself be in danger, or the Voyage may be defeated, that in such case of necessity the Master may impawn for money or other things, to relieve such extremities, by employing the same to that end; and therefore he being the Person trusted with the Ship and Voyage, may therefore reasonably be thought to have that power given to him implicitly, rather than to see the whole loft.

A Ship put into Boston in New-England, and there the Master took up Necessaries, and gave a Bill of Sale by way of Hypothecation, and there being a Suit against the Ship and Owners to compel Repayment, a Prohibition was prayed; whereupon the Court held, that the Master could not by his contract make the Owners personally liable to a Suit, and therefore granted a Prohibition as to them, but refused it as to the Ship; for the Master can have no credit but upon giving security by Hypothecation: And that it was unreasonable for them to prevent the Court of Admiralty's giving a Remedy, when they could give none themselves.

But a Master, for any debt of his own, cannot Impawn or Hypothecate the Ship, &c. for the same is no ways liable but in case of necessity for the relief and compleating of the Voyage.

Nor can he sell or dispose of the same without an Authority or Licence from the Owners; and when he does Impawn

Leg. Oleron.

c. 22.

Hob. 11. 12.

Latch 252.

Nov. 95.

Mo. 918.

Leg. Oleron.

c. 1. 12.

Salk. 34. pl. 7.

Lex Mercator
102, 122.
Impawn or Hypothecate the Vessel or Furniture, he ought to have the consent and advice of his Mariners.

A Ship being repaired, &c. in the Thames, is not liable, but the Owners.

XV. And where the Ship is well engaged, she is for ever obliged, and the Owners are concluded thereby till Redemption.

But in regard Masters might not be tempted to engage the Owners, or infetter them with such sort of obligations, but where there is very apparent cause and necessity, they seldom suffer any to go Skipper or Master, but he that hath a share or part in her; so that if Monies or Provisions be taken up he must bear his equal share and proportion with the rest.

Nor can the Master on every case of necessity impawn the Vessel or Furniture; for if he be Freighted, and he and the Owners are to join in the laying in of the Provisions for the Voyage, and perhaps he wants money, (a great sign of necessity) yet can he not impawn the Vessel or Furniture, any other or further than for his own part or share in her, the which he may transfer and grant as a man may do an eighth or fifth part in Lands or Houses: But such obligation of the Vessel must be in Foreign parts, or places where the calamity or necessity is universal on the Vessel, that will oblige all the Owners.

Where a Ship was hypothecated at Amsterdam, the Party was allowed to sue in the Admiralty here.

XVI. If the Vessel happens afterwards to be wrecked or cast away, and the Mariners by their great pains and care recover some of the ruins and lading, the Master in that case may pledge the same, the product of which he may distribute amongst his distressed Mariners, in order to the carrying them home to their own Country: But if the Mariners no way contributed to the Salvage, then their reward is funk and lost with the Vessel. And if there be any considerable part of the Lading preserved, he ought not to diffuse the Mariners, till advice from the Laders or Freighters; for otherwise perchance he may be made liable.

If Merchants freight a Vessel at their own charges, and set her to Sea, and she happens afterwards to be Weather-bound, the Master may impawn either the Ship or Lading
Lading at his pleasure, or at least such as he could conveniently raise monies on, rather than see the whole Voyage lost. And if he cannot pawn the Lading, he may sell the same, that is, so much as is necessary; in all which cases his act obliges.

However, Orders and Instructions are as carefully to be look'd upon and followed as the Magnet.

XVII. He is not to import into, or export out of any the English Plantations in Asia, Africa, or America, but in English or Irish Vessels, or of the Vessels built and belonging to that Country, Island, Plantation, or Territory; the Master and 3 fourths of the Mariners to be English, upon forfeiture of Ship and Goods; and if otherwise, they are to be look'd upon as Prize, and may be seiz'd by any of the King's Officers and Commanders, and to be divided as Prizes, according to the Orders and Rules of the Sea.

All Goods of the Growth of his Majesty's Plantations are not to be imported into England, Ireland, or Wales, Island of Jersey or Guernsey, but in such Vessels as truly belong to Owners that are of England, Ireland, Wales, Jersey, or Guernsey, and 3 fourths at least of the Mariners are to be English, upon forfeiture of Ship and Goods.

The Goods and Wares of those Plantations, and brought in such manner as aforesaid, must be brought from those very Countries of their several productions and growths, or from the Ports where they are usually shipped out, on forfeiture of Ships and Goods.

XVIII. No Ship to go from Port to Port in England, Ireland, Wales, Jersey, or Guernsey, or Berwick, unless the Owners are Denizens or Naturalized, and the Master and 3 fourths to be English.

All Owners must swear that their Vessels or Ships are their own proper Ships and Vessels, and that no Foreigner hath any share or part in her, and must enter the same; and that she was bought for a valuable consideration, bona fide.

XIX. Nor to bring in any Goods from any place, but what are of the growth of that very Country, or those places which usually are for the first shipping, on pain of forfeiture of their Vessel and Furniture.

This doth not extend so far, but that Masters may take in Goods in any part of the Levant or Streights, although they
they are not of the very growth of the place, so that they be imported in English Ships, 3 fourths English Mariners: So likewise those Ships that are for India in any of those Seas to the Southward and Eastward of the Cape of Good-Hope, although the Ports are not the places of their very growth.

Any People of England may import (the Master and Mariners 3 fourths English) any Goods or Wares from Spain, Portugal, Azores, Madeira, or Canary Islands; nay in Ships that are not English built, Bullion may be imported; so likewise in those that are taken by way of Prize, Bona fide.

But Sugars, Tobacco, Cottons, Ginger, Indicoes, Fustick, or any other dying Wood of the growth of his Majesty's Plantations, to be shipped, carried or conveyed from any of the English Plantations, are to be carried to no place in the World, but are to come directly for England, Ireland, Wales, or Berwick, upon pain of forfeiture of Ship and Goods; and the Master is to give Bond with one Security in 1000 l. if the Ship be under the burden of 100 Tuns, and 2000 l. if above; that upon Lading he brings his Ship directly into England, Ireland, Wales, or Berwick, (the danger of the Seas excepted) so likewise they are to do the same for the Ships that shall go from the Plantations, to the Governor of such Plantation, upon forfeiture of the Ship and Goods.

By a late Act (3 G. 2. c. 28.) Rice is permitted to be carried South of Cape Finisterre without first coming to Great-Britain.

XX. When the Master shall arrive at Gravesend, he shall not be above three days coming from thence to the place of discharge; nor is he to touch at any Key or Wharf till he comes to Chester's Key, unless hindered by contrary Winds, or draught of Water, or other just impediment to be allowed by the Officers: And likewise he or his Purser are there to make Oath of the Burden, Contents and Lading of his Ship, and of the Marks, Number, Contents, and Qualities of every parcel of Goods therein laden to the best of his knowledge; also where and in what Port she took in her Lading, and what Country built, and how manned, who was Master during the Voyage, and who the Owners; and in Out-Ports must come up to the place of unloading, as the condition of the Port requires, and make Entries, on pain of 100 l.
Nor is such a Master to lade aboard any Goods outwardly to any place whatsoever, without entering the Ship at the Custom-House, her Captain, Master, Burden, Guns, Ammunition, and to what place she intends, and before departure to bring in a Note under his hand of every Merchant that shall have laid aboard any Goods, together with the marks and numbers of such Goods, and be sworn as to the same, on pain of 100 l.

No Captain, Master, Purser of any of His Majesty's Ships of War shall unlade any Goods before Entry made, on pain of 100 l.

Note, There is a List of all Foreign built Ships in the Exchequer. No Foreign Ship not built in any of His Majesty's Dominions of Asia, Africa, or America after Oct. 1. 1662. and expressly named in the List, shall enjoy the Privileges of a Ship belonging to England or Ireland, although owned and manned by English, except only such as are taken by way of reprize, and condemnation made in the Admiralty as lawful Prize. None but English and Irish Subjects in the Plantations are to be accounted English.

XXI. If the Master shall have Freight from Port to Port within the Realm, he ought to have Warrant for the same, on pain of forfeiture of the Goods; and he is to take forth a Cocquet, and become bound to go to such Port designed for, and to return a Certificate from the chief Officers of that Port where the same is designed for, and discharged within six Months from the date of the Cocquet.

XXII. But from the Netherlands, or Germany, there may not be imported any port of Wines (other than Rhenish) Spicery, Grocery, Tobacco, Pot-ashes, Pitch, Tar, Salt, Rosin, Deal-boards, hard Timber, Oil, or Olives, in any manner of Ships whatsoever.

It might not seem impertinent, that this latter part which is abridged, in reference to matters publick, should be inserted; for that sometimes it may happen, that an honest and well meaning Master or Skipper might innocently involve and hazard the loss of his Ship by committing acts against Laws positive and prohibitory; and though Masters and Mariners, qua tales, be not so exquisite as to know all that does belong to their Duties, or at least that which
which the Law lays incumbent on their Shoulders; ye for that most of them have some small glimmerings of the fame, such hints in matters publick as well as private may not only be of some advantage to them, but also to Merchants, who always upon the Miscarriages of the Masters, prove the greatest Sufferers; the offenders, for the most part, proving not sufficiently solvent.

CHAP. III.

Of Mariners, their several Offices and Immunities, and of Barretry committed by them.

I. The several Marine Officers on Ship-board, and their Charges and Duties.

II. Of the Master's power and authority over them, as in relation to punishing or otherwise.

III. The Duty that Mariners owe to each other, and th to the Ship.

IV. Their attendance requisite when laden; and if dismasted, where to be responsible.

V. When Accidents befal them, where they ought to be look'd after, and at whose cost.

VI. The Mariners Oath requisite to the discharging of the Master.

VII. What Accidents do destroy, and what not, their Wages.

VIII. Where they may join all in a Suit for the recovery of their Wages, and where not.

IX. Of their Wages where liable to answer damage.

X. Where they absolutely lose their Wages.

XI. Of Money or Goods taken up by a Mariner, where it shall be due, and where a Discount of his Wages.

XII. And of their becoming liable to Correction.

XIII. Barrety in the Mariners, the reason why the Law imputes offences in them to be answered by the Master.

XIV. In what cases the Master shall become liable for the Actions of his Mariners.

XV. Of Goods purloined before they are brought on Ship-board, where the Master is bound to answer, and where not.

XVI. Of the Antiquity of such Custom.

XVII. Of Goods brought secretly on Ship-board, if purloined, where the Master is not made liable.

XVIII. Of Caution or fore-warning, where the same shall excuse the Master.

XIX. Where the Master shall be liable, notwithstanding such Caution.

I. THE
THE persons ordinary for sailing in Ships have divers denominations: The first, which is the Master, known to us and by most Nations both now and of old, and especially by the Roman Laws, Navicularius or Magister Navis; in English render'd Master; or Exercitator Navis; in the Teutonic Skipper; by the Grecians, Navarchus or Naucleus; by the Italians, Patrōna. But this is only to those Vessels that are Ships of Burden and of Carriage; for to Ships of War the principal there is commonly called Commander or Captain. The next in order of Office to the Master, is he who directs the Ship in the Course of her Voyage, by the French called Pilote; by the English and Fleming, Steersman; by the Romans, Gubernator; by the Italians, Nocbiero Pilotto and Navarchus, as Gerottus writes. The third is esteemed the Master's Mate or Companion, chiefly if the Master be Steersman himself; of old by the Grecians and Romans called Proreta; his charge is to command all before the Mast.

His Successor in order is the Carpenter or Shipwright, by those two Nations of old, called Naupegus by the latter; by the first Calabrates. From the Loins of one of that Rank sprang that great Emperor Michael, surnamed Calabrates, who denied not to own the quality of his Father among his Regal Titles. The very Name of Calabrate the Venetian and Italian still use to this Day.

The next who succeeds in order, is he who bears the Charge of the Ship's Boat, by the Italians called Braschierie; by the Grecians and Romans, Carabita, from Carabus, which denotes the Boat of a Ship.

The sixth in order, especially in Ships of Burden, is the Clerk or Purser, by the Italians called Scrivano: whose Duty is the registering and keeping the Accounts of all received in or delivered out of the Ship; for all other Goods that are not by him entered or taken into Charge, if they happen to be cast over-board in a Storm, or are stolen or imbezzeled, the Master answers them not, there being no Obligation on him by Law for the same; his Duty is to unlade by Day, not Night.
The seventh a most necessary Officer as long as there are aboard Bellies, sharp Stomachs and Provifion, called the Cook.

The eighth is the Ship's Boy, who keeps her continually in Harbours, called of old by the Grecians, Nauphi-lakes; by the Italians, Guardino: These Persons are distinct in Offices and Names, and are likewise distinguished in their Hires and Wages; the rest of the Crew are under the common Name of Mariners, by the Romans called Nautae; but the Tarpollids, or those Youths or Boys that are Apprentices, obliged to the most servile Duties in the Ship, were of old called Mesonautae.

By Stat. 2. Ann. cb. 6. Two Justices of Peace, or the Church-Wardens, &c. with Consent of such Justices, may bind out any Boy of ten Years of Age, who is or his Parents are chargeable to the Parish, or who begs for Alms, to be Apprentice to the Sea-Service to any Subject, Master of a Ship, belonging to any Port in England, Wales, or Berwick. See the Act how the Indenture is to be made, and for several other Particulars. The Church-Wardens are to pay 50 s. to buy necessary Clothing and Bedding: Such Apprentice is not to be impressed, or permitted to inlist himself in the King's Service till eighteen Years of Age. But Note, that by Stat. 4. and 5. Ann. cb. 19. Set. 18. Masters are not obliged to take such Apprentices under the Age of fifteen Years; nor, unless they be healthy and strong of Body. The Admiralty is to grant Protections for Apprentices so bound, till eighteen Years of Age, without Fee. They may be assigned, with the Assent of two Justices; and then also to have Protections.

II. The Matter hath the supreme Rule on ship-board, and by that Means his Power and Authority is by Law much countenanced, especially in the keeping his Crew in Peace so long as they eat his Bread; and if a Mariner shall happen to be bruised or hurt in doing his Duty and Service, the Master * is to take Care that he be carefully look'd after, in order to the procuring his Recovery; and if it be occasioned by the Mis-carriage of another on Ship-board, he may refund the Damage out of his Wages, but still remembering who gave the first Assault.
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If it happens that the Master commands his Boat to be manned out, and it so happens that the same is out of order, or unfit to take the Sea, the Tews, or other Accoutrements being impotent, if the Mariners happen to be drowned, the Master is to repay by the Law Marine, one whole Year’s Hire to the Heirs of the drowned: Therefore Masters ought carefully to view and see that the Boat be fit for Men to trust their Lives in, upon his Command.

If a Mariner shall commit a Fault, and the Master shall lift up the Towel three times before any Mariner, and he shall not submit, the Master at the next Place of Land may discharge him; and if he refuse to go ashore, he shall lose half his Wages, and all his Goods within the Ship. If the Mariner shall submit, and the Master will not receive the same, he shall have his whole Wages; or if the Mariner shall depart the Ship on the Master’s Command, and the Master happens not to take another, if any Damage happens to Ship or Goods, the Master must answer.

III. Mariners must help one another at the Sea and in Port; if any refuse, upon the Oaths of his Fellows, he loseth his Wages. None of the Crew must or ought to leave the Ship, without Leave of the Master, when she comes to a Port, or rides at Anchor, but always constantly to wait upon her till they are discharged, or have leave, at least half to be left on Ship-board.

A Mariner may not carry out of the Ship above one Meal’s Meat, but Drink not a drop; and when on Ship-board, ought not to be there arrested for Debt, but only so much of his Wages in the Hands of the Master attached: Yet this is doubted, if it be not on a sworn Debt, that is, a Judgment or Sentence, or a Penalty to the King.

They ought not to depart from on Ship-board when once admitted into their full Pay (which is always when they break Ground) without Licence of the Master; and before they may so do, they are to leave a sufficient number to guard the Ship and Decks.

See the several Acts of the 7th and 8th William III. Cap. 21. Intituled an Act for the Increase and Encouragement of Seamen; and of the 8th and 9th of the same King.
King, Cap. 23. Intituled an Act for the further Increase and Encouragement of Seamen, for registering of Seamen, and providing for their Widows and Children in such manner as therein is mentioned, too large to be recited here.


IV. If the Ship breaks Ground, and is set sail, if after she arrives at her desired Port, their full Pay continues till she returns; nor may they in any wife depart from on Ship-board without Leave or Licence of the Master; if they do, and any Disaftet happens, they must answer: Yet at such Port if the Vessel be well moored and anchored with two Cables, they may go without leave, yet so as they leave a sufficient number behind to guard the Decks: But then their return must be in due Season; for if they make longer stay, they must make Satisfaction.

V. If Mariners get drunk and wound one another, they are not to be cured at the Charge of the Master or Ship; for such Accidents are not done in the Service of the Ship: But if any of the Mariners be any ways wounded, or do become ill in the Service of the Ship, he is to be provided for at the Charges of the Ship; and if he be so ill as not fit to travel, he is to be left ashore, and Care to be taken that he hath all Accommodations of Humanity administered to him: And if the Ship is ready for a Departure, he is not to stay for him; if he recover, he is to have his full Wages, deducting the Master's Charges which he laid out for him.

VI. In Case of Storm, if Goods are cast over-board for lightning the Ship, the Oaths of the Mariners, swearing that it was done for the Preservation of the Vessel and the rest of the Lading, shall discharge the Master.

So Goods damnified at Sea, are cleared by the Oath of the Master and Mariners, by the Laws of Oleron.

To assault the Master on Ship-Board, is a Crime that subjects the Mariner's Hand to be cut off, unless he redeems it at 5 Solz.

VII. If a Ship happens to be seized on for Debt, or otherwise to become forfeited, the Mariners must receive their Wages, unless in some Cases where their Wages are forfeited.
of Marque, and instead of that they commit Piracy, by rea-
son of which there becomes a forfeiture of all: but Ladings
of prohibited Goods aboard a Ship, as Wool, and the like,
though it subjects the Vessel to a Forfeiture, yet it disab-
ables not the Mariner of his Wages; for the Mariners
having honestly perform'd their Parts, the Ship is tacitly
obliged for their Wages: But if the Ship perishes at Sea,
they lose their Wages, and the Owners their Freight.
And this being the Marine Custom, is allowed by the
Common Law as well as the Civil Law.

If she comes to her first delivering Port they have
Wages till then: If lost afterwards, they only lose those
subsequent Wages. L. Raym. 639. Q. this, and see
L. Raym. 739, where they lost part of their first Wages.

VIII. The Courts at Westminster have been very favourable
to Mariners in order to the suing for Wages, for at
the Common Law they cannot join, but must sue all di-


Yet in the Admiralty they may all join, and the Courts
at Westminster will not grant a Prohibition: And so it
was full'd where one Jones, a Master of a Ship was sen-
tenced in the Admiralty for Wages at the Suit of poor
Mariners, a Prohibition, being prayed upon a Suggestion
that the Contract was made at Land, and not super altum
mare; the Court denied it, for that he came too late.
Sentence being given below against him: Yet if the
Mariners had only libelled, and there had been no Sen-
tence, and the Defendant had prayed a Prohibition, as
above, the Court would have denied it. This hath
been, and is usually done.

It was by meer Indulgence that Mariners were per-
mitted to sue in the Admiralty for their Wages: And
this Indulgence was, because the Remedy in the Admi-
ralty was the easier and better; easier, because they
must sever here, whereas they may join there; and
better, because the Ship itself is answerable: but it is
expressly against the Statute, tho' now Communis Error
facit Jus. The first instance of it is in Winch. 8. Yet it
was never allowed the Master should sue there; nor is
it reasonable where he commenceth the Voyage as Mas-
ter; for tho' the Mariners contract upon the Credit of
Q. 4

the
Of Mariners.

The ship, the master doth contract on the credit of the owners. L. Raym. 397, ad idem.

Salk. 33. pl. 5.

But yet the mate may sue in the admiralty for his wages, because he contracts with the master, as the rest of the mariners do. L. Raym. 632, ad idem.

But the court will be very well informed, that the libel is for mariners wages; for some who work carpenters work, and such like labour, aboard a ship in a haven or port within the realm, which is infra corpus comitatus, notwithstanding those great and ingenious objections against it) and must be tried by the common law, and not elsewhere, will libel under that cloak for mariners wages. But the court in that case will grant a prohibition. And so it was done in the like cases.

But if a ship rides at anchor in the sea, and the master sends his boat ashore for victuals or other provisions for the ship, and accordingly the providore or slop-seller does bring victuals and provisions aboard, in that case if the contract be made there, it must be sued for in the admiralty: but if the goods are by the purser or mariners contracted for at land, they must sue at common law.

But a suit in the admiralty for seamens wages grown due in the river, though no voyage made, was not prohibited. L. Raym. 1044.

Nor tho' made by writing at land; or even by deed. (Q. of this last point.) L. Raym. 1206.

The master cannot sue in the admiralty for his wages. L. Raym. 576.

IX. If goods are so imbezalled, or so damned if that the ship's crew must answer, the owners and master must deduct the same out of their freight to the merchants, and the master out of the wages of the mariners; for though freight is the mother of wages, so is it the very father of damage; for before the mariner can claim his wages out of what the ship hath earn'd, the ship must be acquitted from the damage that the merchant hath sustained by the negligence or fault of the mariners: and the reason is, for that as the goods are obliged to answer the freight, so the freight and ship is tackily obliged to clear the damage; which being done, the mariners are then let in to their wages.
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X. If a Mariner be hired, and he deserts the Service before the Voyage ended, by the Law Marine he loseth his Wages: And the same Custom at Common Law pleaded, it hath been conceived will bar him.

If a Mariner shall commit any willful or negligent Fault, by reason of which the Master, Owners, or the Ship answers Damage to the Merchant, an Action lies well against him.

In a Suit for Mariners Wages 'twas agreed, That if the Ship do not return, but perishes by Tempest, Enemy, Fire, &c. the Mariners shall lose their Wages; for if the Mariners shall have their Wages in these Cases, they will not use their best Endeavours, nor hazard their Lives to preserve the Ship, 1 Sid. 179. But if the Ship unlade, they shall have their Wages; in the Case of Cullen and Mico, 1 Keeble 831.

If a Seaman be pressed, he shall have his Wages pro rata. L. Raym. 1211.

XI. If a Mariner takes up Monies or Cloaths, and the same is entered in the Purser's Book, by the Custom Marine it is a Discount or a Receipt of so much of their Wages as the same amounts to; and in an Action brought by them for their Wages, the same shall be allowed, and is not accounted mutual, the one to bring his Action for the Cloaths, and the other for his Wages.

XII. A Master of a Ship may give moderate and due Correction to his Mariners, and if they bring an Action against him, he may justify the same at the Common Law; and by the Law of Oleron, if a Mariner shall assault the Master, he is to pay 5 Solz, or lose his Hand.

Mariners after they have unladen the Ship, if they demand their Wages, and there be any Intention of their Departure, the Master may detain a reasonable Proportion of the same till they bring back the Ship, or give Caution to serve out the whole Voyage.

XIII. Barretty of the Mariners is a Disease so Epidemical on Ship-board, that it is very rare for a Master be his Industry never so great, to prevent it; a Span of Villany on Ship-board soon spreads out to a Cloud, for no other Cause but of that circular Encouragement that one knavish Mariner gives another.

However the Law does in such Cases impute Offences Jus. de ob. &c. ex dikt. and Faults committed by them to be Negligences in the Master.
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Majster; and were it otherwise, the Merchant would be in a very dangerous Condition.

The Reasons why they ought to be Responsible, are, for that the Mariners are of his own chusing, and under his Correction and Government, and know no other Superior on Ship-board but himself; and if they are Faulty, he may correct and punish them, and justify the same by Law: And likewise if the Fact is apparently proved against them, may reimburse himself out of their Wages.

XIV. And therefore in all Cases, wheresoever the Merchant loads aboard any Goods or Merchandize, if they be Lost, Imbezzled, or any other ways Damnified, he must be Responsible for them; for the very lading them aboard makes them liable, and that as well by the Common Law as the Law Marine.

* XV. Nay, if his Mariners go with the Ship-Boat to the Key or Wharf to fetch Goods on Ship-board, if once they have taken Charge of them, the Majster becomes immediately Responsible, if they Steal, Lose, Damnify or Imbezzle them.

XVI. The antientest Record that is found extant, is that in Edward the Third's time, where one brought an Action of Trespass against the Majster for the Imbezzlement by his Mariners of twenty two Pieces of Gold, Bow, Sheaf of Arrows, Sword, and other things; and adjudged he should answer. And for that the same is or may be of great Moment, accept of a Transcript of the Record, as the same was certified into Chancery, in order to have it sent into the King's Bench, to enable the Plaintiff to bring an Action upon the same judgment in any Place in England, where he could meet with the Defendant.

Venerabilis in Christo Patri Domino I. Dei gra-"ta Ulpgojn’ Episcopo Domini Regis Ed. Cancellario vel ejus locum tenenti sui humiles e des voti, Robertus Eyene, Majus Ulle Bristol, Edwardus Blanket, & Johannes de Castle-ace Bal livi libertatum ejusdem Ulle, salutem cum omni reverentia & honore. De tenoje & Recordi & proc essus loquele que suit coiam nodis in Cur’ Domini Regis
Regis ibidem sine brevi inter Hen. Pilx & Jurana-
um Thonoex-Hagistrum Nativis vocat la Gratianum
de Bayone in pluto tranigres prout per brede Do-
mini Regis nobis directum dixit nobis inde certifica-
tur, ub sigillis nostris nobis si placet mittimus in
his scriptis. Ad placit Tolls tent ibidem die Nari-
xis por, post Festum Epiphania: Domini anno Reg-
i Regis nunc 24 Hen. Pilx quer: opte le vertus
Jurdainum Thonoex Hagistrum Nativis vocat la Gra-
tiane de Bayone de pletto tranigres per pl etc. 
unde quer, quod secundum legem et confletubinem
de Oleron unusquisque: Hagister Nativis tenet
respondere de quacunque tranigres per servientes
suos in eadem fact, e Johanne de Rile & Barcolet
de Bornes servientes predicat Iurdaini Hagistri Navi-
s predicat die Mercur, por ante Festum omnium
Sanctorum anno Regni predicti Regis Ed. 23, in
Bara jurata Britan, in eadem navi de Johanne de
Conub servient predict 22 libre in aurum, arcus,
lagit, glab. & al bona & catalla ad valenc. 40 L
operunt & allopetur unjuste, etc. ad damnum
predicat Hen. 60 l. e si predictus Jurdainus hoc velit
dedicere, predict Hen. paratus est verificare, etc. Et
predictus Jurdainus velit & dicit quod ler de Oleron
talit et quod si aliqua bona & catalla Hagisto al-
cinus Nativus liberata sunt custodiend, unde idem
Hagister por eis dem vel po aliqua alia re in eadem
navi facta manucap, illos modo Hagister Nativis te-
netur respondere; non alio modo, & sup hoc petit
Judicium. Et predict Hen. dicit, quod unusquisque
Hagister tenetur respondere de quacunque tranigres-
sione per servientes suos in Navi sua fact, & petit Ju-
dicium omnifer. Et sup hoc predict partes habent
diem hic die Sabbati por post Festum sei. Pillarii
por futur ad audiend Judicium suum, etc. Ad
quem diei predicte partes venerunt & peterunt Ju-
dicium suum, etc. Et recitat Recodo & processu
predictis in plea Curia coam Majore & Vallivis & alis
posibis hominibus Ulle & Hagistris & Varina-
ris, visum futur Curie, quod unusquisque; Hagister
Nativus tenetur respondere de quacunque tran-
gresione per servientes suos in Navi sua facta. Ideo
consideratum
The Judgment in this Case is according to Law, and ought not to have been a captiatur; for it is not such a trespass as the King is entitled to a Fine. Vide Cr. Jac. 224. Bidel vorius Moris. Coke's Entries, fol. 347.

XVII. The Master subject to answer Damage, is to be understood in all such Cases where the Lading was brought aboard either by his Consent or his Purser's; for any other, or such as shall be secretly brought in, not being entered in the Purser's Book, or in the Bills of Lading, the Master is not obliged to see forth-coming, unless it be such Goods as the Parties bring into the Ship about them, as Clothes, Money, and the like, as above, those things being seldom entered, yet most commonly those that are visible, the Master by Law is Responsible for.

XVIII. So likewise if a Master forewarn a Passenger to keep his Goods; and that he will no ways take Care of them, and if they be lost or purloyn'd by the Crew, he will not be obliged to see them forth-coming; the Master is not there held Responsible in Case of a Loss, especially if there be any thing of Agreement thereunto.

XIX. But if Goods shall be sent aboard a Ship, and the Master shall appoint a Cabin for the same, and deliver the Key to the Lader, and tell him he will not be Responsible if a Loss happens; yet if the Goods are stole, he must notwithstanding make Satisfaction: By the Common Law it shall bind an Inn-keeper. Mo. 78.

But if the Inn-keeper desires his Guest to put his Goods in such a Chamber under Lock and Key, &c. and then he will warrant, otherwise not, and the Guest leaves them in an outer Court, where they are stole, &c. the Inn-keeper shall not be charged.

Note, That Goods once delivered to a Master, the Cargo is not subject to be attached in his Hands, nor can any Custome whatsoever support the same; for they are in Law as it were bailed to the Ship, until the Freight and all other Charges are paid: And very much doubted whether an Attachment can be made in London of any Goods.
CHAPTER III. OF MARINERS.

Goods at all lying on Ship-board in the River of Thames, which, though the Port of London notwithstanding Freight and all other Charges are paid off.

Commissioners of Bankrupt issued a Warrant to seize Hill. 8 Anna Goods of the Bankrupt on board two Ships in Topsham Bay in Chancery. in Devonshire; the Goods were consign'd to Persons in Holland who had not paid the Bankrupt for them. The Masters refused to deliver the Goods, notwithstanding the Warrant; which occasioned the Commissioners coming to demand the Goods, which still were refused.

Sir Peter King moved for an Order upon the Masters for their Contempt.

The Court at first greatly doubted whether they can make an Order in Aid and Assistance of the Warrant of the Commissioners of Bankrupt, the Statute having vested a large Power in them; besides the Persons to whom the Goods are consigned, would be indebted to the Creditors of the Bankrupt, which Creditors may recover by the Law of Holland.

Sir Peter King. We shall rather lose the Goods, than follow them into Holland.

Lord Chancellor. Their refusing to deliver the Goods upon the Warrant, is no Contempt to this Court, tho' the Commissioners act under a Commission under the Broad Seal. I remember the Queen was applied to, to lay an Embargo upon a Ship in the like Case, but denied; because an Embargo would have affected other Goods in the Ship: The Masters in this present Case have some Colour to detain the Goods; for upon a Delivery of them, they may be disappointed of Freight, and the Assignees of the Commission must stand in the same Place as the Bankrupt, and be subject to his Contract.

But however, an Order was made upon the Masters to deliver the Goods upon payment of the Freight Money, and the Masters to be indemnified by the Creditors, against a Bill of Lading, which was sent to the Consignees.
C H A P. IV.

Of Freight, Charter-parties, and Damage.

I. The various ways that Ships may be freighted at this Day.

II. The ancient way of Freighting.

III. How the same is governed upon the various Contracts, and of Accidents happening to Masters or Ladiers preventing the Voyage.

IV. Of Agreements made and in Writing, how confirmed by the Common Law; what it is.

V. Of Ships laded and unladed before the Voyage begun; their becoming disabled, viz. perils in the Voyage before the same is completed.

VI. Of Ships departure considered in reference to Freight and Damage.

VII. Of Freight arising on Trading Voyages, and left by contingent Actions, considered by the Common Law, and the Law Marine.

VIII. Of Freight becoming due upon the various ways of Contract, or general where none was agreed for.

IX. Of Faults arising from the Freighters; and of the Decree of the Ship in reference to Freight.

X. Faults of Masters arising from taking in Goods more than were contrived for; and of being forced into Ports in his Passage.

XI. Passengers dying, the Ship's Title to their Goods and Concerns.

XII. The Ship in construction of Law how far liable to Freight.

XIII. Ships taken and retaken in War, whether the same destroys the Contract.

XIV. Goods become lost without Fault of the Ship, whether Freight becomes due.

XV. Of Freight controlled with Persons deficient.

XVI. Of Ships contracted for by the Month, to be paid at the Arrival at a Port; Ship is cast away, the Goods saved: Whether the Freight ought to be paid.

XVII. Covenant mutual in a Charter-Party, shall not be pleaded the one against the other. Plan that answers to Part only is ill. Covenant therein by several, yet brought against one only. Covenant by several & quemlibet eorum, may be brought against one only.

I. In the Freighting of Ships, respect is always had to the Ship itself, or else to a certain Part thereof.

Again, the Merchants either Freight her by the Month, or the entire Voyage, or by the Ton; for it is one thing to Freight a Ship, and another thing to take certain Tonnage to Freight.
CHAP. IV. Of Freight and Charter-parties.

So also it is one thing to be a Cape-Merchant, another to be an under Freighter.

II. There was of old another way of Freighting, which was when the Merchant agreed with the Master for a Sum certain to convey his Goods enured against all Perils; such were to be responsible if any Detriment or Loss happened; but that is now become obsolete.

III. Freight is governed generally by the Contract, and varies according to the Agreement, reduced generally into a Writing commonly called a Charter-party, executed between the Owners and Merchant, or the Master in the behalf of himself and Owners, or himself and the Merchant, or between them all; or else is Parol.

The Master or Owners generally covenant to provide a Pilot and all other Officers and Mariners, and all other things necessary for the Voyage; and for the taking in and delivering out of the Lading.

If there be an Agreement and Earnest, but no Writing, if the same be broke off by the Merchant, he loseth his Earnest; but if the Owners or Master repent, they lose double the Earnest.

But by the Common Law of England, the Party dammified may bring his Action of the Cape, and recover all Damages on the Agreement.

If a time be appointed by the Charter-party, and either the Ship is not ready to take in, or the Merchant not ready to lade aboard, the Parties are at Liberty, and the Party Dammified hath his Remedy against the other by Action, to recom pense the Detriment.

If Part of the Lading be on Ship-board, and it happens some Misfortune may overtake the Merchant that he hath not his full Lading aboard at the time, the Master is at Liberty to contract with another, and shall have Freight by way of Damage for the time that those Goods were aboard after the time limited; for such Agreements being of a Conditional nature Precedent, a Failure as to a compleat Lading, will determine the same, unless afterwards affirmed by Consent. And though it be no Prudence for every Merchant or every Master to depart from the Contract, if it should so fall out that the Agreement as to the Lading is not performed according to Promise, (futudom or ever done if any Part be aboard) yet it is the highest...
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highest Justice, that Ships and Masters should not be In-
fettered, but Free: for otherwise by the bare lading of a
Cask or Bale, they might be defeated of the Opportunity
of Passage or Seafon of the Year.

So on the other hand, if the Vessel is not ready, the
Merchant may ship aboard in another Vessel the Remain-
der of his Goods, and discharge the first Skipper, and
recover Damages against the Master or Owners for the
rest. This is grounded upon the like Reason as the
former.

And therefore by the Law Marine, Chance, or some
other notorious Necessity, will excuse the Master; but
then he lotheth his Freight till such time as he breaks ground,
and till then he sustains the Loss of the Ship.

But if the Fault be in the Merchant, he then must an-
swer the Master and the Ship's Damage, or else be liable
to entertain the Ship's Crew ten Days at his own Charge;
but if after that, then the full Freight: And if any Da-
mage happens afterwards, the Merchant must run the
Rifque of that, and not the Master or Owners. (a) But
by the Common Law, so long as the Master hath the Goods
on Ship-board, he must see them forth-coming.

IV. Charter-parties have always, by the Common Law,
had a genuine Constructions as near as may be, and ac-
cording to the Intention and Design, and not according to
the literal Sense of Traders, or those that Merchandize
by Sea, yet they must be regularly pleaded; and therefore
in an Action of Covenant on an Indenture dated 9
Q. 38 El. wherein was recited, Whereas by Indenture of
Charter-party dated Sep. 8. 38 Eliz. between the Plantiff
and Francis Cherry; the Plantiff having hired of him a
Ship, for a Voyage to Dantzick, upon taking the Ship it
was agreed between them, that the Ship should be laden
with Corn at Dantzick, and to fail to Leghorn. Now by
the said Indenture, in Consideration the Plantiff had a-
reed, that the Defendant should have the Moiety of Corn,
quad tunc fuit, or afterwards should be laden in the Ship
during the said Voyage, the Defendant covenantated to pay
the Moiety of the Money for the said Corn, quad tunc fu-
it, or afterwards should be laden, &c. and alledgedeth in
fatto, that Q. 9. 38 Eliz. the Ship was laden with 6o
Lafts of Corn, and for not Performance of this Covenant
the
the Action was brought; the Defendant pleaded that the Deed was sealed and delivered. **Ost. 28. 38 Eliz. & quot;ad tunc vel postea there was not any Corn laden there, and traversteth the Delivery **Ost. 9. or at any Time afterwards before the 28 **Ost. 38 Eliz. And it was adjudged upon Demurrer, That in regard the Plaintiff declared upon a Deed dated **Ost. 9. 38 Eliz. it shall be intended to have its Essence and Delivery at that time, and no other; and if he should confest it to be delivered at any other time, it would be a Departure from his Declaration, and the Word *tunc* is referred to the Delivery, and not to the Date; and if it were Delivered ten Months after the Date, he should not have the Benefit of the Corn laden before the delivery: And therefore the Defendant was adjudged not to be charged with paying for any Corn before the Delivery of the Deed, the Words of the Deed being, that he should pay for the Corn then laden, &c. which (*ibid*) is referred to the time of the Essence of the Deed by the Delivery, and not to the Date.

*Atkinson* did contract with *Buckle* for the Carriage of 100 Quarters of Barley, and did promise to deliver unto him the 100 Quarters of Barley, a Ship-board at *Barton Haven*, in the County of *York*, to carry them for him, and for the Carriage thereof did promise to pay to him so much; and *Buckle* promised to carry the same for him, and accordingly brought his Ship to the said Haven, expecting there the Delivery of the 100 Quarters of Barley; but *Atkinson* came not to deliver the same to him, whereupon *Buckle* brought his Action of the Case upon the Promise, and upon *non assumpsit* pleaded had a Verdict and Judgment, which was affirmed upon a Writ of Error.

Charter-Party (**Charta partita**, i.e. a Deed or Writing divided) is all one in the Civil Law, with an Indenture at the Common Law. Itsettles the Agreements and Bills of Lading, the Contents of the Cargo, and binds the Master to deliver them well conditioned at the place of discharge, according to the Contents of the Charter-Party or Agreement; and for Performance, the Master obliges Himself, Ship, Tackle, and Furniture, to see the same done and performed.

R: Covenant
Covenant upon a Charter Party between Bolton Owner, and Lee and Morgan Merchants, Freighters of a Ship, by which Bolton put to Freight the Ship in a Voyage to Guinea at 48 l. per Mensem, and there was a mutual Covenant between the Parties & quemlibet corum modo sequente, and then divers Covenants follow concerning the Ship’s Tackle and Performance of the Voyage; and then a Covenant for the Payment of the Freight (viz.) when the Ship arrived at Guinea, the Freight then due was upon Notice to be paid in England, and when the arrived in England the Residue from the time of the last Payment was to be paid. And faith that at such a time the Ship arrived, and that 6 Months and 10 Days were then past, which came to so much, whereof Notice was given; and that after such a time the Ship arrived at England, and that the Freight for 6 Months, from the time of the last Payment, and the Freight came to 287 l. 4 s. and that the Defendant had not paid any of the Sums, upon which the Defendant demurred. And took these Exceptions to the Declaration:

1. For this that the Action is brought against one of the Defendants only, omitting the other; sed non allocator, the Covenant being between them & quemlibet corum is joyned and several of every Part.

2. For that it appears upon Computation, the Plaintiff demanded more upon the first Breach than is due by 30 s. and less than is due upon the second by 16 s. and that the first may be cured by the Jurors finding les, or by the Plaintiff’s releasing the Overplus, yet where he demands less than his due, it is incurable; and cited several Books there quoted for that purpose in Assumpsit, where, as in this Café, only Damages are to be recovered; and on the other Part was cited, Cro. Jac. 498. Pemberton v. Shelton, & 529. Parker v. Curson & uxor, Lee 2 Levinz 4. Hutme & Sambers, & 2 Vent. 129. Welby & Philips. Hale Chief Justice took a Difference between this Café of Covenant, and Debt, and held that after Verdict it had been cured without question, but upon Demurrer there may be some Doubt, the Demurrer being general, but had the Demurrer been special it had been ill, and ruled Judgment, pro Quer. 2 Levinz 56. & 3 Keble 39. & 50. Bolton and Lee.

V. If
CHAP. IV. OF FREIGHT AND CHARTER-PARTIES.

V. If Goods are fully laded aboard, and the Ship hath broke Ground, the Merchant on Consideration afterwards resolves not on the Adventure, but will unladen again; by the Law Marine the Freight is due.

And if the Ship in her Voyage becomes unable without the Master's Fault, or that the Master or Ship be arrested by some Prince or State in her Voyage, the Master may either mend his Ship, or Freight another.

But if the Merchant will not agree to the same, then the Freight becomes due for so much as the Ship hath earned; for otherwise the Master is liable for all Damages that shall happen. And therefore if that Ship, to which the Goods were translated, perished, the Master shall answer; but if both the Ships perish, then he is discharged.

But if there be extream Necessity, as that the Ship is in a sinking Condition, and an empty Ship is passing by, or at hand, he may translate the Goods; and if that Ship sink or perisheth, he is there excused: But then it must be apparent that that Ship seemed probable and sufficient.

VI. If a set time be fixed and agreed upon between the Merchant and the Master, wherein to begin and finish his Voyage, it may not be altered by the Supra Cargo, without special Commission for that Purpose.

If a Master shall weigh Anchor, and stand out to his Voyage after the time covenanted or agreed on for his Departure, if any Damage happens at Sea after that time, he shall refund and make good all such Misfortune; Yet if a Charter-party is made, that the Plaintiff shall sail from London to Lisbon with the first Wind and Opportunity, &c. in Consideration of which the Merchant did covenant to pay so much for Freight; the Ship departs not with the first Wind and Opportunity, yet afterwards breaks Ground, and arrives at her Port, the Freight in this Case is become due; for there is nothing can bar the Ship of her Freight but the not Departure, for only that in Law is transferable, being material to avoid the Payment of Freight; but to say the Ship did not depart with the next Wind, is but a Circumstance which in strictness of Law is not transferable.

If it be agreed that the Master shall sail from London to Leghorn in two Months, and Freight accordingly is agreed

R 2
Of Freight and Charter-parties. Book II.

on, if he begins the Voyage within the two Months, tho' he does not arrive at Leghorn within the time, yet the Freight is become due.

Where the East-India Company by Charter-Party might keep the Ship a long time in India, and did keep her until she was unfit for Service, and could not come home; they were obliged in Chancery to pay the Damage; tho' by the perusing of the Charter-Party it was payable at the Return of the Ship.

So where no Freight was to be paid for the Cargo outwards but freight for the Cargo homewards; and the Factor abroad had no Goods to load her homewards Payment of the Freight was decreed.

So though the Officers and Mariners gave Bond not to demand Wages unless the Ship returned to London; she arrived at a delivering Port, and afterwards was taken by the Enemy. They had their Wages to the delivering Port.

VII. If the Ship is freighted from one Port to another Port, and thence to a third, fourth, and so home to the Port from whence the first failed, (commonly called a Trading Voyage) this is all but one and the same Voyage, so as it be in Conformity to the Charter-party.

A Merchant agrees with a Master, that if he carries his Goods to such a Port, he will then pay him such a Sum; in the Voyage the Ship is assaulted, entred and robbed by Pirates, and part of her Lading taken forth, and afterwards the Remainder is brought to the Port of discharge, yet the Sum agreed upon is not become due, for the Agreement is not by the Master performed.

But by the Civil Law this is vis major or casus fortuitus, there being no Default in the Master or his Mariners, and the same is a Danger or Peril of the Sea, which if not in Naval Agreements expressed, yet is naturally implied: For most certain, had those Goods, which the Pirates carried away in stress of Weather, Navis levanda causa, been thrown over-board, the same would not have made a Difi-

ability as to the Receipt of the Sum agreed on; for by both the Common Law and the Law Marine, the Act of God, or that of an Enemy, shall no ways work a Wrong in Actions private.

VIII. If
CHAP. IV. Of Freight and Charter-parties.

VIII. If a Ship be freighted by the Tun, and she is full laden according to the Charter-party, the Freight is to be paid for the whole; otherwise but for so many Tun as the Lading amounted to.

If Freight be contracted for the lading of certain Cattle, or the like, from Dublin to West-Chester, if some of them happen to die before the Ship’s Arrival at West-Chester, the whole Freight is become due as well for the dead as the living.

But if the Freight be contracted for the transporting them, if Death happens, there ariseth due no more Freight than only for such as are living, at the Ship’s Arrival at her Port of Discharge, and not for the Dead.

If the Cattle or Slaves are sent aboard, and no agreement is made either for lading or transporting them, but generally, then Freight shall be paid as well for the Dead as the Living.

If Freight be contracted for the transporting of Women, and they happen in the Voyage to be delivered of Children on Ship-board, no Freight becomes due for the Infants.

The Charter-party does settle the Agreement, and the Bills of Lading the Contents of the Cargo, and binds the Master to deliver them well conditioned at the Place of Discharge, according to the Contents of the Charter-party or Agreement; and for Performance, the Master obliges Himself, Ship, Tackle and Furniture to see the same done and performed.

If Goods are sent aboard, generally the Freight must be according to Freight for the like accustomed Voyages.

If a Ship shall be freighted and named to be of such a Burden, and being freighted by the Tun, shall be found less, there shall no more be paid than only by the Tun for all such Goods as were laded aboard.

If a Ship be freighted for two hundred Tuns or thereabouts, the addition of therabouts is commonly reduced to be within five Tun, more or less, as the Moiety of the number Ten, whereof the whole number is compounded.

If a Ship be freighted by the great, and the Burden of it not expressed, yet the Sum certain is to be paid.

R 3  IX. If Styles 220.
Of Freight and Charter-parties. Book II.

IX. If the Ship, by reason of any fault arising from the Freighter, as lading aboard prohibited or unlawful commodities, occasions a detention, or otherwise impedes the Ship’s voyage, he shall answer the Freight contracted and agreed for.

If a Ship be freighted out and in, there arises due for Freight, nothing, till the whole voyage be performed: So that if the Ship die, or is cast away coming home, the Freight outwards, as well as inwards becomes lost.

13th July, 1680, in Chancery, a Part-Owner of a Ship sued the other Owners, for his Share of the Freight of the Ship which finished her Voyage; but the other Owners set her out, and the Complainant would not join with them in setting her out, or in the Charge thereof; whereupon the other Owners complained in the Admiralty; and by Order there, the other Owners gave Security, That if the Ship perished in the Voyage, to make good to the Plaintiff his Share, or to that effect; in such a Case, by the Law Marine, and Course of the Admiralty, the Plaintiff was to have no Share of the Freight. It was referred to Sir Lionel Jenkins to certify the Course of the Admiralty, who certified accordingly, and that it was so in all places, for otherwise there would be no Navigation, whereupon the Plaintiff’s Bill was dismist. See more of Freight, and the Incidents thereunto, Lex Mercatoria 100.

X. If a Master freights out his Ship, and afterwards secretly takes in other Goods unknown to the first Laders, by the Law Marine he loses his Freight; and if it should so fall out, that any of the Freighter’s Goods should for Safety of the Ship be cast over-board, the rest shall not become subject to the Average, but the Master must make good that out of his own Purse: But if the Goods are brought into the Ship secretly against his Knowledge, it is otherwise; and Goods so brought in, the same may be subjected to what Freight the Master thinks fitting.

If the Ship puts into any other Port than what she was freighted to, the Master shall answer Damage to the Merchant; but if forced in by Storm, or by Enemy, or Pirates, he then must fail to the Port conditioned at his own Cofts.

Generally
CHAP. IV. Of Freight and Charter-parties.

Generally the touching at several Ports by Agreement, im-
port not a Diversity, but a Voyage entire.

XI. If Passengers having Goods, happen to die on
Ship-board, the Master is to inventory their Concerns,
and the same may keep a Year; and if none claim the
same, the Master becomes Proprietor defeasible: But the
Bedding and Furniture of the Parties become the Master’s
and his Mates, and the Clothing are to be brought to
the Ship-Maft-Head, and there prized and distributed
amongst the Crew, as a reward for their Care of seeing the
Body put into the Sea.

The Captain died leaving Money on Board, the Mate
became Captain, and improved the Money: He shall,
on Allowance for his Care in the Management of it, ac-
count for the Profits, and not for the Interest only.

XII. The Lading of the Ship in Construction of Law,
is tacitly obliged for the Freight, the same being, in Point
of Payment, preferred before any other Debts to which
the Goods so laden are liable, though such Debts, as to
time, were precedent to the Freight; for the Goods re-
main as it were bailed for the same: Nor can they be at-
tached in the Master’s Hands, though vulgarly it is con-
ceived otherwise.

Ships deserve Wages like unto a Labourer; and there-
fore in the Eye of the Law, the Actions touching the
same, are generally construed favourably for the Ship
and her Owners: And therefore if four Part-Owners
of five, shall make up their Accounts with the Freigh-
ters, and receive their Proportions, yet the fifth Man
may sue singly by himself without joining with the rest;
and this as well by the Common Law as the Law Ma-
rine.

XIII. A Ship in her Voyage happens to be taken by an
Enemy, afterwards in Battle is re-taken by another Ship
in Amity, and Restitution is made, and she proceeds on
in her Voyage, the Contract is not determined, though
the taking by the Enemy divested the Property out of the
Owners; yet by the Law of War that Possession was de-
feasable, and being recovered in Battle afterwards, the
Owners became re-invested: So the Contract, by Fiction
of Law, became as if she never had been taken, and so
the entire Freight becomes due.

R 4. Covenant
Of Freight and Charter-parties. Book II

Covenant by a Charter-Party, that the Ship shall return within the River of Thames by a certain time (periculos & causalitatis Marium, Anglice, Dangers of the Sea, exceptis) and after in the Voyage, and within the time of the return, the Ship was taken upon the Sea, per homines bellicosos modo guerrino arraiatos, to the Covenantor unknown, &c. & abinde hoc usque detenta fuit by them, per quod he could not return within the River of Thames within the time mentioned in the Covenant. Resolved this Impediment was within the Exception, for these Words intend as well any Danger upon the Sea by Pirates and Men of War, as Dangers of the Sea by Shipwreck, Tempest, or the like. Pickering and Barkley, Stiles 132. & 2. Rolls Abridg. 248.

XIV. If Freight be taken for 100 Tuns of Wine, and twenty of them leak out, so that there is not above eight Inches from the Buge upwards, yet the Freight becomes due: One Reason is, because from that Gage the King becomes entitled to Custom, but if they be under eight Inches, by some it is conceived to be then in the Election of the Freighters to fling them up to the Master for Freight, and the Merchant is discharged. But most conceive otherwise; for if all had leak’d out, (if there was no Fault in the Master) there is no Reason the Ship should lose her Freight; for the Freight arises from the Tunnage taken, and if the Leakage was occasions through Storm, the same perhaps may come into an Average. Besides, in Bourdeaux the Master stows not the Goods, but the particular Officers appointed for that Purpofe, quod nota. Perhaps a special Convention may alter the Case.

Most certain, if a Ship, freighted by the Great, be cast away, the Freight vanishes; but if by the Tun or Pieces of Commodity, and she happens to be cast away, afterwards Part is saved; doubted whether pro rata the ought not to be answered her Freight.

Debt upon a Charter-Party upon a Penalty, the Covenant was to pay so much per Tun for Freight, and Breach was assigned in non Payment, for so many Tun and
and an Hogshead, which came to so much: Upon Demurrer, 'twas held the Declaration was ill, for the Covenant is only to pay so much per Tun; ali ter if it had been to pay secundum ratam of so much per Tun. Rota. 176 v. 134.

XV. If a Merchant takes Freight by contracting with a Mariner that is not a Master, if Loss happens, he must be contented to sit down without any Remedy against the Owners; but perhaps such a Mariner for such an Act may subject himself to an Action.

But if there be a Fault committed by a Mariner which was hired, or put in by the Master or Owners; there for Reparation the Owners become liable.

XVI. The Master is not bound to answer Freight to the Owners for Passengers, if they are found to be unable to pay.

If Ship by Charter-party reciting to be of the burden of 200 Tuns is taken to Freight for a Sum certain, to be paid at her return, the sum certain is to be paid, though the Ship amounts not to that Burden.

If a Ship is freighted after the rate of 20 l. for every Month that she shall be out, to be paid after arrival at the Port of London; the Ship is cast away coming up from the Downs, but the Lading is all preferred; yet the Freight is become due: For the Money arises due monthly by the Contract, and the Place mentioned is only to shew where payment is to be made, for the Ship deserves Wages like a Mariner, who serveth by the Month; and though he dies in the Voyage, yet his Executors are to be answered pro rata. Besides, the Freight becomes due by intend- ment on the delivery or bringing up of the Commodities to the Port of London, and not of the Ship.

If a Man freights a Ship out, and covenants that the Ship with the first Wind and Opportunity should sail out of that Port to Cales, and the Freighter covenants that he for the Freight of all the Premisses would pay unto the Master 184 l. pro tota transfretatione omnium premis sarum, if the Master doth not aver that the Ship did arrive at the Port of Cales, he cannot maintain an Action against the Freighter.

If the Master enters into a Charter-Party for himself and Owners, the Master in that case may release the
Of Freight and Charter-parties. Book II.

the Freighters without advising with the Owners; but if the Owners let out to Freight such a Ship whereof J. S. is Master, though the Master covenant in the same Charter-party and subscribes, yet his Release in that case will not bind the Owners, but the Owners Release on the other hand will conclude the Master: And the reason is, for that the Master is not made a proper Party to the Indenture. And so it was ruled, where an Indenture of Charter-party was made between Scudamore and other Owners of the good Ship called the B. whereof Robert Pitman was Master on the one Part, and Vandenstene on the other Part; in which Indenture the Plaintiff did covenant with the said Vandenstene and Robert Pitman, and bound themselves to the Plaintiff and Robert Pitman for performance of Covenants in 600 l. and the Conclusion of the Indenture was, — In witness whereof the said Robert Pitman put his Hand and Seal, and delivered the same; in an Action of Covenant for not performing certain Covenants in this Indenture, the Defendant pleaded the Release of Pitman; whereupon the Plaintiff demurred: And it was adjudged, That the Release of Pitman did not bar the Plaintiff, because he was no Party to the Indenture; and the diversity in that case was taken and agreed between an Indenture reciprocal between Parties on the one side, and Parties on the other side, as that was; for there no Bond, Covenant or Grant can be made to or with any that is not party to the Deed; but where the Deed indent-ed is not reciprocal, but is without a Between, &c. as Omnibus Christi fidelibus, &c. there a Bond, Covenant or Grant may be made to divers several Persons.

If an Indenture of Charter-party be made between A. and B. Owners of a Ship of the one Part, and C. and D. Merchants of the other Part, and A. only seals the Deed of the one Part, and C. and D. of the other Part; but in the Indenture it is mentioned that A. and B. covenant with C. and D. and C. and D. covenant with A. B. in this Case A. and B. may join in an Action against C. and D. tho' that B. never sealed the Deed, for he is a Party to the Deed, and C. and D. have sealed the other Part to B. as well as to A. Clement against Henley, 2 Rolls Abr. 22.
CHAP. IV. Of Freight and Charter-parties.

XVII. Covenant upon a Charter-party, by which the Master of the Ship covenants to fail with the first fair Wind to Barcelona, and that the Mariners shall attend with a Boat to relade the Ship, and then to return with the first fair Wind to London, and to unlade and deliver the Goods, and the Merchants covenant to pay so much for Freight, and so much for Demurage every day; the Master brought his Action for the Freight and Demurage, and declares that he failed such a Day with the first fair Wind, and upon all the other Points. The Defendant, quoad the Freight, that the Ship did not return directly to London, but went to Alicant and Tangier and made divers Deviations, and by these delays the Goods were spoiled, and as to the Demurage, that this was occasioned by the Negligence of the Mariners in not attending with the Boat to relade the Ship; to which the Plaintiff demurred, and per Curiam pro Quer. for that the Covenants are mutual and reciprocal, upon which each shall have his Action against the other, but shall not plead the breach of one in bar of another, for perhaps the damage of the one side and of the other are not equal. 3 Levinz 41. Cole contra Shallet. Sir Tho. Jones 216. Showers against Cudmore.

In Covenant the Plaintiff declared, that he covenanted to fail with a Ship to D. in Ireland, and there to take 280 Men of the Defendant's, and to carry them to Jamaica, and the Defendant covenanted to have the 280 Men there ready, and to pay for their carriage 5 l. for each Man, and that the Defendant had not the 280 Men ready, but that he had 180, which he took on Board, and carried them, but that the Defendant had not paid for them; the Defendant pleaded that he had the 280 Men ready, and tendered to the Plaintiff, who refused to receive them, but said nothing as to the carrying of the 180 Men, nor to the Payment for them; and for that it was not a Plea to all, Judgment was given for the Plaintiff upon Demurrer, 1 Levinz 16. 1 Keble 100.

CHAP. V.

Of Wreck.

I. Of Goods wrecked, as in relation to the Alteration of the Property by the Civil Law.

II. Of the Preservation of Goods wrecked, and the Punishment of those that shall add Misery to the Condition of such Persons so distressed.

III. Of Goods wrecked, their Preservation according to the Laws of Oleron, and of England, and of the Punishment of those that shall not make Restitution.

IV. Of Contribution where the Ship perishes, and the Goods are all saved, and where not.

V. The King of Great Britain's Prerogative as in relation to Wreck and other Royalties of the Sea.

VI. Of Plotsam, Jettsam, and Lagan, where the King shall have the same, and whether by the Grant of Wreck the same passes; and where a Subject may prescribe.

VII. Of Ships wrecked and no Creature in them, yet no Wreck; and of Ships forsaken, whether in Law accounted lost or wrecked, or neither.

VIII. Of the Sheriff's Duty as in relation to Goods wrecked; and of Owners their time of claiming their Property.

IX. Wreckt Goods not to pay Custom.

X. Of Wreck, in the Isle of Wight, not in the Admiral without Special Wards.

I. In matters of Wreck there is, as it were, a Contract between them which have lost their Goods by such Misfortune, and them upon whose Lands the Goods and Merchandize are driven, that the same be restored to them or those that claim under them. And therefore by the Civil Law, it is precisely forbid, that no Man shall meddle with such Goods as are wrecked; and such as are proved to have stolen anything therefore, are holden for Robbers; for that such Goods being cast on Land and recovered out of the Sea, remain still his who was the Owner thereof, and descend upon his Successor; neither Escheat to the King, neither to any other to whom the King hath granted such Royal Privilege.

The reason why the Laws were so strictly declared by the Romans, was, for that by the Laws of Rhodes, if any Ship had become Wreck, though all the Persons were saved
ved and alive, yet the Ship and Goods became seizable by the Lord: But the same being barbarous, was afterwards repealed and abrogated.

The Emperor Constantine the Great says, in this Case, if any Ship at any time by any Shipwreck be driven to the shore, or touch at any Land, Let the Owner have it, and let not my Exchequer meddle with it: For what Right hath my Exchequer in another man’s Calamity, so that it should burn after Gain in such a woful Case as this is?

And yet if no Kindred appear within a Year and a Day, or, appearing, prove not the Goods shipwreck’d to be theirs, the Goods come to the Exchequer, even by that Law: So much that Law condemns carelessness, which is written, vigilantibus & non dormientibus, &c. And with this agree the Laws of Oleron and the Laws of this Land, as taken out of those Imperial Laws, in that Point, as is conceived.

II. The Civil Law was ever so Curious and Careful to preserve the Goods of such miserable Persons, that if any should steal such, they should pay four-fold to the Owner, if pursued within a Year and a Day, and as much to the Prince or his Admiral: So careful were they, and so exact in requiring Restitution, that the very stealing of a Nail, or the Worth thereof, obliged the Thief to the Restitution of all the remaining Goods. And by the Emperor Antonius it was made a Law for such sort of Men, that they should be batten’d and banish’d for three Years; but that was for only those of a high and honourable Rank: But those that were Base and Ignoble, should be scourged and sent to the Gallies or Metal Mines.

And the preventing of Help to such shipwreck’d Persons, was punish’d with the same Suffering as a Murderer.

The like for those that put forth any treacherous Lanthorn or Light, with Intention to subject others to Danger or Shipwreck, these were punished with Death.

And though no Harm happens, yet he may be punish’d: Hence it is, that Fishers are forbidden to fish with Lights in the Night, for fear of betraying Sailers.

III. And here I cannot omit the great and pious Care that his Majesty hath had, in his Directions about Light-Houses and Lanthorns, and other special Sea-marks; but more especially in his
his erecting at his own Princey Charge, that most Excellent Light-House near Gold-
son by Yarmouth, which, both for Height, Curiositie and Form, is not inferior to, if
not excelling, all, or most, in Christendom.

III. And as the Emperor, and other maritime King-
doms, had in some sort abrogated and repealed that cruel
Law, and subjected the Violaters to Punishment for the
Inhumanity offered to such distressed Persons; so our Fa-
mous King Richard, returning from the Holy War, in
his own Experience at Sea, became sensible of the Miseries
which Merchants and Mariners at Sea underwent, their
Lives being always within few Inches, often within an
Hair’s Breadth of Death; and having Consideration of
their Calamities and Distresse State in his Voyage, re-
solved to revoke that Law, and at Oleron in the Bay of
Aquitain (then part of his Dominions, as Sovereign Lord
of the Ocean, and all those Maritime Kingdoms) did
there, amongst other good Marine Laws, declare, That
if any Person or living Thing escaped out of any wreck-
ed Ship to Land, it should not be Wreck or conscienced to
him or his Successor, as it was before, though all the Men
escaped alive. For before that, both in England and in

- Braaten, lib. 2. cap. 5.
+ Custum.
Norman. c. 17.

Roger Hoveden
in the latter
part of his
Annals, fol.
678. Joan.
Brompton.
Chron. Coll.
fol. 1887.

* Normandy, the + Crown was entitled to shipwreckt
Goods, and the King Fure Gentium (indeed according to
the Rhodian Law) became Heir unto them, which other-
wise Fure naturali were conceived to be in bonis nullius,
pertaining to no Owner: But now that Valiant and Re-
ligious Prince resolved no longer to embrace so cruel
a Prerogative, by the stripping the distressed Mariners of
those Rags of their Estates, which the Mercy and Modesty
of the Waves and Winds had left them; and therefore
in the Month of October at Messana, in the presence of
many Archbishops, and Bishops, and others, he then for
ever quitted the Royal Claim to Wrecks, which after-
wards was declared and published at Oleron in his own
Territories; so that if any Man out of the Ship came
alive to shore, the Property of the shipwreckt Goods
was still preferred to the Owner: Which Royal Con-
defcentration was so enlarged by our succeeding Kings,
That if a Man, Dog, or Cat escapes alive out of the Ship,
neither the Ship or other Vessell, nor any thing therein shall
be adjudged Wreck, but the Goods shal be saved and kept by
of Wreck.

by the Sheriff, Coroners, or the King's Bailiffs, and delivered to the Inhabitants of the Town where the Goods are found; so that if any, within a Year and a Day, sue for these Goods, and after prove that they were his at the time of the Shipwreck, they shall be restored to him without delay: But if not, they shall be seized by the said Sheriff, Coroners, or Bailiffs for the King's use; and shall be delivered to the Inhabitants of the Town, who shall answer before the Justices for the Wreck belonging to the King: But this good Law extends not to Pirates, Robbers, Sea Rovers, Turks, or other Enemies to the Catholick Faith.

Where the Wreck belongs to another, he shall have it in like manner; and if any be attainted to have done otherwise, he shall suffer Imprisonment, make Fine to the King, and yield Damage also.

If a Bailiff do it, and it be disallowed by his Lord, the Bailiff shall answer for it if he hath wherewithal; but if not, the Lord shall deliver his Bailiff's Body to the King.

IV. If the Ship perishes only, and the Goods are safe, in that Case the Goods ought to pay a Proportion of a fifth or tenth Penny, according to the easy or difficult Winning or Saving of the said Goods. Rich Goods, as Gold, and Silver, and Silk, pay less than Goods of great Weight and Cumber, being in less Danger, unless it were a Wreck going into a Port, which the Skipper was not bound for; there è contra, then the Skipper is not to be considered.

Goods may be retained for Payment of Salvage.

But if the Ship and Goods perish in the Sea, and the Owners do totally forfake her, and so she becomes a meer Derelict, in that Case the first Possessor that recovers her, or any part of her Lading, gains a Property: And this according to the Laws of Nations, as is that given for lost, whereof there is no Hopes of Recovery, like a Lamb in the Paws of a Lion. And the incomparable Ulpian compares such a Derelictio to a Man that knows his own Goods to be by another Man detained, and makes no Claim unto them in a long time; unless some Cause do manifestly appear, seems to do it to no other purpose but to shew that he is willing to renounce them; and this is it what Ulpian elsewhere intends, where he faith, that a Houfe possessor'd for a long time by another, and no Claim made, nor
nor Rent demanded for it, seems to be deferred by the right Owner.

To exact Interest long since due, faith the good Emperor Antonius, is hardly just; for the not demanding it in so long a space, makes it probable that thou wert willing to remit it; and that by not so much as demanding it, thy purpose was to make thy self the more Beloved and Honour'd, and thy Debtor the more Thankful.

Now that Silence should be of such a force as to justify our Presumption of a Dereliction, two things are requisite; First, That he that is silent knows that he hath a Right; for him that knows it not, Silence cannot prejudice. Secondly, That his Silence be free and voluntary, and not occasioned by Fear, or any other such Caufe; and the true Reason is, that it is hardly possible that in a long time a Man should not by some Means or other arrive at the Knowledge of his own Right, time daily adminsttring occasions to the discovery of Truth.

But because that time, which exceeds the Memory of Man, is in a moral Sense infinite, therefore if Claim be not made with a reasonable time to a thing out of Possession, it is a sufficient Presumption that it is forsaken, unless some very strong Reasons be brought to the contrary; and therefore the recovery of the Plate near the Babana Rocks, loft near fifty Years before by the Spaniard, became most apparently a Derelict, and free not only for the Undertakers to recover and posses, but to keep as a Property justly acquired by them, as well by the Laws of Nations, as the Civil Law.

V. The King shall have Wreck of the Sea, Whales, and great Sturgeons taken in the Sea, and elsewhere throughout the whole Realm, except in Places privileged by the King.

Also Wreck may be claimed by Prescription: and the Lord High Admiral possibly may have it by Prescription.

A Grant of Wreck to the Lord High Admiral as appertaining to his Office, will not pass Wreck belonging to the King's Manor by Prescription.

VI. By the Grant of Wreck will pass Flotsam, Jetsam, and Lagan, when they are cast upon the Land; but if they
CHAP. V. Of Wreck.

They are not cast upon the Land, the Admiral hath Jurisdiction, and not the Common Law, and they cannot be said Wreck.

Wreccum Maris, are such Goods only as are cast and left upon the Land by the Sea.

Flotsam, is when a Ship is sunk, or otherwise perished, and the Goods float upon the Sea.

Jettsam, is when the Ship is in danger to be sunk, and for lightening the Ship the Goods are cast into the Sea, notwithstanding which the Ship perisheth.

Lagan vel Ligan, is when the Goods being heavy, are cast into the Sea before the Ship perishes, which by the Brasen, lib. Prudence of the Master or Mariners, who have an In- tent to save them so sunk, as that they may come at them again; in order to which they fasten a Buoy or other Light Matter, that may signify to them where they lie, if Providence should bring them in a Condition to retake them; & dicitur Ligar à ligando.

The King shall have Flotsam, Jettsam and Lagan, when the Ship perisheth, or when the Owners of the Goods are not known; but when the Ship perishes not, A Man may have Flotsam and Jettsam by the King's Grant; and may have Flotsam within the high and low Water-mark by Prescription, as it appears by those of the West-Countries, who prescribe to have Wreck in the Sea; so far as they may see a Humber Barrel.

VII. If the Ship be ready to perish, and all the Men therein, for Safeguard of their Lives, leave the Ship, and after the forsaken Ship perisheth, if any of the Men be saved and come to Land, the Goods are not lost.

A Ship on the Sea was pursued by Enemies, the Men therein for Safeguard of their Lives, forsake the Ship, the Enemies take the Ship, and spoils her of her Goods and Tackle, and turn her to Sea; by Stres of Weather she is cast on Land, where it happened her Men arrived: It was resolved by all the Judges of England, that the Ship was no Wreck, nor lost.

VIII. If Goods are cast up as a Wreck, and it falls out they be bona peritura, the Sheriff may sell them within the Year, and the Sale is good; but he must account to the true Owners.
Owners claiming the Wreck, must make their Proof by their Marks or Cocquets, by the Book of Customs, or by the Testimony of honest Men; and if the Wreck belongs to the King, the Party may sue out a Commission to hear and determine, and that by the Oaths of twelve Men; or else he may bring his Action at Law, and make out his Proof by Verdict; but such Action must be brought within the Year and Day.

Note, Flotsam, Jetsam and Lagan, are Goods on or in the Sea, and belong to the King, who by Charter hath granted them to the Lord Admiral.

IX. If Goods were wrecked on the Shore, and the Lord having Power, takes them, he shall not pay Custom, neither by the Common Law nor by the Statute; for at the Common Law, wrecked Goods could not be charged with Custom, because at the Common Law all Wreck was wholly the King's, and he could not have a small Duty of Custom out of that which was all his own; and by Westm. 1. where wrecked Goods belonged more to another than to the King, he shall have it in like manner, that is, as the King hath his.

Now Goods that are chargeable with Custom, according to the Act of Tunnage and Poundage, must have these Properties.

1. They must be Goods which shall come or be brought into the Ports or Places of the Kingdom.

2. They must come or be brought into such Ports or Places, as Merchandize that is for sale, and to that end; for there can be no other Conception of Goods brought as Merchandize.

3. They must come and be brought as Merchandize, and for sale by the King's natural born Subjects, or by Strangers and Aliens, as distinguished from the natural Subjects.

4. The Duty payable to the King, is to be measured by the Quality of him that imports the Commodity; that is, if the Importer be a natural Subject, he pays less to the King; and if an Alien, more.

5. All those Goods charged with the Duty by the Statute, so to come, or be brought into Ports or Places of the Kingdom, are to be foreign, as of the Growth of France, the Levant, Spain, Portugal, Germany, &c.

Whence
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Whence it follows, 1. That Goods of foreign Growth, and which by their kind are to pay Duty, if they shall come or be brought into the Ports or Places of the Kingdom, neither by the King’s natural born Subjects, nor by Aliens, they are not chargeable with the Duties mentioned in the Act.

2. If they are not brought into the Ports and Places of the Kingdom as Merchandize, viz. for Sale, they are not chargeable with the Duty; but Wines or other Goods coming or brought into the Realm as Wreck, are neither brought into the Kingdom by any of the King’s natural born Subjects, nor by any Strangers, but by the Wind and Sea; for such Goods want a Proprietor until the Law appoints one.

3. Wrecked Goods are not brought into the Kingdom, being cast on Shore, as Merchandize, viz. For Sale; but are as all other the native Goods of the Kingdom, indifferent in themselves, for Sale or other use at the Pleasure of the Proprietor.

4. All Goods foreign or domestick are, in their Nature, capable to be Merchandize, that is, to be sold; but it follows not thence, that wherefoever they are brought into the Kingdom, they are brought as Merchandize, and to be sold, and should pay Custom; for they are transferred from Place to Place, more for other uses than for Sale.

5. All Goods charged with the Duty of the Act, must be proprietor by a Merchant Natural born, or Merchant Alien, and the greater or les Duty is to be paid, as the Proprietor is an Alien or Native Merchant; but wrecked Goods are not the Goods of any Merchant Natural born, Alien or Denizen, whereby the Duty payable should be either demanded, distinguished, or paid: Therefore a Duty impossible to be known, can be no Duty; for Civilly what cannot be known to be, is as that which is not.

6. All Goods subject to the Duty of Tunnage and Poundage, may be forfeited by the Disobedience and Misbehaviour of the Mérchant Proprietor, or thosr trusted by him, As unshipping before Payment, or lawfully tendering or agreeing for, &c. But wrecked Goods cannot be import- ed into any Creek or Place of the Realm by way of Mer-

S 2
chandize, and unshipped to be laid on Land; for if Goods imported and unshipped to be laid on Land, it is not Wreck, and therefore are not Goods forfeitable by the Misbehaviour of any within the Act; and consequently not Goods intended to be charged with the Duties by the Act.

Goods drowned or lost in passing a Ferry, a great River, or an Arm of the Sea, are not to be laid to be exported, though they be carried to Sea; but Goods exported are such as are conveyed to Sea in Ships or other Naval Carriages of Man's Artifice; and by like Reason, Goods imported must not be Goods imported by the Wind, Water, or such inanimate Means, but in Ships, Vessels, and other Conveyances used by reasonable Agents, as Merchants, Mariners, Sailors, &c. Whence it may be concluded, that Goods or Merchandize imported within the Meaning of the Act, can only be such as are imported with Deliberation, and by reasonable Agents, not casually and without Reason; and therefore wrecked Goods are no Goods imported within the Intention of the Act, and consequently not to answer the King's Duties; for Goods, as Goods, cannot Offend, Forfeit, Unlade, pay Duties, or the like, but Men whose Goods they are: And wrecked Goods have no Owners to do those Offices, when the Act requires they should be done; therefore the Act intended not to charge the Duty upon such Goods.

Per Holt, C. J. That Wreck shall not pay Custom, has never been made a Doubt since the Case in Vaughan, 159. of Shephard v. Gafnold. L. Raym. 388. The same Point (including Flotsam) resolved by both Courts, viz. C. B. and then B. R. on Error brought.

The Admirals of England, ut magnus Admirallus Angliae, Hiberniae, Walliae, ac Dominiorum & Insularum earundem, Ville Calilie & Merchantrum ejusdem, necnon Gafconie, Aquitanie, clausum & Marium dictorum Regnorum Angliae praefectus generalis, &c. which are the words of their Patents used at this day, do claim all Wrecks arising from any of those Places, by virtue of their Grants.

And yet in the like Case, in all Circumstances, between Power and Sir William Portman, Hill. 6. William Com. B. Rot. 1431. where the Judges, and more particularly
Chap. V. Of Wreck.

ny Justice Treby, seemed to be of Opinion, that Goods wrecked, or Flottam, should pay Custom.

X. King Edward the Second, in the first Year of his E. 2. m. 6. Reign, by his Charter, granted the Castle of Carisbrook, num. 6. with all the Lands and Tenements in the Isle of Wight, formerly belonging to Isabella Forestus, Countess of Al- bmarle, to his great Favourite Peter de Gaveston, and Margaret his Wife, and the Heirs of their two Bodies begotten (together with fundry other Castles and Lands) and commanded Nicholas de Bosco to put him into actual Possession; and likewise commanded Robert de Sanson, Keeper of the Forest of Parkhurst in that Isle, to be Intendent to them for the Farm he had granted him for Life, for the Custody thereof, which being afterwards soon reseized into the King's Hands, he granted this Castle with all its Services, and all his Lands in that Isle, to Edward his Son and his Heirs Kings of England, and afterwards, for the ascertaining what did of Right belong to the same Castle, an Inquisition went out by which it was found, inter alia, quod wreckum Maris pertinentium ad dictum Castrum valet per Ann. 4. 9.

So that, by the general Patent of the Admiral, will not pafs the Wreck of this Isle, without special Words granted in the Patent.

Note, If the Wreck happened, or was occasioned by reason of any Fault or Negligence in the Master or Ma- riners, the Master must make good the Loss; but if the same was occasioned by the Act of God, to avoid an Ene- my or Pirate, and the like, there he shall be excused.

S 3 Chap.
CHAP. VI.

Of Averages and Contributions.

I. Of Goods and Merchandize, when subject to be cast over-board.
II. Of the Account rendered of such ejected Goods, and by whom.
III. Of the ancient Laws of England, in reference to such Ejectments.
IV. What Goods must come into the Average, and what are exempt.
   The Description of Average.
V. The Master discharged by such Acts, by the Common Law.
VI. The Ship's Gear or Apparel, whether within the Average.
VII. The residua of the Goods where strictly obliged to answer the Average.
VIII. Of Goods remaining on shipboard, spoiled by reason of the ejecting of others, subject to the Average.
IX. Where Ship and Lading are both made liable to the Average.
X. Of Misfortunes not subject to an Average.
XI. Where the remainder of the Goods are exempted from the Average, and the Damage of the ejected Goods falls on the Master.
XII. Damage to the Ship, where the Lading contributes, and the standard Rate in Contributions.
XIII. The Master becomes a Captive for the Redemption of Ship and Lading, where liable to the Average, and where discharged.
XIV. What Goods are subject to the Average.
XV. Contribution for Pilotage, and where the remaining Goods not subject to Average.
XVI. Rules general for settling the Average.
XVII. Three Sorts of Goods taken at Sea.

I. SHIPS being freighted and at Sea, are often subject to Storms, and other Accidents, in which, by the antient Laws and Customs of the Sea, in extreme Necessity, the Goods, Wares, Guns, or whatsoever else shall be thought fit, may in such Extremity be flung over-board; but then the Master ought to consult with his Mariners, who if they consent not, and yet the Storm and Danger continues; the Master may command notwithstanding, the casting over-board what he shall judge most fitting, for the common Safety of the rest. So likewise Goods coming from infected Towns or Places may be cast over-board; and if an Action be brought at Common
chap. vi. of averages and contributions.

non Legis, the defendant may justify the same by plead-
ing the special matter.

if there be a super-cargo, a request ought to be made to him to begin first; but if he refuses, the mariners may proceed.

ii. if the ship so fortunes as to out-weather the storm, and in safety arrives at her port of discharge, the master, and most of the crew, must swear that the goods were cast over for no other cause but purely for the safety of the ship and lading. the custom of clearing of that point, varies according to the several countries or places they arrive at.

where goods are laden above the overloose, or forbidden goods be transported; if such goods happen to be the cause of any danger or damage, the master shall bear the loss; also he may be prosecuted criminally.

iii. king william the conqueror, and henry the first, made and ratified this law concerning goods cast overboard by mariners in a storm, in imitation of the ancient rhodian law, de jact.

si ergo jecero res tuae de navii de metum mortis, de boe non potes me implacitare, nam licet alteri dannnum inferre de metum mortis quando periculum evadere non potes. et si de boc me meces, quid ob metum mortis nil fecisse de communicatori. et ea que in navi refant dividantur in communi secundum catalla, et si quis jecerit catalla extra navim quando necessitas non exercet, ea restituat.

iv. the ship arriving in safety, the remainder must come into the average, not only those goods which pay freight, but all those that have obtained safety and preservation by such ejection; even money, jewels and clothes, and such like, are not exempted.

but those things which are borne upon a man's body, victuals, and the like, put on ship-board to be spent, are totally excluded from the contribution.

the master ought to be careful, that only those things of the least value and greatest weight be flung overboard.

in the rating of goods by way of contribution, this order is observed: if they chance to be cast overboard before half the voyage be performed, then they are to be esteemed at the price they cost; if after, then at the price.
Of Averages and Contributions. Book I

Price as the rest, or the like, shall be sold at the Place of Discharge.

The Person (whose Goods have been cast) is to be careful to have the same estimated before the Ship do discharge, wherein the Master ought to be Assistent.

Average, in the Merchants Law, is used or taken for a certain Contribution that Merchants and others do proportionably make towards their Losses who have their Goods cast into the Sea for the Safeguard of the Ship or of the Goods and Lives of them in the Ship, in the time of Tempeft; and this Contribution seems to be so called, because it is proportioned after the Rate of every Man’s Average or Goods carried. It is derived from the Word Aверia, Cattle.

Goods are thipp’d in England, and a Tempeft ariseth to the Passengers, for saving their Lives, cast them over board, and another English Ship takes them, the Owners bring Trover, it lies, because delivered upon the Land.

It is lawful for Passengers to cast Goods over-board out of a Ferry-boat, in Case of a Tempeft, for Preservation of their Lives: So if the Ferryman surcharge the Boat with Goods, the Owners of the Goods shall have their Remedy against the Ferryman in this Case of a Surcharge, but not in the other Case.

V. As this Law doth take care that this common Calamity should be borne by all the Parties interested by a general Contribution, so the Common Law takes notice of the Misfortune, and makes Provision to indemnify the Master; and therefore if the Party, owner of such ejected Goods, shall bring an Action against the Master or Owners of the Vessel, the Defendant may plead the special Matter, and the same shall bar the Plaintiff.

VI. But if the Ship’s Gear or Apparel be lost by Storm, the same is not within the Average, but is accounted like unto a Workman breaking or spoiling his Tools; except in the avoiding of a Danger, as the flinging the Mast over-board, or the flipping the Tow-Anchor or Boat.

Goods brought secretly in the Ship against the Master or Purser’s Knowledge, if ejected, no Contribution is to be had.

VII. As
CHAP. VI. Of Averages and Contributions.

VII. As the Common Law looks upon the Goods and

argo as a Pawn or Pledge for the Freight, so the Marine

law looks upon them likewise as a Security for the an-

vering the Average and Contribution, and that the Master

ought not to deliver the Goods till the Contribution is

settled, the same being tacitly obliged for the one as well

as the other. Ad Leg. Rhod. t. 2. Si non conservatis.

VIII. If through the rising of the Ship, or the casting

or unlightening the Ship, any of the remaining Goods are

poised, either with wet or otherwise, the same must come

into the Contribution for so much as they are made

worse.

IX. If it falls out that a Ship entering into a Port or

Channel, cannot make way, and there be a lightning or

difburdening of the Ship, then the Contribution falls two

Parts to the Lading, and one third to the Ship, except

the Ship surpafs in value the Lading, or that there is some

bad Quality in the Ship itself.

But to prevent that ambiguous Question, if the Party

covenants that the Goods shall be delivered at the Port

covenanted and appointed, then Condition makes Law.

So for the Pilot's Fee and rising of the Ship off Ground,

when there is no Fault in the Master.

X. If two Ships happen to encounter and crofs each

other, and the Crew swear their Innocency, Contribution

must be made by a just Equality; but if one perishes, as

there can be no Proportion of the Loss, so no Contribu-

tion. The reason given is, for that otherwise a Skipper

might on purpose set an old weak Ship against a strong

Ship, and by that Means hedge himself into a Contribu-

tion and Recompence. However, this bars not the Own-

ers from bringing their Action against the negligent Ma-

ster, by which Means he may recoup himself in Damage,

if it happens at Sea, the Action by the Civil Law is

called Legis Aquile.

If such a Misfortune happens in the Night at Sea, the

Party, if he will compleatly arm himself for his recovery,

ought to prove, that he made out Light or Fire, or

otherways gave notice by crying or calling out.

XI. If it falls out in the Ship or Veffel, by the indiscreet

Stowing or Lading thereof above the Birth-mark, that

such Ejection happened, in that Case it has been used by

the

Leg. 1. del. Mer. exempt. 8 leg. Si non faterem de cond. in de.

Leg. Navis 4. ad Leg. Rhod. And Vinini's Commentary

fol. 235.

Leg. 9. §. 3. ad exhib.

L. 1. verf. good covenants defef.

Leg. quemad-

medium pa-

rag. Si navis

ad leg. Aqui-

liae.

Fed. leg. 18.

H. 6. num. 52.

3 Inst. fol. 146.

Goodwin verf.

Tompkins, Noy


Aquil.
Of Averages and Contributions. Book II.

the Marine Laws no Contribution to be made, but Satisfaction is to be answered by the Ship, Master, or Owners.

If Salt or Corn be laid loose, or in an heap by divers Persons in one Ship, without Distinction, and the Master delivers to any of them their due Share or Quantity; but before the rest receive their Share or Measure, the remaining Salt or Corn washes or loses, those that had the good Fortune to have their Shares, shall enjoy it without any Contribution to the other Partners. Lex Mercat. 110.

XII. If to avoid the Danger of a Storm, the Master cuts down the Masts and Sails, and they falling into the Sea, are lost, this Damage is to be made good by Ship and Lading pro rata: Otherwise if the Cafe happens by Storm or other Casualties.

No Contribution is to be paid in Cafe one Ship strike against another whereby Damage happens, but full Satisfaction is to be answered the Merchant in Cafe of Fault or Miscarriage in either; or an equal Division of the Damage, in Cafe it happens by a Casualty, as above.

If a Lighter or Skiff, or the Ship's Boat into which part of the Cargo is unladen for the lightning of the Ship, perish, and the Ship be preserved, in that Cafe Contribution is to be made; but if the Ship be cast away, and the Lighter, Boat, or Skiff be preserved, there no Contribution or Average is to be had, it being a Rule, No Contribution but where the Ship arrives in Safety.

XIII. If a Ship happens to be taken, and the Master, to redeem the Ship and Lading out of the Enemies or Pirate's Hands, promises them a certain Sum of Money, for Performance whereof himself becomes a Pledge or Captive in the Custody of the Captor; in this Cafe he is to be redeemed at the Costs and Charges of the Ship and Lading, and Money, if there be any in her; are contributary according to each Man's Interest for his Ransom.

So where a Pirate takes part of the Goods to spare the rest, Contribution must be paid.

But if a Pirate takes by Violence part of the Goods, the rest are not subject to Average, unless the Merchant hath made an express Agreement to pay it after the Ship is robb'd.

But
Chap. VI. Of Averages and Contributions.

But if part of the Goods are taken by an Enemy, or by Letters of Mart and Reprizal, è contra.
So likewise in Storm, if the same is done for Preservation of the Remainder.
He may hypothecate the Ship for his own Redemption. L. Raymond's Reports 22.

A Ship was taken by a French Privateer, and the Master of her ransom'd her for 1800 l. (the Master having a Share in the Ship) the Mate was carried into France, as a Hostage for this Money. Lord Chancellor said, the Ransom Money must be raised out of the first Profits, notwithstanding any former Mortgage of the Ship; for if there was a precedent Mortgage, what would have become of the Security if the Ship had not been redeemed? After the Ship was redeemed she performed her intended Voyage, and the Freight-Money earned after her Redemption was the first Profits arising, and out of these the Ransom-Money is to be satisfied. This was upon Motion. The Lord Chancellor said, the Insurers always paid part of the Ransom-Money.

XIV. In Ejectment the Master or Purser of the Ship shall contribute for the Preservation of the Ship, and also the Passengers for such Wares as they have in the Ship, be it Pearls, precious Stones, and such like; and Passengers that have no Wares or Goods in the Ship, yet in regard they are a burden to the Ship, Estimate is to be made of his and their Apparel, Rings, and Jewels, towards a Contribution of the Loss; and generally all things in the Ship, except the Victualling and Provisions of the Ship, and the Bodies of Men (unless Servants) must bear a proportionable Share in the Contribution.

The Estimate being made of the Goods lost and saved, the Price is to be set down, not for how much they were bought, but how much they might be sold for at the time when the Ejectment was made; and if any thing be flung into the Sea, and endamaged, and afterwards is recovered again, yet Contribution is to be made only for the Damage.

XV. Contribution is to be paid for the Pilot's Fee that hath brought a Ship into a Port or Haven for her Safeguard, (it being not the Place she was designed for) so
Of Averages and Contributions. Book II

to raise her off the Ground when there is no Fault in the Master.

If a Master of a Ship lets out his Ship to freight, and then receives his Compliment, and afterwards takes in Goods without leave of the Freighters, and a Storm arises at Sea, and part of the Freighters Goods are cast over-board, the remaining Goods are not subject to the Average, but the Master must make good the Loss out of his own Purse.

The Goods which are lost are to be valued, and the Goods saved are to be estimated, which being known, a proportionable Value is to be contributed by the Goods saved, towards Reparation of the Goods ejected, or cast over-board.

In which, regard is always had, not to what might be got by the Goods lost, but what the intrinsic Damage is by the loss of the same; the which are not to be estimated what they might have been sold for, as what they cost, or were bought for.

XVI. But now the Custom is general, the Goods saved and lost are estimated according as the Goods saved were sold for, Freight, and other necessary Charges, being first deducted.

If there were Plate, Jewels, or the like, in a Trunk, Chest, Pack or Bale, at the time of their Ejection, if there be a Super-Cargo, he ought to give notice, by discovering of the same to the Master or Mariners, otherwise he shall be answerd in the Contribution no more than the bare intrinsic Value appeared to be: But the Assurers will hardly fare so well.

If Contribution shall be settled, and the Merchant will not agree, the Master may detain the Lading, for the same is as tacitly obliged to answer that as the Freight; and if at the Common Law the Merchant should bring an Action, the Defendant shall bar him by pleading the special Matter.

If Goods are cast over-board, and afterwards are recovered, Contribution ceases; saving for so much as they are damnified and made worse by reason of such Ejectment.

Note, Goods cast over-board to lighten the Ship, make no Derelict. 5 Co. 107. b.

And
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And though such necessity seems to subject the Lading to Ejection, to prevent the Ruin and Destruction of the Persons, yet some Lading seems excepted, and therefore Cannon, and other Instruments or Provisions conscripted to relieve a City, ought not to be flung over-board; for in such Case the Law impofeth on every Subject, that he prefer the urgent Service of his Prince, before the Safety of his Life.

XVII. Goods taken upon the Sea, are of three Sorts.
2. Taken from Pirates or Sea Rovers; And 3. From professed Enemies. Those Goods that are taken from Pirates, are esteemed to be the just Prize or Prey to any Taker of them, so that an Account be given of them to the Admiral. If a Ship or Goods be taken from a professed Enemy, it is to be proceeded in according to the Authority whereby it was taken. But if a Ship or Goods be taken by a professed Enemy, and afterwards they are taken from him, and the same Owner claims them, they ought to be restored to him; for the Law looks upon these Goods as received, not taken, yet with some Re- compence for them.

By an Act 13 G. 2. c. 4. If a Ship be retaken by a Man of War, the Owners are to pay one Eighth of the Value of the Ship and Cargo, in lieu of Salvage: If by a Privateer or other Ship they are intituled to one Eighth, in Case such Ship hath been in Possession of the Enemy 24 Hours: If above 24 Hours and under 48 one fifth Part: If above 48 Hours and under 96 one Third: If above 96 Hours they are intituled to a Moiety thereof.

By the said Act Privateers have the sole Property of what they take from the Enemy, being first adjudged lawful Prize in any of His Majesty's Courts of Admiralty; as also 5 l. for every Man on Board every Ship of War or Privateer, taken, sunk, burnt, or otherwise destroyed, who was living at the Beginning of the Engagement between them. And by a Proclamation issued in Pursuance of this Act, dated 19 June 1740, 'tis directed that the neat Produce of all Prizes, and the like Bounty Money for Prisoners taken by any of His Majesty's Ships, be divided into eight equal Parts, whereof the Captain or Captains of any of His Majesty's Ships of War,
War, who shall be actually on Board at the taking, shall have three Eights; but if such Ship be under the Command of a Flag, and the Flag Officer being actually on Board, or directing and assisting in the Capture, he is to have one of the said three Eights.

Captains of Marines, and Land Forces, Sea Lieutenants and Masters on Board one Eighth.

Lieutenants and Quarter-Masters of Marines, and Lieutenants, Ensigns and Quarter-Masters of Land Forces, Boatswain, Gunner, Purser, Carpenter, Masters, Mate, Chirurgeons, and Chaplain one Eighth.

Midshipmen, Carpenter’s Mates, Boatswain’s Mates, Gunner’s Mates, Master at Arms, Corporals, Yeomen of the Sheets, Coxswain, Quarter-Master, Quarter-Master’s Mates, Chirurgeon’s Mates, Yeomen of the Powder Room, and Serjeants of Marines or Land Forces one Eighth.

Trumpeters, Quarter-Gunners, Carpenter’s Crew, Steward, Cook, Armourer, Steward’s Mate, Cook’s Mate, Gunsmith, Cooper, Swabber, ordinary Trumpeter, Barber, able Seamen, ordinary Seamen and Marine or other Soldiers two Eights.

If any Commission or Warrant Officer be not on board at the Time of the Capture, his Share to be cast into the Shares allowed the Trumpeter, &c.

In Case any Person have more Offices, than one, he is to have no more than what shall belong to his superior Commission.

CHAP.
Of Policies of Assurance.

I. It is conceived by Suetonius, that Claudius Caesar was the first that brought in this Custom of Assurance, by which the Danger and Adventure of Voyages is divided, repaired and born by many Persons, who for a certain Sum, by the Spaniards called Premie, assure Ships or Goods, or both, or a Proportion, according as the Policy is.

II. By 43 Eliz. c. 12. An Office of Assurance was erected for deciding of Differences arising upon Policies of Assurance in London; and a Court was to be held for that Purpose, by Virtue of a standing Commission issued out by the Lord Chancellor to the Court of Admiralty, the Recorder of London, two Doctors of the Civil Law, two Common Lawyers, and eight Merchants; which Commissioners were to meet weekly, and to have Power to...
to summon and examine Witnesses, and hear and determine all Causes in a summary Way, subject to appeal to the Lord Chancellor, &c. And by Stat. 14 Car. II. 25. several additional Privileges were granted to the Court, which was a Court of Equity, as well as of Law, but now there is no such Court in Being, and Causes of this Nature are tried in the ordinary Courts.

By 6 Geo. I. c. 18. His Majesty was empowered to grant two Charters for Assurance of Ships and Merchandise, &c. and to incorporate the Adventurers, in Consideration of a large Sum of Money by them to be advanced.

III. Indebitatu. Assumpsit pro premio; upon a Policy of Assurance upon such a Ship, the Defendant demurred specially because he did not shew the Consideration certainly what the Premium was, or how it became due, sed non allocavit for it is as good as Indebitatu. pro quodam Salarium, which hath been adjudged good.

If the Person whose Name is used in the Assurance, be in Time of War taken to be no Friend to the State, there is danger to pay the Assurance; if after the Subscription of the Assurer, the Goods should be arrested and made forfeited, to answer the same to the Prince, as it often happens.

If Goods are stolen or embezzeled on Shipboard, the Master, not the Assurer is responsible. So if the Goods be lost in default of the Pilot.

Policy of Assurance to warrant a Ship for twelve Months; the Ship did not perish within the time of twelve Months, being accounted according to the Months of January, February, &c. but within twelve Months reckoning twenty eight Days to the Month, resolved that the Policy was not forfeited; cited in Sir Woollaston Dixey's Case 1 Leon. 96.

IV. Assurances are of various sorts, some being to places certain, others general: Those that are made to places certain, are commonly upon Goods laden or to be laden aboard outward, and until the same Adventure shall be laid ahore at such a Port.

Or upon Goods laden or to be laden homeward in such a Ship till the Adventure shall likewife be landed.
Chapter VII. Of Policies of Assurance.

Or else upon Goods out and in, with liberty to touch at Ports as are mentioned in the Policy.

So likewise on Ships that go trading Voyages, as round Cadiz; and that it shall be lawful after the Ship's delivery there, to take in at the same Port another Cargo, and with that proceed to the West-Indies or other parts and back again to Cadiz, and from thence to London; this Policy being general and dangerous, seldom procures subscriptions, or at least very chargeable ones.

As Goods and Merchandize are commonly ensured, so likewise are the Ships Tackle and Furniture; but in regard there seldom happens a Voyage but somewhat is missing or lost, the Premio commonly runs higher than or Merchandize.

Assurances may be made on Goods sent by Land, so likewise on Hoys, and the like, and may be made on the need of Men; as if a Man is going for the Straights, and perhaps is in some fear that he may be taken by the Moors or Turkish Pirates, and so made a Slave, for the Redemption of whom a ransom must be paid, he may advance a Premio accordingly upon a Policy of Assurance; and if there be a Caption, the Assurer must answer the Ransom that is secured to be paid on the Policy.

V. Those Assurances are most dangerous when there are these words inserted, lost or not lost; which is commonly done when a Ship hath been long missing, and no Tidings can be had, the Premio (especially in time of War) will run very high, sometimes 30 or 40 per Cent, and though it happens at the time that the subscription is made, the Ship is cast away, yet the Assurers must answer.

But if the Party that caused the Assurance to be made, saw the Ship wreacked, or had certain Intelligence, such subscription will not oblige, the same being accounted a mere fraud.

So likewise if the Assured, having a rotten Vessel, shall assure upon the same more than she is worth, and afterwards give order that going out of the Port, she should be sunk or wrecked, this will be fraudulent, and not oblige the Assurers to answer.

A Merchant having a doubtful Account of his Ship, in sure, without acquainting the Insurers of her Danger; Chancery relieved against the Policy of this fraudulent Insurance.
In the Year 1678, one Newbom Perkins and Siaokes were Owners of a Vessel called the May-Flower Ketch, the Vessel coming laden with Wines on the account of Fierbrasse and Stone, to the Isle of Wight; Perkins being then in the same Place, contrives with one Ivy the Master to sell the Freighters Goods privately, and that being effectuated, go out to Sea some small distance from the Isle, and there privately sink the Vessel, and pretend the struck, and then foundered by the Extremity of Weather. The Plot being laid, Perkins hastens up to London, and makes a Policy of Assurance on the Vessel; which being done, remits his Orders to Ivy to put in Execution the contrivance, who accordingly, the Goods, or the best of them, being disposed of, stands out to Sea, and then with his own Hands, by the Force of an Iron Crow, makes a hole in the Hold, and then in his long Boat (the Crew perceiving the Vessel to be sinking),conveys himself and Mariners ashore; Ivy remits up advice of the loss, and Perkins (as if he had never known any thing of the Matter) demands the Monies assured with great Confidence, and thereupon brings an Action for the same; but before the Cause came to a Tryal, Fierbrasse and Stone bring Trover against Perkins, and thereupon the whole Practice came out, and a Verdict was found against the Defendant, with this further, That if Perkins would proceed on his Actions on the Assurance, he must expect that this Practice and fraud of his, would totally poison his Assurance, and thereupon being well advised, never proceeded.

The Assurance was against the Barretry of the Master; the Breach assigned was, that the Ship was lost by the Fraud and Neglect of the Master; this is well enough; it is the Meaning of the Words of the Policy; it is not necessary to use the very Words.

The Government laid an Embargo, seized a Ship, and converted her to a Fire-ship; the Insurers are liable.

Holt C. J. In Cases of Deviation, the Insurers are liable for Damages before the Deviation; and from the Time of the Deviation they are discharged.

VI. Besides the two Corporations before-mentioned, there are several Offices near the Royal-Exchange for the affording Ships and Merchandize, where many of the most eminent Merchants by their Subscriptions subject themselves
selves to the Payment each of a Sum certain, as 100 l. or more, at the Premio then current, which in the Policy is said to be received, tho' it may be not actually paid: There used to be a Clause to deduct 10 per Cent. in Cafe of Loss, and 14 per Cent. more was customarily abated on Account of prompt Payment. So that the assured received but 84 l. per Cent. But of late it is become much more frequent to stipulate for an Abatement of two per Cent. only, in which Cafe there is a proportional Advance of the Premio.

If an Assurer pays his Money, believing the Ship to be lost when it is not, he may bring an Assumpsit for the Money. Cited to be adjudged, Salk. 22. pl. 2.

VII. The Policies now adays are so large, that almost all those curious Questions that former Ages, and the Civilians according to the Law Marine, nay and the common Lawyers too, have controverted, are now out of debate; scarce any m jsfortune that can happen, or provision to be made, but the same is taken care for in the Policies that are now used; for they ensure against Heaven and Earth, stress of Weather, Storms, Enemies, Pirates, Rovers, &c. or whatsoever detriment shall happen * or come to the thing ensured, &c. is provided for.

cui quid per tempestates accidisset, Livius, lib. 23. cap. 25. Vidi Zelas in Commentario ad digesta tit. pro Socia, num. 25.
Sub nomine periculi, de quo fit cautio, comprehenditur omnis casus qui accidit in marit, a tempestate, ab hostibus, pradonibus, repriisulis, ut vocant arreptis altisque modis usitatis & imprimatris eius fraudem & capam contrabandium, aut domini mercurium vel navis. Gratius de Jure Belli. part. 24.

But a Policy against Restraint of Princes, will not ex- tend to Practices against the Laws of Countries; to a Seizure for not paying Custom and the like.

A Man lent Money on a Bottomry-Bond, and insured the same Money on the Ship; the out-lived the Time in which the Bond came due, and then was lost; he recovers on the Bond; Chancery would not suffer to recover on the Policy also, but decreed it to be delivered up.

But where the Insurance was larger as to the Voyage, than the Bottomry-Bond, and the Ship was lost, Chan- cery would not intermeddle.

Where the Assurance is Interest or no Interest, what Chancery will do, See 2 Vernom 716.
Of Policies of Assurance. Book II.

VIII. If a Merchant ensures such a Ship generally, and in the Policy it is expressed of such a Burthen, the Ship happens then to be laden and after miscarries, the Ensurer shall not answer for the Goods, but only for the Ship.

It matters not in the Policy whether the particular Wares and Goods are named, but generally upon the Principal Wares, and all other Commodities laden or to be laden for the Ensured, or for his Account, or for any other.

IX. If a Ship be Ensured from the Port of London to Cadiz, and before the Ship breaks Ground, takes Fire, and is burnt, the Assurers in such a case shall not answer, for the Adventure begun not till the Ship was gone from the Port of London; but if the Words had been, at and from the Port of London, there they would upon such a misfortune have been made liable.

If such an Assurance had been from London to Cadiz, and the Ship had broke Ground, and afterwards been driven by Storm to the Port of London, and there had took Fire, the Ensurers must have answered; for the very breaking of Ground from the Port of London was an Inception of the Voyage.

On the other hand, if a Man at Cadiz ensures a Ship from thence to London, if a loss happens, the Assurer, if he comes into England, shall answer by the Common Law; for though the place where the Subscription was made, and the Premio given was in a Foreign Country, yet that is not material, for the Action that is brought is grounded on the Promise, which is transitory, and not local, and so it was adjudged where the Defendant in consideration of 10l. had ensured, that if the Plaintiff's Ship and Goods did not come safe to London, he would pay 100l. afterwards the Ship was robb'd on the Sea, and in an Action brought for the 100l. the Plaintiff had Judgment, notwithstanding the Robbery or Loss was on the main Sea, and the Subscription out of the Realm.

X. If after a Policy of Assurance, a damage happens, and afterwards in the same Voyage a Deviation; yet the Insured shall recover for what happened before the Deviation, for the Policy is discharged from the Time of the Deviation only.

XI. If Goods are Ensured in such a Ship, and afterwards
wards in the Voyage it happens she becomes leaky and crazy, and the Super-Cargo and Master by consent become Freighters of another Vessel for the safe delivery of the Goods; and then after her relading, the second Vessel miscarries, the Assurers are discharged: But if there be these words, The Goods laden to be transported and delivered at such a place by the said Ship, or by any other Ship or Vessel until they be safely landed, then the Ensurers must answer the misfortune.

XII. If a Man Ensures 5000 l. worth of Goods, and he hath but 2000 l. remitted, now he having ensured a real Adventure, by the Law Marine all the Assurers must answer pro rata, if a loss. But by the Opinion of some, only those first Subscribers who under-writ so much as the real Adventure amounted to, are to be made liable, and the rest remitting their Premio (10 s. per Cent. deducted out of the same for their Subscriptions) are to be discharged.

On a Policy of Insurance on Goods by Agreement valued at 600 l. and the Infurred not to be obliged to prove any Interest, the Lord Chancellor ordered the Defendant to discover what Goods he put on board; for although the Defendant offered to renounce all Interest to the Insurers; yet referred it to a Master to examine the Value of the Goods saved, and to deduct it out of the Value or Sum of 600 l. at which the Goods were valued by the Agreement.

Debt upon Obligation with Condition, to pay so much Money; if a Ship returned within six Months from Flanders to London (which was more by a Third part than the Legal Interest of the Money) and if she do not return then the Obligation to be void: The Defendant pleaded that there was a corrupt Agreement between him and the Plaintiff, and that at the time of making of the Obligation that he should have no more for Interest, than the Law permits, in case the Ship should ever return, and avers that the Bond was entred into by Covin to avoid the Statute of Usury. Per Hale, clearly this Bond is not within the Statute, for this is the common Way of Assurance, and if this were void by the Statute of Usury, Trade would be destroyed, for it is a casualty whether ever such Ship shall return or not, but he agreed the Averment
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Averment was well taken, because it disclosed the manner of the Agreement. *Hardres* 418. *Joy against Kent*.

Action upon the case, upon a Policy of Assurance of Goods from *London* to *Naples*; the Adventure was to begin in time of the Lading at *London* (dangers of the Sea only excepted) with this Clause, warranted to depart with Convoy; the Ship departed with Convoy, but was separated from the Convoy, by stress of Weather, and put into Torbay, and was there detained by contrary Winds; afterwards the Master of the Ship expecting to meet the Convoy, departed out of the Harbour, but could not meet the Convoy, being hindered by stress of Weather, the Ship was taken by the French. Judgment pro Quo.

Case upon a Policy, which was to insure the *William* Galley, in a Voyage from Bremen to the Port of London, warranted to depart with Convoy: The case was, the Galley set sail from Bremen under Convoy of a Dutch Man of War to the Elb, where they were joined with two other Dutch Men of War, and several Dutch and English Merchant Ships, whence they failed to the Texel, where they found a Squadron of English Men of War and an Admiral; after a stay of nine Weeks, they set out from the Texel, and the Galley was separated in a Storm, and taken by a French Privateer, taken again by a Dutch Privateer, and paid 80 l. Salvage. And it was ruled by *Holt* C. J. That the Voyage ought to be according to Usage, and that their going to the Elb, tho' in Fact out of the Way, was no Deviation; for till after the Year 1703. there was no Convoy for Ships directly from Bremen to London: And the Plaintiff had a Verdict. Bond v. Gonfalone, February 14. 1704. coram Holt C. J. at Holf Prius at Guildhall.

Warranted to depart with Convoy has been resolved to import, by the Usage of Merchants, a Continuance with that Convoy as long as may be. *Lucas's Reports* 287.

XIII. A Merchant Ensures his Goods from *London* to *Salerno*, and there to be landed; the Factor, after arrival, having Opportunity, sells the Cargo aboard the same Ship without ever unlading her, and the Buyer agrees for the Freight of those Goods for the Port of *Venice*; before the breaks Ground the Ship takes Fire, the Assured and Buyer are absolutely without remedy; for the Property of the Goods.
Goods becoming changed, and Freight being contracted de novo, the same was as much as if the Goods had been landed.

And so it is if the Factor after her arrival had contracted for Freight to another Port, and the Ship had happened to take Fire, the Assurers are hereby absolutely discharged for ever.

XIV. If a Ship be Ensured from London and blank being left by the Lader to prevent her surprize by the Enemy, in her Voyage she happens to be cast away, though there be private Instructions for her Port, yet the Ensured fit down by the loss, by reason of the uncertainty. So a Blank is left in the Policy for the value of the Ship or Lading, if a loss, and there be not words that may supply, the Ensured may endanger the Policy.

A taking of a Ship (that is insured) by Pirates is to be understood, the Perils of the Sea.

Where Goods are redeemed from a Pirate, contribution must be paid by all, because the Redemption is made for the safety of all; but if the Pirate be once Matter of all, and yet take but some special Goods; whether from Ship or Merchant, and not as a Contention for sparing of the rest, in this case, because the Remainder is not assured thereby, but freely spared, no Contribution is to be made for the taken Goods to charge any Assurer with any part thereof. So Contribution shall be made for Goods spoiled by wet, or other accident. Again if it be needful to lighten a Ship for her easier entry into Harbour or Channel, two parts of the Lofs fall upon the Goods, and the third upon the Ship; unless the Ship is more worth than the Lading, and the charge of the Goods be not the Cause of her inability to enter, but some bad quality proceeding from the Ship itself, or that otherwise it be provided in the Charter-party. Lex Mercat. 109.

XV. After notice of Loss, the Ensured, (if he doth think fit) for that he hath Ensured the most of his Adventure, or that he would have the assistance of the Assurers; when there is hope of Recovery of the Lading, he may then make a Renunciation of the Lading to the Assurers, then he comes in himself in the nature of an Ensurer, for...
Of Policies of Assurance. Book II.

To much as shall appear he hath born of the Adventure beyond the Value enliured.

But if the Merchant shall not renounce, yet there is a power given in the Policy for him to travel, pursue, and endeavour a Recovery (if possible) of the Adventure after a misfortune to which the Assurers are to contribute, the same being but a trouble to give ease to the Assurers.

If prohibited Goods are laden aboard, and the Merchant ensures upon the general Policy, which always contains these words: Of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jottazons, Letters of Maris, and Countermart, Arrefts, Restraintments and Detainments of Kings and Princes, and all other Persons, Barret of the Master and Mariners, and of all other Perils, Losses, and Misfortunes whatsoever they be, and howsoever they shall happen to come, to the hurt and detriment of the Goods and Merchandize, or any part or parcel thereof; whether if such Goods be lawfully seized as prohibited Goods, the Ensiurers ought to answer? It is conceived they ought not; and the difference hath been taken, where Goods are lawful at the time of Lading to be imported into that Countiy, for which they are configned for; but by matter ex post facto after the lading they become unlawful, and after arrival are seizes, there the Assurers must answer, by virtue of the Clause, And all other Perils, &c. But if the Goods were at the time of lading unlawful, and the Lader knew of the same, such Assurance will not oblige the Assurers to answer the los; for the same is not such an Assurance as the Law supports, but is a fraudulent one.

A Policy was made from Cadiz to Vera Cruz in New Spain, upon Monies lent upon Bottomry, and upon any kind of Goods and Merchandize whatsoever loaded aboard the Good Ship called the Nuestra Seignora del Carmen and Mary Magdalen, the Adventure beginning immediately from the lading before a day to come, and the Monies from the time they were to be lent, and so to continue from Cadiz to Vera Cruz, and after Delivery, with Proviso to stay at any Port or Place in her Voyage, and likewise to touch at Porto Rico, and there to lade and unlade without any Prejudice to the Ensurance, the Cargo being valued at 1700l, Sterl. without Account, &c. against
against Seas, Men of War, Fires, Enemies, Pirates, Robbers, Thieves, Jettisons, Letters of Mart and Counterpart, Surprizals at Sea, Arrests, Restraints and Détainments of all Kings, Princes, and People, of what Nation, Condition or Quality soever. The Ship being laden at Cadiz, did depart towards Vera Cruz, and before arrival there, touching at Porto Rico, the Goods were there seized and arrested. In an Action brought upon the Policy, the Defendant came in and pleaded, That the Ship at her arrival in her Voyage at the Port of Rico, was laden with Goods and Merchandize prohibited, and the same, and also the Ship, did there become forfeited by Default of the Proprietors, and was there seized and taken. The Question was, if the Owners should enforce, and then order prohibited Goods to be laden, whether that an Arrest upon the same should entitle them to a Recovery? The second Objection was, If (as the Defendant had pleaded this Plea) the same were good? As to the first, the Court did all incline, that the Ensurance ought to be bona fide, i.e. the Restraint ought to be of such Goods as by Law were not restrainable; but surely that cannot be, for the Intention of Policies are to warrant the Perils of all manner of Goods in all manner of Cales. So that if there be a loading bona fide, be it prohibited or not, the same in Case of Loss ought to be answered, unless it were a fraudulent Contrivance: But to the second, it was resolved, That the Plea was insufficient; for admitting the same should not oblige the Ensurer, yet because the Defendant did not shew that the Goods were laden either by the Ensured, or by their Factor or Order, otherwise the same should not conclude them; for perhaps the Master or his Mariners, or a Stranger, might load them on Board without Order, so that upon the mere Insufficiency of the Manner of Pleading, and not of the Matter, the Court gave Judgment for the Plaintiff.

But if a Merchant will freight out Wool, Leather and the like, or send out Goods in a Foreign Bottom, and then make a Policy, the Ship happens afterwards to be taken, by Reason of which there becomes a Forfeiture of Ship and Lading, the Ensurers are not made subject to answer the Damage; for the very Foundation was illegal and fraudulent, and the Law supports only those Assurances.
De Policies of Assurance. Book II.

...ances that are made bona fide; for if otherwise, and Men could be assured against such Actions, they would destroy Trade, which is directly to thwart the Institution and true Intentions of all Policies.

But if Goods should happen to be lawfully Ensured, and afterwards the Vessel becomes disabled, by reason of which they relade by consent of the Super-Cargo or Merchant, into another Vessel, and that Vessel, after arrival, proves the Ship of an Enemy, by reason of which the Ship becomes subject to Seizure; yet in this Case Ensurers shall answer, for that this is such an Accident as is within the Intention of the Policy.

Several Men lade aboard Salt, without distinction, not putting them in Sacks, and the like; the Ship arrives, the Master delivers to their Principals according to their Bills of Lading as they come one by one, it falls out that some of the Salt is washed or lost by reason of the Dampness of the Ship, and that the two last Men cannot receive their Proportion. There are in this Case these things to be considered:

1. Whether the Master is bound to deliver the exact Quantity?

2. Whether those that have received this Loss can charge the Assurers?

3. Whether the Assurers can bring in the first Men for a Contribution, they having their Salt delivered to them compleatly?

Certainly the Master is not bound to deliver the exact Quantity, nor is he obliged to re-deliver the very specific Salt, but only as Men are to repay Money or Corn by the distinction in a Bag or Sack, and out of them; but if the Fault was in not pumping, keeping dry his Deck, and the like, there est contra: Though perhaps there may be special Agreement.

Besides, this is a Peril of the Sea which the Master could not prevent, and of necessity he must deliver to one first before another.

As to the second, It is no Question but that the Assurers shall answer. But whether they shall bring in the first Men for Contribution, may be some doubt.

It has been conceived by some, that they ought not; for they delivered their Salt to the Master tamquam in Creditum.
Chap. VII. Of Policies of Assurance.

Creditum, and were not to expect the redelivery of the same specific Salt.

But by others it has been conceived they ought to contribute pro ratione; for as Goods of necessity, some must be stowed in the Hold, and that such Goods seldom escape the Peril of the Sea; so the rest must of necessity contribute to that Misfortune, and so make no Distinction.

The Bills of Lading are very useful to settle the Difference between the Assurer and Assured, of which there are three Parts, one sent over Sea, the other left with the Master, and the last remaining with the Lader.


CHAP. VIII.

Of Pilstage and Butlerage.

I. What Pilstage is, and where taken, and of what.

II. Merchants, Strangers exempted from the same.

III. When due, and the exemption of the Citizens of London from the same.

IV. What Citizens are capable, and where not.

V. A Foreigner imports and makes a Citizen Executor and dies; whether he shall have the Benefit of the Immunity.

VI. Where a Foreigner sells to a Citizen before Bulk be broken, the

VII. Where a Grant to discharge a particular Ship shall be good; and whether a Grant to a particular Person shall be otherwise.

VIII. Of Butlerage, what, and who are exempted.

IX. Where the King becomes entitled to these Duties.

X. A Grant to be free of all Customs, Impositions, &c. extends not to Pilstage and Butlerage.

XI. Cinque Ports exempted from Pilstage.

I.

Pilstage is a certain taking or purveyance for Wine to the King's use; the same is an antient Duty which the Kings of England have, time out of mind, had and received; the manner hath been by taking of every Ship or Vessel that should come into this Realm, if ten Tuns, to have for Pilstage one Tun: And if it contain twenty Tuns or more, to have two Tuns, (viz. one Tun before the Mast, and the other behind the Mast) paying 20 s. for each Tun. This antient Immunity they have enjoyed as a Flower of the Crown, and by some has been conceived not grantable away without Act of Parliament. But yet in 6 E. 3. fol. 3. Case 15. mentions the same to be grantable over.

Such Wine may be tasted, and the fullest Vessels may be taken for Pilstage. And if a Ship has ten Tuns, then only one Tun is to be taken: and none if there be but nine Tuns; unless there be Evidence of Fraud. But if there be nine Tuns and an half, that is Fraud apparent; and then one Tun shall be taken.

II. King
CHAP. VIII. Of Prisage and Butlerage.

II. King Edward the First having laid some Impositions on the Merchants, which in Anno 25. of his Reign, being taken away, with promiss, that neither he nor his Successors should do any such thing without Assent of Parliament; in the one and thirtyth of his Reign they granted him an Increase of Customs, in lieu of which he granted them many Immunities, as Release of Prisage; &c.

III. Prisage is not due till the unlading, or that which is commonly called breaking of Bulk; for the Words are De qualibet navi important vina, & disonerant inde. King Edward the Third by his Charter dated 6 Martii Anno Regni Primo, granted his Royal Charter of discharge to the Mayor, Commonalty, and Citizens of London, in loco verba, (viz.) Quod de vinis Civium nulla prisam, sed perpetue inde effents quieti, &c. which was afterwards allowed in the Exchequer.

IV. It is not every Citizen that is capable of this Privilege, but only those that are resident within the City: And so it was ruled in the Case of one Knowles, who being a Citizen and free Grocer of London, removed his Houshould cum pannis, and did dwell at Bristol, but yet kept his Shop in London; and a Ship of his arriving with Wines at London, and being unladen, the Prisage was demanded; he claimed the Benefit of discharge. It was adjudged, he was not capable of the same: For he that will claim the benefit of his discharge ought to be Civis & Incola commorans.

By 24 H. 6. (a private Act of Parliament) Complaint was made, That the Lord Mayor of London would make Strangers Citizens; It was there declared, that this benefit to be discharged from Payment of Prisage, did not extend to such Citizens as were donati, made free, but unto those Citizens only which commorant, incolant, and are resident in the City.

V. If a Foreigner brings a Ship laden with Wines, into the Port of London, and then makes a Citizen his Executor and dies, he shall not have the benefit of this Immunity from Payment of Prisage for these Wines, for that they are not bona Civium.

VI. If a Foreigner arrive with a Ship laden with Wines at a Port with an intention to unlade, and before the
Of Prystage and Butlerage. Book II.

the Goods are entered, or Bulk is broken, he sells them to a Citizen, Prystage shall be paid notwithstanding, for it was never the Intent of the King in this his Grant to discharge a Citizen in such a manner.

VII. If the King does discharge such a Ship of 7. S. being at Sea, particularly naming the same, from the Payment of Prystage, and he dies before the Ship arrives, no Duty can be demanded.

But it has been held, if a particular Person has a Grant to him to be discharged of his Goods, and he dies before the arrival, the Duty shall be paid.

Vide the Case at large for the Court was divided in Opinion.

Quo Warranto's were brought against three Archbishops of York, to shew cause why they demanded to have Prystage for Wines brought into the Port of Hull: The two first pleaded to have only the first taste, and a pre-emption after Prystage paid; but the third pleaded a Charter of 16 E. 2. by force of which he claimed the same; and ruled not good. But though the Charter might be good, yet it was held in that case, a disclaimsr by the Predecessor should bind the Successor. Note, the Duke of Ormond in Ireland had an Inheritance in the Prystage of Wines by the King's Charter. But the fame was forfeited. 2 G. 1.

VIII. Butlerage is a Custom due from Merchant-Strangers of 2 s. upon every Tun of Wine brought into this Realm by them; but Englishmen, pay it not.

King John granted to the Merchants of Aquitaine trading for Wines thence into England, divers Liberties, and amongst others, Libertatis concessit Mercatoribus vinetariis de Ducatu Aquitania reddendo Regi & heredibus suis 2 s. de quolibet doli vini duos per cossinum infra Regnum Angliae vel potestatatem Regis.

All Merchants Strangers in consideration of the Grant to them by the King of divers Liberties and Freedoms, Concefferunt de quolibet doli vini quod adduceret vel adduceret facerent infra Regnum, &c. solvere nobis & heredibus nostris nomine Custumae duos solidos, &c.

It is called Butlerage, because the King's chief Butler doth receive it. If any Person free of Prystage or Butlerage customs
customs Wines of a Person not free of Prisage or Butlerage, he forfeits double the Value of the Prisage of the Wines so customed.

By Stat. 1. H. 8. ch. 5. Making false Entry to defraud the King of Prisage and Butlerage, infers a Forfeiture of double the Value. And by Stat. 2. and 3 Ed. 6. ch. 22. of the Offender's Goods and Chattels, provided the Prosecution be within three Years. One Moiety to the King, the other to the Informer.

IX. Breaking of Bulk is that which entitles the King to the Duty: For if a Merchant imports Wines to the Number of 20 Tuns, yet if he unlades but part, as nine or four Tuns, yet the King shall have the entire Prisage; and though the Custom seems to declare, that the taking must be as well before as after the Mast, yet is not the Officer tied to that Strictness but may take where he pleases; for two Tuns are the King's due; for otherwise he might be cozened, the Freighter perhaps lading other Commodities aboard after the Mast.

If there be but one Tun taken out, yet the duty must be paid: The reason is, for that otherwise the Officer should be obliged to travel perhaps all over the Kingdom.

X. The King granted to a Venetian Merchant that he should be quit, de omnibus Custumis, Subsidiiis, & Impotitionibus, & omnibus aliis denariarum summis debitis & jura-bilibus pro quibuscumque Merchandizis importandis; and that he should be as free as the Citizens of London. In that case it was adjudged in the Exchequer, That by that Grant the King did not discharge him of Prisage, because the Prisage was not specially expressed in the Grant, although that the City of London were by a special Charter freed of Prisage.

XI. The Cinque Ports are likewise discharged of Prisage; yet if a Citizen of Salisbury should consign Wines to be delivered and unladed at Dover, the bare Discharge of the Goods at that Port will not acquit the Importer from the Duty; for it is not the Party's Importation, but his Domicil that qualifies him for the Benefit of his Immunity.
C H A P. IX.

Of Pilots, Wharfage, Primage, Average, Lodmanage.

I. Of the Pilot's charge till the Ship is brought to her place or bed.  
II. If the Ship is likely to miscarry, what the Ships Crew may do at such time.  
III. Of ignorant Pilots their punishment, and if the Ship miscarries, who shall answer.  
IV. Of Wharfage, and where the Wharfinger shall answer, and where not.  
V. Primage and Petty Lodmanage where due, and for what; and if the Ropes break, whether the Master, or Wharfinger shall answer.  
VI. Petty Average where due, and for what, and Hat-money.  
VII. Lodmanage where due, and for what.

BY the Laws of Oleron after that the Pilot hath brought the Ship to sure Harbour, he is no further bound or liable; for then the Master is to see her bed and to her lying, and bear all the rest of her Burthen, Charge, and Danger, except that of the Act of God; so that before she comes to her place or bed, and while she is under the Pilot’s charge, if she or her Goods perish, or be spoiled, the Pilot must make good the same.

II. By the Laws of Oleron, if his fault is notoriously gross, that the Ships Crew sees an apparent Wreck, they may then lead him to the Hatches, and strike off his Head; but the Laws of England allow no such haftly Execution.

By the Laws of Denmark, an ignorant Pilot is to pass thrice under the Ship’s Keel.

The Master generally in the Charter-party covenants to find a Pilot, and the Merchant covenants to pay him his Pilotage.

III. But if a Ship should miscarry coming up the River, under the charge of the Pilot, it has been a Question, whether the Master should answer in Case of the insufficiency of the Pilot; or whether the Merchant may have his remedy against both? It hath been conceived

Leg. Oleron, cap. 23.
Chap. IX. Of Pilots, Wharfage, &c.

received the Merchant hath his election to charge either; and if the Master, then he must lick himself whole of the Pilot.

IV. Wharfage is Money paid for landing Wines at a Wharf, or for shipping or taking in Goods into a Boat or Barge; they commonly keep Boats or Lighters of their own for the carrying out and bringing in of Goods, in which if a loss or detriment happens, they may in some cases be made liable.

An Action of the Case grounded on the Custom of the Realm was brought against the Defendant, Master of a Wharf, for not safe delivering of Goods, &c. The Case appeared to be thus: The Master unloaded a Bale of Silk into the Wharfinger's Lighter, and sent part of his Mariners to convey it aforesaid; it happened that the Goods were stole: The Question was, Whether the Wharfinger or the Master should answer? Upon a Trial at Guildhall before the Lord Chief Justice Hale, it was there ruled, That the Master was liable, and not the Wharfinger; for till they are landed, the Master hath them under his Power: But if Goods are to be sent aboard, there if they miscarry in their Passage, the Wharfinger must answer.

V. Primage and Petty Lodmanage is likewise due to the Master and Mariners for the Use of his Cables and Ropes to discharge the Goods, and to the Mariners for loading and unloading of the Ship or Vessel; it is commonly about twelve Pence per Tun.

If the Ropes break in hoisting of Goods out of the Ship into the Lighter or Boat, the Master must answer if the Goods be damaged or lost.

But if the Ropes break at the Crane in taking them out of the Lighter, (although till they are landed, they are not out of the Master's Custody) yet the Wharfinger shall answer.

VI. Petty Average is another little small Duty which Merchants pay to the Master, when they only take Tunnage over and above the Freight, the which is a small Recompence or Gratuity for the Master's care over Lading; and in the Bills of Lading they are expressed after Freight, together with Primage and Average accustomed.

Some conceive that the Average mentioned in the Bills, is that which is the Average or Contribution for losses.
Of Pilots, Wharfage, &c. Book II.

The French Ships commonly term the Gratuity Hat-
mony, and our English Merchants pay it our Masters
over the Freight; it is sometimes more, sometimes less;
two or three Pieces.

VII. Loadsman, is he that undertakes to bring a Ship
safe through the Haven to the Key or Place of Discharge,
and if through his ignorance, negligence, or other fault,
he suffereth the Ship or Merchandize to perish, an
Action lies against him at the Common Law; and so by
some conceived he may be punished in the Admiralty,
but not in both.

The Hire is called Lodmanage, the which the Pilot
receives of the Master for conducting the Ship up the Ri-
ver, or into the Port to her convenient Bed.

If two Ships lie in a Harbour and the Anchor of one
is feared may occasion damage to the other, after re-
quiest and refusall (and there be probable cause) the other
may take up the Anchor, and let the same down at a
further distance, and the same, if opposed or hindered
and any damage happen thereby, they are to make full
Satisfaction; so it is if they lay out an Anchor, and
neglect the placing of a Buoy to the Anchor, and damage
happen thereby, they are not only subject to be punished
in the Admiralty, but likewise to render satisfaction to
the Party damnified.

If two Ships be in the River, and the one falls foul on
the other, both being laden, by the Law Marine the
Contribution is to be in Common, and to be equally
divided and appraised half by half; but then the Mari-
ers must swear there was no fault in them: For other-
wise one that hath an old rotten Vessell which he can no
ways dispose of, may so order the matter as to lay her in
the way of a good Ship under Sail, so that the same may
be answered in damage: But when the Contribution is
made equal, then the Contrivance will be avoided; but
at the Common Law there can be no such Judgment, for
one of them must be found guilty; and if so, he must
answer the other's Damage, and for his own he may fit
down by the loss.

C H A P.
CHAP. X.
Of Bills of Exchange.

I. Of the Antiquity of Exchange by the Hebrew Law.
II. Of the Antiquity of Exchange by the Romans.
III. Of Exchanges by other Nations in imitation of those People.
IV. Of the several sorts of Exchanges, and of Cambio commune.
V. Of Cambio real, or Exchanges valae for vaale.
VI. Of Cambio sicco, or dry Exchanges.
VII. Of Cambio fictio, or feigned Exchange.
VIII. Of the Exchanges used this day, and on what.
IX. How Exchanges are made, and upon Manies in London.
X. Monies paid generally, how repay'd by Exchange, how an Alien shall be brought for Guinea, or Foreign Coin.
XI. Of Bills of Exchange payable at single usance.
XII. Bills of Exchange at double or treble usance, and of the customary usance; to certain places from London and Amsterdam to other places.
XIII. Of the nature of Bills of Exchange, and bore esteemed by the Laws of England.
XIV. Bills drawn more than one, no prejudice to the Parties; and of the true measure of judging on Bills by Custom.
XV. What amounts to an acceptance generally, and on refusal when to be protested. Indebitat Assumptum upon general acceptance.

XVI. All the Drawers are made liable; and whether the Party to whom the Money is made payable, is bound to procure an acceptance.
XVII. Protest, what is meant by the same; and whether the same is necessary, and whether not. Protest upon the Stat. of 9 & 10 Will. 3. cap. 17.
XVIII. Bill drawn on two Persons, where the same is necessary, and where not.
XIX. One Factor serves a Company, where a Bill of his accept'd by one of the Company, obliges, the rest, and where not.
XX. What words amount to an acceptance, and what not.
XXI. Where a Bill may be accept'd for part, and what must be done with the Bill thereupon.
XXII. When a Countermand may legally be made, and when not.
XXIII. How the several Parties interested in a Bill of Exchange are obliged and fettered to each other.
XXIV. How a collateral Security may be annex'd to a Bill, when the time is elapsed, for non-payment.
XXV. Where the Protest is only necessary to be kept, and whether that and the Bill must both be remitted.
XXVI. Bill lost, what is necessary for the Parties interested in such case to do.
XXVII. Of blank Endorsements, the validity of the same.

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Of Bills of Exchange.  Book II.

XXVIII. A Bill once accepted, whether the same may be revoked; and whether it may be accepted to be paid at a longer time than is mentioned: And what Protest is then necessary to be made.

XXIX. Of Bills accepted for the honour of the Drawer, where the same shall oblige.

XXX. The time customary allowed for payment after failure of payment at the day.

XXXI. Of the Validity of speedy Protest in relation to recover the money to be paid on the Drawer.

XXXII. Bill accepted, and before the day of payment the Acceptor is failing, what's necessary to be done in reference to the obtaining better Security.

XXXIII. Bills accepted for the honour of the Drawer, where turned into an Ann, and remitted by him that gives honour to the Bill.

XXXIV. The Acceptor ready to pay, but the Party to whom made payable is dead, what is necessary.

XXXV. Causes general for a Protest, and where satisfaction to the deliverer discharges all Parties.

XXXVI. Of Exchange by way of Credit.

XXXVII. One pays a Bill before it be due, and the Party to whom the same was paid, fails, where he shall be answerable to the Drawer notwithstanding.

XXXVIII. Of Bills assignable over according to the Customs of Merchants, what Operation in England.

XXXIX. Where an Assignment is necessary of Defendant's being a Merchant.

I. THE Exchange for Monies is of great Antiquity as well by observation of the Hebrew Customs, as those of the Romans.

Upon the first of the Month Adar, Proclamation was made throughout all Israel, That the People should provide their half Shekels, which were yearly paid towards the Service of the Temple according to the Commandment of God; on the 25th of Adar, then they brought Tables in the Temple, (that is, into the outward Court where the People stood) on these Tables lay the leffer Coins which were to furnish those who wanted half Shekels for their Offerings, or that wanted leffer pieces of Money in their payment for Oxen, Sheep, Doxes, and the like, which stood there in a readiness in the same Court to be fold for Sacrifices; but this supply and furnishing the People from those Tables was not without an Exchange for other Money, or other things in lieu of Money, and that upon advantage: Hence all those that sat at the Tables were called chief Bankers, or Masters of the Exchange.

II. By the Romans it is supposed to be in use upwards of 2000 Years, Monies being then fetched out of the best of
of Metals to avoid the tedious Carriage of Merchandize from one Country to another: So other Nations imitating the Jews and Romans, erected Mints, and coined Monies, upon which the Exchange by Bills was devis'd, not only to avoid the danger and adventure, but also its troublesome and tedious Carriages.

III. Thus Kingdoms and Countries having by their Sovereign Authorities coined Monies, caused them to appoint a certain Exchange for permutation of the various Coins of several Countries, without any transportation of the Coin, but giving par pro pari or value for value, with a certain allowance to be made those Exchangers for accommodating the Merchants.

IV. As Commerce became various, so Exchange numerous; but generally reduced to four, Cambio commune, Cambio real, Cambio fisco, and Cambio fictitio.

Cambio commune, in England was that which were constituted by the several Kings, who having received Monies in England, would remit by Exchange, the like sum to be paid in another Kingdom. Edward the Third, to ascertain the Exchange, caused Tables to be set up in most of the general Marts or Ports of England, declaring the Values of all or most of the foreign Coins of those Countries where his Subjects held Correspondence or Commerce, and what allowances were to be made for having Monies to be remitted to such Countries or Kingdoms.

V. Cambio real, was when Monies were paid to the Exchanger, and Bills were drawn, without naming the species; but according to the value of the several Coins, which two Offices afterwards were incorporated, and indeed was no more but upon payment of Monies here in England to be repaid the just value in Money in another Country, according to the Price agreed upon between the Officer and Deliverer to allow or pay for the Exchange of the Money, and the loss of time.

VI. Cambio fisco, or dry Exchange, is when a Merchant hath occasion for 500 l. for a certain time, and would willingly pay interest for the same; the Banker being desirous to take more than the Statute gives, and yet would avoid the same, offers the 500 l. by Exchange for
Of Bills of Exchange. Book II.

The Usury was first introduced by the Jews here in England. Vide Co. 2. Lev. fol. 506.

for Cales, whereunto the Merchant agrees; but the Merchant having no Correspondence there, the Banker defires him to draw his Bill, to be paid at double or treble usance, at Cales, by Robin Hood, or John a-Nokes (any feigned Person) at the Price of Exchange then current; accordingly the Merchant makes the Bill, and then the Banker pays the Monies; which Bill the Banker remits to some Friend of his to get a Protest from Cales for Non-acceptance, with the Exchange of the Money from Cales to London, all which with Costs, the Merchant is to repay to the Banker; sometimes they are so conscientious as not to make above 30 per Cent.

VII. Cambio fictitio, when a Merchant hath occasion for Goods to freight out his Ship, but cannot well spare Money; the Owner of the Goods tells him he must have ready Money; the Buyer knowing his drift, it is agreed, That the Seller shall take up the Monies by exchange for Venice, or any other parts; but then the Merchant must pay for exchange, and re-exchange.

So likewise where the Merchant is become indebted to the Banker, they are contented to stay, the Merchant paying exchange and re-exchange, the which he will most certainly compel him to do.

3 & 4 H. 7. These two last ways of grinding the Face of the generous Merchant was afterwards prohibited, but notwithstanding it was found impossible to moderate the inequality of Exchanges, and to have value for value: So that at this day it seems to be a Cold that many an honest Man is apt to catch.

VIII. The just and true Exchange for Monies that is at this day used in England, (by Bills) is par pro pari, according to value for value; so as the English Exchange being grounded on the weight and fineness of our own Monies, and the weight and fineness of the Monies of each other Country, according to their several Standards proportionable in their valuation, which being truly and justly made, ascertains and reduces the Price of Exchange to a sum certain for the Exchange of Monies to any Nation or Country whatsoever: As for instance,
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If one receives 100 l. in London to pay 100 l. in Exeter; this by the par.

But if a Merchant receives 100 l. in London to pay 100 l. at Paris, there the Party is to examine and compare the English weight with the weight of France, the fineness of the English Sterling Standard with the fine-
ess of the French Standard; if that at Paris and that at London differ not in proportion, then the Exchange may run at one Price, taking the Denomination according to the Valuation of the Monies of each Country; but if they differ, the Price accordingly rises or falls: And the same is easily known by knowing and examining the real fineness of a French 5 s. Piece and an English 5 s. Piece, and the difference which is to be allowed for the want of fineness or weight, which is the Exchange; and so proportionably for any Sums of Monies of any other Country, the which is called Par, or giving value for value.

But this Course of Exchange * is of latter Years abused, and now Monies are made a meer Merchandize, and does over-rule Commodities, and Monies rise and fall in Price according to the Plenty and Scarcity of Money.

the Par in Exchange, to answer justly the Value of the Coins of Foreign Parts, by reason of the Diversity of them, and of their intrinsic Values. Vide Sir Robert Cotes, Posthumous, fol. 306.

IX. As Money is the common Measure of Things between Man and Man within the Realm, so is Exchange between Merchant and Merchant within and without the Realm; the which is properly made by Bills when Money is delivered simply here in England, and Bills received for the repayment of the same in some other Country, either within the Realm or without the Realm, at a Price certain, and agreed upon between the Merchant and the Deliverer. For there is not at this Day any peculiar or proper Money to be found in specie whereupon out-land Exchanges can be grounded; therefore all Foreign Coins are called imaginary.

At London all Exchanges are made upon the Pound Sterling of 20 s. and 12 d. to the Shilling; for Germany, Low-Countries, and other Places of Traffic; and for France upon the French Crown: For Italy, Spain, and some
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some other Places, upon the Ducat: For Florence, Venice, and other Places in the Streights, commonly by the Dollar and Florin.

Note, in an Action on the Case upon a Bill of Exchange, it was said in Verna against Debusse, Special Bail is not required in a Writ of Error by the Stat. of 3 Jac. 1. cap. 8. because an Action upon the Case is not within that Stat. but only Actions of Debt; for had this been aided by 3 Jac. 1. there needed no provision by the Stat. of Car. 2. 2 Keb. 234.

X. Bills drawn to be paid, are either at sight, or a time certain, single, double or treble Usance, and are commonly about three, for fear of any miscarriage.

The taking and delivering Money at sight binds the taker up to give his Bill to pay at sight, or within some short time the like Sum after such a Rate the Pound, Dollar, Ducat or Crown, as is agreed between them in Foreign Coin, either according to the Valuation of Monies, or current Monies for Merchandize.


XI. The second time of Payment is called Usance; it is known or taken to be the Compass of one Month, to be computed from the date of the Bill, and that governed according to the Custom of the Place where those Exchanges do run. For which Reason in an Action on a Bill of Exchange payable at Usance, the Plaintiff must shew what the Usance is.

XII. The third is double or treble Usance, two or three Months: Sometimes there are Exchanges made upon half Usance.

The times of Payment do alter the Price of Exchanges according to time.
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XIII. *Excambium vel Cambium,* or as the Civilians term it, *Permutatio;* *Bill* *Excambii* signifies no more but a customary *Bill,* solemnized by numerous consent of Traders, to have a Respect more than other Bills, though of as high and as intrinsical a Value: And those that give such Bills are called *Exchangers* or *Bankers.*

Though the Act was no more but to keep up the Life of Commerce, (without which it is impossible for any Nation to flourish) yet could not any Person draw such Bills, or return Money beyond Seas, without Licence first obtained of the King. But at this day any Man may do it without being obliged to obtain such leave.

Where there are two joint-Traders, and one of them subscribes a *Bill* for himself and Partner it binds both.

A *Bill* drawn upon B. requiring him to pay C. seven Pounds every Month, out of the growing Subsistence
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Note. There is not the same Strictness requisite in penning of Bills current between Merchant and Merchant, as in Deeds, &c. Lucas 287.

There is no material Difference whether a Bill be drawn payable to the Order of A, or to A. or Order: For upon Acceptance, A. may maintain his Action in the one Case as well as the other. Lucas 286.

XIV. Such a Bill being drawn, they commonly take one or two more of the same date word for word, only this Clause is inserted in the second, My first of the same Date, Persons and Sum not being paid: And in the third, My first and second of the same Date, and contents not being paid.

The Declaration ought to aver that the second and third are not paid (& vice versa come semble) but this may be aided by Verdict, though ill upon a Demurrer.

The right Measure of judging on Bills of Exchange, is purely by the laudable Custom often reiterated, by which means the same hath obtained the force of a Law, and not the bare and single Opinion of some half-fledged Merchants: For Bills of Exchange are things of great Moment as to Commerce, and are neither to be strained so high, as that a Man should not cast his eye on them, but the same shall be taken to be an acceptance: Nor on the other hand, having duly accepted them, the same should be rashly and unadvisedly avoided, by the shallow fancy of such nimble-pated shufflers; but they are soberly judged and governed, as the same hath generally been approved of and adjudged of in former Ages.

XV. A Bill being remitted, the Party is to go immediately to the Person to whom the same is directed, and present the same in order to his acceptance; if it be ten-dred, and the Party subscribes Accepted; or Accepted by me A. B. or being in the Exchange says, I accept the Bill, and will pay it according to the Contents; this amounts without all Controversy to an Acceptance.

But if the same be refused, the Party must then procure a Protest, and remit the same to the Deliverer, who is to resort to the Drawer for Satisfaction for the principal, costs, and damage.

Words are made to signify things; by the word Deliverer is meant he that
The Drawing a Bill of Exchange is an actual Promise. L. Raymond 538.

Acceptance after the Day of Payment past is usual, and good. L. Raymond 364. 574. So Acceptance for the Honour of the Drawer. Idem 575.

Three Days of Grace are allowed upon Foreign Bills, unless the third Day be Sunday or Christmas-Day, &c. and then only two Days. Idem 575, 743. No such Custom for inland Bills. Idem 743. Goldsmiths Notes to be received immediately. Idem 744, 757, 759, 774.

The question whether a general Indebitat. Assumpsit Hard. 485, will lie upon a bare acceptance of a Bill of Exchange, in the Argument of the Case of Bellaifs and Heffer. By Justice John Powell, a general Indebitat. Assumpsit does not lie on a Bill of Exchange; but it ought to be a special Declaration upon the Custom of Merchants, as in the Case of Brown and London. 1 Levinz 298. 1 Mod. 285. 2 Keble 695, 731, 758, 822. 1 Vent. 152. In which Case, Judgment was arrested after Verdict as reported by Levinz and Ventris.

In the Case of Brunswick and Ladies, it was said by the Chief Justice Treby, that Bills of Exchange were of such general Use and Benefit, that upon an Indebitat, Assumpsit, a Bill of Exchange may be given in Evidence to maintain the Action; and by Mr Justice Powell, that upon a general Indebitat. Assumpsit, for Monies received to the use of the Plaintiff, such Bill may be left to the Jury to determine, whether this was for value received or not. In this Case the Declaration was on the Custom of Merchants, and a general Indebitat. Assumpsit thereon. See the Declaration and Exceptions to it, in the said Case of Bellaifs and Heffer, in 1 Lutwych, 1589.

By the Stat. of the 9th and 10th of Will. 3. cap. 17. It is enacted that after the 24th of June 1698. All Bills of Exchange drawn in, or dated at, and from any Place of this Kingdom of the Sum of 5l. or upwards upon any Person in London, or any other trading City, Town or Place (in which Bills, the value shall be expressed to be received)
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received) drawn payable at a certain time, after the Date thereof, may after acceptance in Writing, and the expiration of three Days after the same shall be due, be protested by a Notary Publick; or in default of such Notary Publick, by any other substantial Person of the Place before two Witnesses; refusal or neglect being first made of due Payment; which Protest shall be made under a Copy of the Bill, in the form prescribed by the Act, and shall be notified within 14 Days after, to the Party from whom the Bills were received, who (upon producing such Protest) is to repay the said Bills with Interest and Charges from the Protester; for which Protest there shall not be paid above 6d. And in Default of such Protest, or due Notice thereof, the Person so failing shall be liable to all Costs, Damages and Interest thereupon. Provided that if any such Inland Bills be lost, or miscarry within the time limited for Payment of the same, the Drawer of the said Bills shall give other Bills of the same Tenor, Security being given to indemnify him, in Case the said Bills so lost or miscarried be found again.

A Writ of Error was brought on a Judgment by Nil dicit in an Action against the Drawer of an Inland Bill of Exchange; and it was objected, that since the Act of 9 W. 3. no Damages shall be recovered against the Drawer upon a Bill of Exchange without a Protest, and therefore the Action lies not, there being no Protest.

But Holt C. J. The Statute never intended to destroy the Action for want of a Protest, but only to deprive the Party of recovering Interest and Costs upon an Inland Bill against the Drawer without Notice of Non-payment by Protest; for before the Statute there was this Difference between Foreign and Inland Bills of Exchange: If a Bill was foreign, one could not resort to the Drawer for Non-acceptance or Non-payment without a Protest, and reasonable Notice thereof; but in Case of an Inland Bill, there was no occasion for a Protest, but if any Prejudice happened to the Drawer by the Non-payment of the Drawee, and that for want of Notice of Non-payment, which he to whom the Bill is made ought to give, the Drawer was not liable; and the Word Damages in the Statute, was meant only of Damages

Salk. 128.
2 Mod. Cas.
80.
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Damages that the Party is at by being longer out of his Money by the Non-payment of the Drawee, than the Tenor of the Bill purportcd, and not of Damages for the Original Debt: And the Protest was ordered for the Benefit of the Drawer; for if any Damages accrue to the Drawer for want of Protest, they shall be borne by him to whom the Bill is made; and if no Damages accrue to him, then there is no Harm done him, and a Protest is only to give formal Notice that the Bill is not accepted, or accepted and not paid; and if in such Case the Damage amount to the Value of the Bill, there shall be no Recovery, but otherwise he ought not to lose his Debt; but that ought either to appear by Evidence upon Non Assumpsit, or by special Pleading; and the Act is very obscurely and doubtfully penned, and we ought not by Construction upon such an Act to take away a Man's Right. And the Judgment was affirmed per totam Curiam.

What Actions lie upon a Bill of Exchange, and how to be brought, and against whom. See Hardres's 487. in Scaetario, and Brown and London's Cafe, 1 Mod. 285, 1 Levinz 298, and 2 Keble 695, and the Case of Cramlington against Evans and Percival, 2 Vent. 307. L. Raym. 175, 364, 574.

Acceptance of a Bill of Exchange may be pleaded as Payment in Bar of an Action of Account. Luc. 37.

Where the Drawee first accepts and then suffers the Bill to be protested, he shall pay Interest from the Time of the Protest. Luc. 37.

If a Bill be accepted, and afterwards indorsed to the Drawer, he may maintain an Action as Indorsee, in Case he had Effects enough in the Hands of the Drawee, to answer the Bill: but it is otherwise where the Acceptance was only for the Honour of the Drawer. Luc. 37.

A. draws a Note upon a Goldsmith, and sends his Servant to receive the Money, and invest it in Exchequer-Bills; the Servant gets B. to give him Money for the Note, and then brings the Exchequer-Bills to his Master, and two Days afterwards the Goldsmith fails; it was adjudged that A. must answer the Money to B. for the Property of the Note was not transferred to B. there being no Indorsement; and he could not have sued upon it; it
it was only in the Nature of a Pledge or Security to him. 

Luc. 109.

A Bill was drawn on the York-Buildings Company; one Bishop, who was their Cashier, accepts it without writing for the Company, or any thing to that Effect: An Action was maintained against him in his private and single Capacity upon this Acceptance.

XVI. If there be several Drawers who subscribe, all are liable in cafe of a Protest.

If a Bill is drawn upon a Merchant in London payable to J. S. at double Usance, J. S. is not bound in Strictness of Law to procure an acceptance, but only tender the Bill when the Money is due: But Merchants who generally have generous Spirits, will not surprize a Man; but first procure an Acceptance, or at least leave the Bill for the Party to consider and give his answer, and then give Advice of the same, and if the Money be not paid, then protest.

Note, the Stat. 3 & 4 Ann. cb. 9. having given like Remedy upon promissory Notes, as upon inland Bills of Exchange: it was resolved that an Action lies by a second Indorsee upon a Note, whereby the Defendant promised to be accountable to J. S. or order for 100 l. value received. L. Raymond 1396.

A Note value received de premisso in Rosemary-lane, was adjudged a good Note within the Statute. Idem 1545.

The Indorsee declared that the Defendant made his Note in writing, by which he promised to pay, &c. without saying that the Defendant signed it: This was held good, on Demurrer. Idem 1376, 1377. The like of a Bill. Idem 1542.

So where the Declaration shewed that the Defendant made it for himself and his Partner, and signed it; whereby he promised for himself and his Partner to pay, &c. Idem 1484.

A Bill need not to be expressly averred to be drawn according to the Custom of Merchants. Idem 1542.

An Action on a Note by which the Defendant and another promised jointly or severally, is ill. Idem 1544, 1545.
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XVII. A Protest is no more but to subject the Drawer to answer in case of non-acceptance, or non-payment; nor does the same discharge the Party Acceptor, if once accepted; for the Deliverer hath now two Remedies, one against the Drawer, and the other against the Acceptor.

To entitle the Party to an Action at Law in England against the Acceptor, it matters not whether there be a Protest; but to entitle the Party to a recovery against the Drawer beyond the Seas or elsewhere, there must be a Protest before a Publick Notary.

If a Merchant hath accepted a Bill, and before the same becomes to be due, he proves insolvent, or at least his Credit is publickly blasted, a Protest ought to go.

If a Merchant to whom the Bill is payable, be absent, sick or like to die, any Friend or Servant of his, may cause a Protest to be made.

A. draws a Bill upon B. to the use of C. and upon non-payment, C. protests the Bill, he cannot sue A. unless he gives notice that the Bill is protested, for A. may have Effects of B. in his Hands, by which he may satisfy himself, 1 Vent. 45.

By the Statute 3, 4 A. c. 9. It is enacted, that if the Party on whom an Inland Bill of Exchange shall be drawn, shall refuse to accept the same by under-writing it, the Party to whom the same is made payable may and shall cause such Bill to be protested for Non-acceptance.

No Acceptance of such Inland Bill of Exchange shall be sufficient to charge any Person, unless the same be underwritten or indorsed in Writing thereupon; and if such Bill be not accepted by such under-writing or Indorsement, no Drawer shall be liable to pay any Costs, Damages or Interest thereon, unless such Protest be made for non-acceptance thereof, and within fourteen Days after such Protest, the same be sent, or Notice thereof be given to the Party from whom such Bill was received or left in writing at the Place of his usual Abode.

If such Bill be accepted and not paid before the Expiration of three Days after the same shall become due, then no Drawer shall be compellable to pay any Costs, Damages
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Damages, or Interest thereon, unless a Protest be made and sent, or Notice thereof be given in manner above-mentioned: Nevertheless, every Drawer shall be liable to pay Costs, Damages and Interest, if a Protest be made for non-acceptance or non-payment and Notice thereof be sent, given, or left as aforesaid.

Such Protest is not necessary unless the Value be acknowledged in such Bill to be received, and unless the Bill be drawn for 20 l. or upwards.

If any Person accepts such Inland Bill of Exchange in Satisfaction of a former Debt, the same shall be esteemed a compleat Payment of such Debt, if the Person accepting such Bill for his Debt doth not take his due Courte to obtain Payment thereof by endeavouring to get the same accepted and paid, and make his Protest as aforesaid.

Before this Statute the Declaration need not have shewn a Protest upon such Bill, though the Drawer ought to have had convenient Notice of Non-Payment. L. Raymond 992, 993. But the Law seems to be altered, as to the Protest by this Statute.

An Inland Bill drawn to be paid out of a particular Fund, is not a Bill of Exchange. L. Raymond 1361, 1362, 1563.

Yet, Pay to J. S. or Order 10 l. as my Quarter's Half-Pay by Advance, a good Bill of Exchange. Idem 1481.

XVIII. A Bill drawn on two jointly must have a joint acceptance, otherwise it must be protested: but to two or either of them, è contra.

Then if the same be accepted by one, it is pursuant to the tenor of the Bill, and ought not to be protested but in case of non-payment; and in that case the Person Acceptor is liable to an Action, but if it be on joint Traders, an acceptance by one will conclude and bind the other.

XIX. A Factor of the Hamburgh, Turkey, or India Company draws a Bill on the same, and a Member accepts the same, this perhaps may make him liable, but not another Member.

So it is if ten Merchants shall employ a Factor at the Canaries, and the Factor draws a Bill on them all, and one
one of them accepts the Bill, and then refuses Payment; this will not oblige the rest.

But if there be three joint Traders for the common Stock and Benefit of all three, and their Factor draws a Bill on them, the Acceptance of the one will oblige the residue of the Company.

XX. A small Matter amounts to an Acceptance, so that there be right understanding between both Parties: As Leave your Bill with me, and I will accept it; or, Call for it to morrow, and it shall be accepted; that does oblige as effectually by the Custom of Merchants, and according to Law, as if the Party had actually subscribed or signed it (which is usually done.)

But if a Man shall say, Leave your Bill with me, I will look over my Accounts and Books between the Drawer and me, and call to morrow, and accordingly the Bill shall be accepted, this shall not amount to a complete Acceptance: For this mention of his Book and Accounts was really intended to see if there were effects in his hands to answer, without which perhaps he would not accept of the same. And so it was ruled by the Lord Chief Justice Hale at Guildhall.

XXI. A Bill may be accepted for part, for that the Party upon whom the same was drawn, had no more Effects in his hands; which being usually done, there must be a Protest, if not for the whole Sum, yet at least for the Residue: However, after payment of such part there must be a Protest for the Remainder.

Before the time of payment of the Bill, the Party may notwithstanding accept it, and pay it at the time of payment; or another may accept the Bill for the Honour of the Drawer, and if he pay it in default of the Party, yet before payment he is bound to make a Protest, with a Declaration that he hath paid the same for the Honour of the Drawer, whereby to receive his Money again.

XXII. Any time before the Money becomes due, the Drawer may countermand the payment, although the Bill hath been accepted.

The Countermand is usually made before a Notary; but if it comes without, so it comes under the Party's hand, it is well enough.
If the Bill be accepted, and the Party desires to have the Money before it be due, and it is paid, and then there comes a Countermand; it hath been conceived that it ought not to be allowed; for as he could not enlarge the time, so he could not shorten it, but his Duty is to follow his Order.

XXIII. Assumpsit, and declares on the Custom of London, that if any Merchant or other Person merchandizing in London, make a Note in Writing under his Hand, and by this promiseth to pay any Sum of Money to a Person in it named, or to the Bearer; and if the Person in the Note named, to whom by the Note it was promised to be paid, assign or deliver it to another Person for to receive the Money to his own use, and he carries this to the Drawer of the Note, and requests him to pay the Money to him, then the Person that made the Note, was chargeable to pay this to the Bearer. That the Defendant (being a Goldsmith) made such a Note, by it promising to pay a 100 l. to W. B. or the Bearer; and that W. B. delivered the Note to the Plaintiff to receive the Money to his own use, in satisfaction of 100 l. due to him by the said W. B. and that the Plaintiff carried it; and shewed it to the Defendant and requested him to pay the 100 l. which he had not done; by which by the Custom he became chargeable, and so promised to pay. After Verdict for the Plaintiff, it was moved in Arrest of Judgment; that this Custom to pay to the Bearer was too general: For perhaps the Goldsmith before notice by the Bearer had paid it to W. B. himself, as in truth he had; and of such Opinion was the Court, Horton vs. Coggs, 3 Levinz 299. where see the Pleadings.

(a) If the Plaintiff recover against the Drawer of a Bill (though he has no Execution upon it) he shall not afterwards recover against any of the Endorsers. See the Case at large, Claxton and Swift, 3. Mod. 86. Skinner 255.

L. Raymond 180, 181.

If a Goldsmith's Note be drawn payable to J. S. or Bearer, the Bearer cannot maintain an Action for the Money, except in the Name of J. S.
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Note. The Drawer is bound to the Deliverer, and the Acceptor to the Party to whom the Bill is made payable; yet both are not bound to one Man, unless the Deliverer be a Servant to the Party to whom the Money is made payable; or the Party to whom the Money is made payable be Servant to the Deliverer: Yet both Taker and Acceptor are liable till the Bill is paid.

XXIV. Therefore when you bring your Action, be sure to draw your Declaration accordingly, and make the same part of the Custom as you set it forth; for if you vary, you must expect to be nonsuited: And the Party is not bound to allege a particular Place of Demand.

See L. Raymond 281. That the Day of Acceptance shall be included in the Days allowed for Payment, unless there be a Custom of Merchants to exclude it; and then that ought to be pleaded. Q. Whether such Custom. See also Idem 365.

To make an Indorser liable to an Action, the Indorsee must in convenient Time demand the Money of the Person upon whom the Bill was drawn. Ibid. 443, 444.

If a Bill be returned protested for want of payment, the Drawer is to repay the Money and damage, or else he may procure a Security, which is no more but another Person of value subscribes the Bill, in these or the like words, I here underwritten do bind myself as Principal, according to the Custom of Merchants, for the sum mentioned in the Bill of Exchange whereupon this Protest is made, Dated, &c.

Now the Drawer, by virtue of this supplemental Agreement, hath as much time again to pay Monies as there was given him in the Bill when it was first drawn; so that if the Money be not paid, together with the Change and Charges of the Party, the Party may recover the same on the Principal or Security.

XXV. Beyond the Seas the Protest under the Notary's hand is sufficient to shew in Court, without producing the very Bill itself. But if a Bill in England be accepted, and a special Action grounded on the Custom be brought against the Acceptor, at the Trial the Party Plaintiff must produce the Bill accepted, and not the Protest; otherwise he will fail in his Action at that time.
Therefore it is safe that a Bill once accepted be kept, and only a Protest for non-payment be remitted; but a Bill protested for non-acceptance must be remitted.

XXVI. If a Bill is left with a Merchant to accept, and he loses the Bill, (or at least it is so mislaid, that it cannot be found) the Party shall request the Merchant to give him a Note for the payment according to the time limited in the Bill of Exchange; otherwise there must be two Protests, one for not acceptance, the other for non-payment: But if a Note is given for payment, and there happens to be a failure, yet in that case there must be a Protest for non-payment.

XXVII. A Bill is remitted to J. S. who owes Monies to J. D. J. S. delivers the Bill to J. D. and on the back-side subscribes his Name; if J. D. receives the Monies, he may fill up the blank as if the Monies had been actually paid to J. S. This is practised amongst Merchants, and by them reputed firm and good. But certainly the Common-Law looks upon this filling up of blanks after a Man hath once signed or sealed, to be no better than a harmless forgery; but if there be either a general or special Authority to the purpose, it may then alter the Law.

Note, No Person, be it Wife or Servant, can accept of a Bill of Exchange to bind the Master without a lawful Authority, as a Letter of Attorney, and the like, which must be under hand, unless that it has been formerly and usually done by the Wife or Servant in such case, when the Master hath been out of Town, who hath approved of the same and answered payment: It must be usually done; but one Partner may for another.

A Servant of Sir Robert Clayton, and Mr Alderman Morris, (but at that time actually gone from them) took up 200 Guineas of Mr Monck a Goldsmith, without any Authority of his Masters; (but Monck did not know that he was gone) the Monies not being paid, Monck brought an Action against Sir Robert Clayton and Morris, and at Guildhall it was ruled per Keeling Chief Justice, That they should answer; and there was a Verdict for the Plaintiff. And though there were great endeavours to obtain a new Trial, yet it was denied, the Court at Westminster being fully satisfied that they ought
to answer: For this Servant had used often to receive and pay Monies for them; and thereupon they actually paid the Monies.

By Holt C. J. A Servant is sent to receive Money for a Bill, he can't accept of a Note instead of Money, without the particular Direction of his Master. L. Raym. 930.

A Note given in Payment, is intended to be taken under this Condition, that it be paid in convenient Time. Ibidem. S. P. Q. if S. C. Eq. Abr. 375, 376.

Note, That which will oblige the Master, will be the Authority and Liberty which he usually gives the Servant; therefore such a Power devolved, ought to be secured by the prudentest way that may be: Which is generally done by Bonds and Obligations.

yet it oftentimes proves the Destruction of many a Family. The Father puts out the Son perhaps with no less than 2 or 300 l. and is himself become bound for his Truth and just Accounting, &c. The Servant is immediately trusted with his Cash, and then he, too young to be experienced in the World, either neglects keeping a just Account, or keeping that, subjects his Master's Cash to be spent by himself and those who make it their sole Trade to betray such Youths. The Master finding the Consumption, calls his Servant to account, who, conscious of the Act, forsakes his Service, dares not see his Relations, and then, as a general Consequence, falls into Company, to which nothing but Providence can preserve from taking their wicked Courses. The Father is called to answer whatever the Servant hath spent or imbezzeled; he must with a heart full of grief submit to pay, besides the loss of the Monies advanced upon the Servant's first putting forth: Which sometimes proves a great Affliction in a Family. On the other Side, if Servants were not to be intrusted, the Mystery could not be learnt, nor the Business dispatched; and therefore faith must be given: But then it were Justice and Honesty that as a Father puts perhaps the Child of his love to one in whom he repose a Faith and Truth, that the Master should be then as a Parent, so they should prevent all Occasions that might subject them to temptations, and not be over hasty in trusting them with the Cash. Which is the very Bait our London Gamblers catch such Gudgeons with.

If a Bill of Exchange by contrary Wind or other occasions be so long on the way, that the Time or time limited by the Bill be expired, and being tendred, both acceptance and payment are denied; Protests for both must be made, and the Drawer must answer the value, rechance and damage.

XXVIII. A Bill once accepted, cannot be revoked by the Party that accepted it, though immediately after and before the Bill becomes due, he hath advice the Drawer is broke.
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If a Bill is not accepted to be paid at the exact time, it must be protested; but if accepted for a longer time, the Party to whom the Bill is made payable, must protest the same for want of acceptance according to the tenor; yet he may take the acceptance offered notwithstanding. Nor can the Party if he once subscribes the Bill for a longer time, revoke the same, or blot out his Name, although it is not according to the tenor of the Bill; for by his acceptance he hath made himself debtor, and owns the draught made by his Friend upon him, whose Right another Man cannot give away, and therefore cannot refuse or discharge the acceptance.

Nota, This Case will admit of two Protests, perhaps three.

1. One Protest must be made for not accepting according to the time.
2. For that the Money, being demanded according to the time mentioned in the Bill, was not paid.
3. If the Money is not paid according to that time that the Acceptor subscribed or accepted.

A Bill was drawn payable the first of January, the Person upon whom the Bill was drawn accepts the Bill to be paid the first of March, the Servant brings back the Bill: The Master perceiving this enlarged acceptances, strikes out the first of March, and puts in the first of January, and then sends the Bill to be paid, the Acceptor then refuses: Whereupon the Person to whom the Monies were to be paid, strikes out the first of January, and puts in the first of March again: In an Action brought on this Bill, the Question was, Whether these Alterations did not destroy the Bill? And ruled it did not.

XXIX. A. draws a Bill on B. and B. is in the Country; C. a Friend of his hearing of the Bill accepts it: The Party to whom the Money is to be paid, must make a Protest for non-acceptance by B. and then he may take the acceptance of C. and it shall bind C. to answer the Money.

If a Bill is drawn on B. and B. happens to be in the Country, and a Friend of his desires the Party not to protest,
protest, and he will pay the same, it is good, and shall bind such Party.

If there be two joint Merchants or Partners, and one § 126. of them accepts a Bill of Exchange, the same shall bind the other; and an Action of the Case on the Custom may be maintained against him.

XXX. Merchants generally allow three days after a Bill becomes due for the payment; and for non-payment within three days protest is made, but is not sent away till the next Post after the time of payment is expired.

If Saturday is the third day, no Protest is made till Monday.

XXXI. The Use of the Protest is this, That it signifies to the Drawer that the Party upon whom he drew his Bill was unwilling, not to be found, or insolvent, and to let him have a timely Notice of the same, and to enable the Party to recover against the Drawer; for if one draws a Bill from France upon a Person in England, who accepts and fails, or becomes insolvent at the time of payment, if there be not a Protest and a timely Notice sent to the Drawer there, it will be difficult to recover the Money.

In Holland they are not altogether so strict, yet there must be a reasonable time of notice; the reason is, for perhaps if he had reasonable and timely notice, the Drawer then might have had effects, or other means of his upon whom he drew, to reimburse himself the Bill, which since for want of timely notice he hath remitted or lost. And the general Rule is, That though the Drawer is bound to the Deliverer till the Bill is satisfied, yet it is with this Proviso, that Protest be made in due time, and a lawful and an ingenious diligence used for the obtaining payment of the Monies; for it were unreasonable the Drawer should suffer through his neglect.

ately if the Money be not paid when it is due, i.e. the third Day, but there may (especially beyond Seas) be great Hazard for want of protest ing.

XXXII. Where a Merchant hath accepted, and before the same became due, he becomes insolvent, or at least his Credit publicly blasted, a Protest ought to go; but
but then there is usually a demand made, which once coming, the Drawer is compellable to give better Security; and if a second Bill comes, if no Protest, then Drawer and Security lie at stake.

If a Bill of Exchange be paid before it is due unto one that breaketh afterwards, he shall be compelled to pay it again unto the Deliverer of the Money, within what time it is payable.

XXXIII. If a Merchant draws a Bill, and there is a Protest for non-payment; if another Person hearing of the same, declare, that he for the honour of the Drawer will pay the contents, and thereupon subscribes, he is obliged thereby; and in this case it has been practised, that that Party who received the Money hath put his Name on the back-side of the Bill in blank; but the Receipt is sometimes taken on the Protest, which together with the whole proceeding is turned into an Act, and the same being drawn by the Notary, is remitted to the Drawer by him who gave honour to the Bill.

XXXIV. If a Bill be accepted, and the Party dies, yet there must be a demand made of his Executors or Administrators; and in default or delay of payment, a Protest must be made: And although it may fall out, that the Monies may become due before there can be Administrators, or the Probate of the Will be granted; yet that is delay sufficient for a Protest in case of non-payment.

But on the other hand, if the Party be dead to whom the Monies are made payable, and the Monies are ready to be paid, and there is no Person that can legally give a Discharge, yet a Protest ought not to go for not payment: The reason is, because there is no person that hath any Authority either in Deed or in Law to make it, and a Notary ought not to make it; if he does, and the Party hath received any prejudice thereby, an Action of the Case perhaps may lie against him for his pains: Nor does it avail, that if Security be offered to save him harmless against the Executors or Administrators, for that is an Act left to his own Discretion; for perhaps the Security may not be liked:

But
CHAP. X. Of Bills of Exchange:

But whether good or bad, makes nothing as to oblige him in Law.

But if a Man is bound in a Bond to pay a Sum of Money to J. S., his Executors, Administrators, &c. and the Obligee dies intestate the Day before the Sum becomes due, yet the Bond is not forfeited if not paid at the Day, because there was no body to whom the Obligor could pay to save his Obligation: But as Littleton says, If it be to pay to J. S. generally, you must hunt him out all over the Kingdom, if you'll save the Penalty.

XXXV. A Man not found, or being found, not met withal either at Home or the Exchange, is cause sufficient for a Protest; but in that there must be diligence used in the finding him.

A Bill returned protested for non-payment being once satisfied by the Drawer to the Deliverer, the Drawer is discharged, and so is the Acceptors to him to whom the Monies were to be paid: But the Acceptors, by virtue of his acceptance, makes him Debtor according to the Custom of Merchants to the Drawer.

XXXVI. Monies may be had on Exchange by way of Letters of Credit, the which are in two respects; the first general; the other special.

The general Letter is open, directed, To all Merchants and others that shall furnish, my Servant or Factor, or any other with such and such Monies; for repayment of which he binds himself to answer and pay all such Bills of Exchange as shall be drawn on him upon the receipt of the value, by his Servant, Factor, or other Person: If there be really Monies advanced on this Letter of Credit, and paid to the Factor, Servant, or other, and Bills of Exchange are sent to the Party that sent such Letter of Credit, and if he refuses to accept, yet according to the Custom of Merchants he is bound to pay: The Reason is, for that there was no Respect had to the Ability of the taker up, but to him that gave his Letters of Credit: And therefore in such Case if an Action at Law be brought, the particular Custom as to that Point must be carefully set forth.

Y

The
Of Bills of Exchange. Book II.

The special Letters of Credit, where one writes a Letter to furnish another Man's Factor or Agent; there is in this the same Remedy as above.

As Bills of Exchange seldom come without Letters of Advice, so ought they to be pursued: If a Bill shall express, And put it to the Account of A; and the Letter of Advice says B; this must be protested against, for it cannot safely be paid, at least running the Risk of an equitable Suit.

XXXVII. If one pays Money on a Bill before it be due, and the Party breaks, it has been conceived that the Party ought to answer the Drawer: The Reason hath been, because the Drawer might have countermanded the same, or ordered the Bill to be made payable to another.

In Italy if Money is paid to a Banker's Servant, and if the Master subscribe, Pagate con fi dice, this binds the Master as effectually as if he had subscribed it with his own hands.

XXXVIII. A Bill drawn by a Merchant in London payable by another Person beyond Seas, such Bills in most Countries are assignable over from Merchant to Merchant, and the last Person may sue and recover the same upon an acceptance: But in England, only the first Person mentioned in the Bill, and to whom the Money is made payable may recover. 'Tis true, such Person to whom the Money is made payable may for valuable Consideration deliver this Bill to another Person, and he may indorse an Order on the back-side; and if the Party afterwards refuses Payment of the same, it may be sued in the Party's Name to whom the same was transferred, laying the same by way of Custom.

But if the Person to whom payable, indorses it for Payment of Part to J.S. the Drawer is not liable to the Action of J.S. for, a Man cannot make another liable to two Actions, where by the Contract he is liable but to one. L. Raymond 360, 744.

Where the Bearer receives Value for a Bill not indorsed, it is a Sale of the Bill. Idem 442. But if there be an Indorserment, though only upon Discount, the Indorser
Chap. X. Of Bills of Exchange.

Indorser is liable. Idem 443, 444. And a blank Indorsement may be filled up by the Indorser. Ibid. In Action against Indorser, not necessary to prove the Hand of the Drawer. Ibid.

It is essential to a Bill of Exchange to be negotiable. Lucas 294.

It is enacted by 3, 4 A. c. 9. That all Notes payable to any Person or Order shall be assignable over in the same Manner as Inland Bills of Exchange are or may be, and that any Person to whom such Note is indorsed, may maintain an Action for the Money, either against the Person who signed such Note, or against any of the Persons who indorsed the same, in like manner as in Cases of Inland Bills of Exchange.

By Stat. 2. Geo. 2. Ch. 25. Sel. 1. If any Person shall forge, or procure to be forged, or assist in forging any (inter alia) Bill of Exchange, Promissory Note for Payment of Money, Indorsement, or Assignment of any Bill of Exchange, or Promissory Note for Payment of Money, or any Acquittance or Receipt for Money or Goods; or shall utter or publish as true any such forged, &c. knowing the same to be forged, with an Intent to defraud any Person; every such Offender shall be guilty of Felony without Benefit of Clergy. And,

By Stat. 7. Geo. 2. Ch. 22. If any Person shall falsely make, alter, or forge, or procure to be falsely made, &c. or assist in falsely making, &c. any Acceptance of any Bill of Exchange, or the Number or principal Sum of any accountable Receipt for any Note, Bill, &c. or any Warrant or Order for Payment of Money or Delivery of Goods, or shall utter or publish any such false Acceptance, Bill, &c. with Intent to defraud any Person; every such Offender shall suffer as a Felon without Benefit of Clergy.

XXXIX. In an Action on the Case grounded upon the Custom of Merchants, that whenever any such or other Person, negotiating for them with any other Merchant in England, have Bills directed to them, that if He to whom such Bills are directed, refuse to accept on sight, or to pay such Bills, then he that drew it ought: Both being by the Custom to be Merchants, the Bearer as
as well as the Drawer. And the Plaintiff not having shewed that the Beare was such a Merchant or Person negotiating, it was moved to stay Judgment for that Cause; but Judgment was given for the Plaintiff, for by the Court such Merchant, is referred only to him, to whom the Bill is directed, and to the Procurers of such a Bill, and not to the Drawers, or they to whose use the Money is to be paid.


In an Action on the Case on an Inland Bill of Exchange brought by the Indorser against the Drawer it was objected, that there was no Averment of the Defendant's being a Merchant; but it was answered and resolved by the Court, that the Drawing of the Bill was a sufficient merchandizing and negotiating to this Purpose.
### Chapter XI.

**Of Monies advanced by way of Bottomry, or Fœnus Nauticum.**

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**PUCEREO.**

I. **Money** is one of those things, which they who want, want all other things but Words to reproach their bad Fortune. But sometimes it is the Policy, even of Rags and Poverty itself, to undervalue that which it cannot have, and to convert that which it hath (though never so mean) into an Esteem; and then to lodge as much Pride in a Tub, as Alexander could in a Palace, though it could not tempt him to a Change of Condition.

*Nil babet infelix paupertas durius in se, Quam quid ridiculos homines facit—*

No wonder therefore, seeing rich Men will be obstinate to hold their Advantages, that deformed Poverty, (which mixes with them in the same Frame, as a Shadow to set off their...
their Colours the better) would have the Rich to descend to them; and that instead of setting out Monies by way of Bottomry, U/fury, and the like, they would not have any such thing as Money at all, but would have all things reduced into a State as is before mentioned.

Lib. 1. cap. 1. § 1, 2, 3. It cannot be denied, but that we all live by the natural or intrinsick Value of Things; but the way to come by them is an Instrument of Civil Value, which is Money; instead of Community, therefore, we now have Commerce: Which Commercium is nothing else but Communio mercium; but Communion must needs be by the means of another thing that may bear equal Proportion on both sides, which is Money only. But now let us hear, and, if possible, satisfy the Complaints that are made against it so impatiently.

Where there is great Luxury, there must be likewise great Industry to maintain it; and therefore the Industry of this Civil State must be greater than that which is in the simple State of Nature: But what is there here to blame, seeing Industry, no more than Plenty, is, in itself, a Sin?

II. It is the Answer of Envy or Ignorance, Prima peregrinos obscena pecunia mores Intulit. Money is that (say they) which maintains the Trade and Credit of Vice, if that were taken away, we should look after nothing but Necessaries which are virtuous; it makes too nice Inequalities and Distances, and is not significant enough in the best Things: For all the Money in the World is not really worth one Penny-Loaf, which is convertible into our Natures and Substances; it serves only to assure Fortune, but not Virtue; it is accepted as the Measure of all things Natural, Moral, and Divine: For Honour is nothing but ancient Riches; and in Morals, Virtus post nummos; this, in Religion, breeds that Root of all Evil, Covetousness: For, in a simple State of Nature, necessary things must needs be spent within a short Time, and the Return of the Sun brings a new Supply and a Treasure greater than the Indies; of which One makes this Observation, That it was got in Blood, fails home in a Sea of Blood, and never rests till it be laid out in Blood. This was that which was made the Price of Salvation, even of the Blood of our Blessed Saviour, thirty Pieces for that which was worth thirty
Chap. XI. De Numin Nauticenum.

thirty thousand Worlds; but in the Religion of the first Times, Nullo violatus Jupiter auro, as Juvenal hath it.

And if this had not been brought into the World, we should not have so much to discount for at the Day of Judgment. Why therefore should that which is condemned to the Obscurity of the Earth, and lodged so near Hell, now be made the Price of all that which is above the Earth, even a Solo usque ad Calum? Or why should we be excluded from the Gifts of Nature, unless we have those of Fortune? Is it not then more reasonable that rich Men lose this Instrument of Luxury, than the Poor should lose the necessary Means of their Subsistence? This is the Plea which is made in forma Pauperis, & de ipsa Paupertate.

Most certain it is, that neither the stupid Simplicity of the Woods, nor Poverty itself, are any Part of Virtue; and therefore are not reckoned Blessings, as Riches were to Solomon, (he who built God's first Temple, and put his Religion in lufre) and as they likewise were to Nummus, from whom Money was called Nummus; he likewise built the first Temple at Rome, and kindled first the Vestaal Fire, & ferocem populum deorum metu mitigavit.

III. We know how God converted with Abraham, who was the first that had Money, and made use of it to buy a Property: It is true, they with whom he inhabited called him a Prince; but that was no Argument to him to disown their Properties, but for the contrary, lest they should think that Dominion or a Right to Things was founded in Grace.

IV. But to come more close to the Question, and to examine the Reason and Necessity of this Measure; Money is like a Law or Government, which are all constituted by the same extreme Necessity; therefore the counterfeiting or attempting to destroy any of these by private means, is everywhere Trespass. Now this Measure is two-fold, either Natural or Civil, or rather Natural, and the Instrument which expresses the natural by equal Permutation: The natural Measure is proportioned either by Want, or Plenty. In Want we consider whether the thing be useful or necessary; things which are necessary are best, but of least Price; as a Loaf of Bread is more necessary, but infinitely cheaper than a Diamond. One Man hath Clothes, another Leather; those two possibly have no need of one
another, and therefore there will be no Permutation between them; but if one had need of another, then he who were more pref'd, would come to the Price of the other: And therefore Want or Plenty is the Measure of estimating things, and is the Bond of Society, whereby one Man shews he is or may be useful to another; and Nature hath so ordered it, that no Man is so rich who hath not some need of the Poor; and no Man is so mean and abject, but he may be some ways useful to the Rich.

V. The Civil Measure, or rather Instrument, whereby the Natural expresses itself, is Money, which hath but a feigned Value, and therefore it is sometimes higher and lower in esteem as Men please; which could not be, if its Value were natural, which is unalterable. If I have Cloth at such a Price, and you have Wines at the same Price, then we regarding the same Price, may make an equal Permutation: Or if I give to you so many Pieces of Gold for your Cloth at the same Price, the Sale is equal again. Whether it be an Inconvenience, that in some Countries it is sometimes at a higher Value than at another, is not a Consideration of this Discourse; for the Price of things themselves change more than any Money doth daily.

VI. Money is an Invention only for the more expedites Permutation of things; but it doth not follow, that Men may not make any Permutations but by Money, even as well now as if we were in our natural State. If they who dig now in waste Hills have their Harvest of Beans well gathered in, but had need of Wine for the Stomach's sake, or of Drugs for Health's sake; if the Vintner, or Apothecary have no need of Beans, what use will they make of the natural Value of their Beans without Money? Or if need be, what would they do till their Beans are gathered? Money therefore hinders not Permutation and Commerce of natural things, but assists them; nay, it is therefore an Instrument of Instruments; for he who hath Money may buy things which he need not use, but sell, thereby to get other things afterwards for his Use. There is no Nation or People so barbarous, but have Money or a publick Instrument of Permutation either in Metals or in Fish Bones, &c. for it imports not much of what matter it is, provided it be durable, not counterfeitable, and difficult to come by.

VII.
CHAPEL XI. De Fœnus Nauticum.

VII. Take away this fungible Instrument from the Service of our Necessities, and how shall we exercise our Charity, which is a Branch of Religion and Justice, as well as of Humanity? He who goes to Church, paffeth, as it were, through two Temples, the Poor at the Porch, and the Temple itself: And the giving at the Porch is called Sacrifice, Offering, and Gift, as well as that at the Altar. God would be sacrificed to only in one Town of the World, Jerusalem: But could that have been, if Money and Money-Changers had not been allowed? How could they, who came from such remote Places, have, by any other means, brought their Oxen, Calves, Goats and Doves to the Altar? If there were nothing further to shew, but that one Piece which our Saviour himself coined miraculously in the Mouth of a Fish, it were Argument sufficient that the Use of Money may be both good, just, and necessary.

VIII. Things being thus stated, and that Money is both good, just, and necessary, it will be demanded loudly, That admitting a reasonable Advantage may be made by way of Usury, quo jure is it, that an Advantage upon the same, more than what the Law allows, is taken?

The Distinction is great between Monies lent to be used in Commerce at Land, and that which is advanced to Sea. In the first, the Laws of the Realm have set Marks to govern the same, whereby the avaricious Mind is limited to a reasonable Profit: The Reason of that is, because the Lender runs none, but the Borrower all the Hazard, whatever that Money brings forth. But Money lent to Sea, or that which is called Pecunia * trajeßilia; there the same is advanced on the Hazard of the Lender, to carry (as is supposed) over Sea; so that if the Ship perishes, or a Spoliation of all happens, the Lender shares in the Loss, without any Hopes of ever receiving his Monies; and therefore is called sometimes Usura Marina, as well as Fœnus Nauticum, the Advantage accruing to the Owners from their Money, arising not from the Loan, but from the Hazard which the Lender runs; the which is commonly reduced to a time certain, or one or more Voyages, according to their several and respective Agreements.
IX. If the Bonds be sealed, and the Money is advanced, if the Ship happens to miscarry by Storm, Fire, Enemy, or any otherwise before the Voyage began, then the Borrower runs the risk, unless it be otherwise provided generally, as that if such a Ship shall not arrive at such a Place at such a time, &c. there the Contract hath its Inception from the Sealing; but if the Condition be, That if such a Ship shall fail from London to Amsterdam, and shall not arrive there, &c. then, &c. there the Contingency begins not till the Departure. Yet it has been conceived, that if the Master takes up Money accordingly, and buys in a lawful Lading, but will endeavour to defraud the Prince or State of their Customs, and put such Goods on Board, by means whereof he has incurred a Forfeiture of his Ship; in such Case the Lender is not obliged to such hazard.

X. If Money be lent on Ship-board by a Merchant super Cargo or Passenger, and before the Day of Payment the Ship happens to be wrecked or cast away; if there be such a Saver as will admit a Contribution, then the Party is not to have his whole Money, but is to come into the Average: But if the Time of Payment were past before the Misfortune happened, then the Lender must be repaid his whole Money free from Contribution.

And therefore by the Laws Marine, if the Borrower detains any such lent Monies beyond the Term appointed for the repaying, he shall at his Return not only pay the Profit agreed on before the Voyage, but also augment the same according to the Time that hath accrued since the Day of Payment.

Where the Bond will be forfeited by Deviation. See 2 Cia. Ca. 130. 2 Salk. 444.

Where the Ship never went out of the River, the Lender was obliged to take his Principal and Interest, because he ran no Hazard, 1 Vern. 263.

Courts of Equity will not assit Bottomry-Bonds, which carry an unreasonable Interest. Dandy and Turner, Equ. Abr. 372.

XI. A Master of a Ship hath no Power to take up Money by Bottomry, in Places where his Owner or Owners dwell, unless it were for so much only as his Part comes to in
in the said Ship: Otherwise he * and his Estate must stand liable to answer the same. (a) But when a Master is out of the Country, and where he hath no Owners, nor any Goods of theirs, nor of his own, and cannot find means to take up by Exchange or otherwise, and that for want of Money the Voyage might be retarded or overthrown, Monies may be taken up upon Bottomry, and all the Owners are liable thereunto; otherwise he shall bear the Loss, that is, the Owners are liable by their Vessel, though the Money is not so employed in truth; and the Owners have their Remedy against him whom they put in Trust. (b) But Gothir & the Perfons of the Owners are no ways made liable by the Act of the Master for Monies taken up.

If Owners agree not in setting out the Ship, most Voices shall carry it, and then Money may be taken up for their Part by Bottomry, or Fenus Nauticum, or by Hypothecating such a Proportion of the Ship.

Many Masters of Ships having Ensured or taken up Monies upon Bottomry to greater Sums of Money than the 79. Value of their Adventure, do wilfully cast away, burn, or otherwise destroy the Ships under their Charge, the fame was made Felony, and the Perfons and Perfons so wilfully doing or procuring the fame to be done, were to suffer Death.

XII. The Signification of this Fenus Nauticum, is by the Dutch called, Bomerie, Bodmerie, Boddemerr, (so variously pronounced) from the Keel * or Bottom of the Ship upon the Parallel whereof the Rudder of a Ship doth govern and direct the same; parte pro toto sumpta, ita primum appellata, cum etiam lingua Gallorum antiqua & Britannica Bodo vel Bodum fundum aut profundum signet † in quem navis fundum, vel ipsam navem ejusq; usum mutuo accepta est pecunia, sed postea latius pro sanore nautico etiam usuprari capit. And the Money so taken up by the Master is done upon great Extremity, and that for the compleating of the Voyage when they are in Distress and Want in some Foreign Parts; and indeed such taking up is indeed in the Nature of Mortgaging the Ship, for le Neif est obliged al payment de ceo, &c. And in the Instrument there is a Clause that expresses that the Ship is engaged for the Performance of the fame.
Monies that are advanced are upon two Securities, the one is on the bare Ship, the other upon the Person of the Borrower, sometimes upon both: The first is where a Man takes up Monies and obliges himself, that if such a Ship shall arrive at such a Port, then to repay (perhaps) double the Sum lent; but if the Ship happens to miscarry, then nothing.

This Money is likewise called pecunia trajectitia, because that upon the Lender's Danger or Adventure, it is carried beyond or over the Seas, so that if the Ship perish, or all be spoiled, the Lender does lose his whole Money lent: But on the contrary, Money lent at Interest is delivered at the Peril of the Borrower, and the Profit of this is merely the Price of the simple Loan, and is called Ufura. But the Profit of the other is a Reward for the Danger and Adventure of the Sea, which the Lender takes upon him during the Loan, which is to be understood until the Voyage be ended.

XIII. So likewise some will take up Monies, the Condition reciting, Whereas there is such a Ship, naming her, bound to Amsterdam, whereof such a Man is Master, (whereas indeed there is no such Ship or Master in Nature) that if that Ship shall not arrive at such a Place within twelve Months, the Money agreed on to be paid, shall be paid; but if the Ship shall arrive, then nothing. The first of these is honourable and just, according to the laudable Practice among Marine Persons, and though the Advantage runs high, as 20, 30, nay sometimes 40 per Cent. without Consideration of Time; (for the Monies are to be paid within so many Days after the Ship's safe Arrival;) yet in regard the Adventure is born by the Lender, for (if the Ship perishes, the Advancer loseth,) the Laws and Practice of all Maritime Countries allow of the same. And therefore by the Common Law, if an Action of Debt be brought on such an Instrument, the Defendant cannot plead the Statute of Usury. And so it was adjudged where one Sharp ley had brought an Action of Debt on a Bond for Monies taken up upon Bottomry: The Defendant pleads the Statute of Usury, and shewed that a certain Ship called the made a Voyage to fish in Newfoundland, (which Voyage might be performed
Chap. XI. of Fama Nauticum.

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performed in eight Months) and the Plaintiff delivered 50l. to the Defendant to pay 60l. at the Return of the Ship to D. and if the said Ship by Leakage or Tempest should not return from Newfoundland to D. then the Defendant should pay the principal Money; and if the Ship never returned, then nothing to be paid. Upon * Demurrer it was adjudged the same was not Usury: For if the Ship had stayed at Newfoundland two or three Years, yet at her Return but 60l. was to be paid, and if the never returned; then nothing.

Verum enim. vero hic pro-
propri non ver-
sari, damna-
tum fœnus, sed
compensationem aliquam periculi, quod creditor contra naturam mutui in se recept paritem.


The other Advance which is upon a fictitious Supposition of a Ship and Master, wherein indeed there is no such Nature, is more unconscionable, the same being the common Practice that’s used amongst the Italians, and now on this side the Water, though the same is as to internal Right unjust, yet it is daily practised, and it was not long since adjudged * that such Contract was good, according to the † C. B. FeI. Common Law of this Realm, and that on a special Verdict. 22, 23. Car. 2.

XIV. Most certain it is, that the greater the Danger is, if there be a real Adventure, the greater may the Profit be of the Monies advanced: And so hath the same been the Opinion of Civilians, and likewise some Divines; though some seem to be of Opinion, that any Profit or Advantage ought not to be made of Monies so lent, no more than of those that are advanced on simple Loan, and on the Peril of the Borrower. However, all or most of the trading Nations of Christendom do at this Day allow of the same, as a Matter most reasonable, on account of the Contingency or Hazard that the Lender runs; and therefore such Monies may be advanced several ways, and a Profit may arise so, that there runs a Peril on the Lender.

Vide Carolum Molinetum de usur. q. 3. n. 92. ait boc approbant omnes Theologi ut creditor possit alicui quid accipere ultra foriem pro susceptione periculi. But furely that must be upon a real Venture.


XV. There is likewise a second way of advancing Monies called Usura Marina, joining the advanced Monies and
and the Danger of the Sea together; and this is obliging sometimes upon the Borrower’s Ship, Goods and Person: The Product of which by Agreement will advance sometime 20, 30, and sometimes 40 per Cent. As for instance, A private Gentleman has 1000 l. ready Money lying by him, and he has Notice of an ingenious Merchant that has good Credit beyond Seas, and understands his Business fully, applies himself to him, and offers him a 1000 l. to be laid out in such Commodities as the Merchant shall think convenient for that Port or Country the Borrower designs for, and that he will bear the Adventure of that Money during all that Voyage; (which he knows may be accomplished within a Year) hereupon the Contract is agreed upon, 6 per Cent. is accounted for the Interest, and 12 per Cent. for the Adventure outwards, and 12 per Cent. for the Goods homeward; so that upon the Return the Lender receives 30 per Cent. which amounts to 1300 l.

And this cannot be Usury by the Laws of this Realm, for the Risque and Danger that the Lender runs.

XV. There is also another way, but that is both honest and honourable, called Usfruit, that is, a Stock in a Company or Society, which is perpetual; such a Stock or Portion may be purchased, that is, the Advantage or Benefit arising by the Improvement of the same.

As for instance, The East-India Company hath a Stock lodged in their Hands by divers Persons, which they in the most prudent manner as they see fit, employ to such Places as they judge most proper; if a Return is made, the Advantage of that is distributed to each Person that is any way intitled to that Stock; which Advantage is called a Dividend, and perhaps may afford some 20 or 30 per Cent. But on the other hand, if that Proportion of the Stock which goes out happens to miscarry, the Abatement is proportionable, and so the Stock may be lessened, unless that they will stay the Dividends to keep up the Stock; the which they may do; For it is a Trust reposed of so many Mens Monies in their Hands, to yield them such Advantage as they shall upon a just Account set out: So that if a Man hath 1000 l. Stock, he cannot take the same out of the Great Stock whereby to lessen the same, but he may transfer that Usfruit by that customary Way which they have to any other Person, for a valuable Consideration in infinitum.

CHAP.
### Chap. XII.

**Of Impositions called Great Customs, Petty Customs, and Subsidies.**

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### I. IMPOSITIONS

Neither in the Time of War or other the greatest Necessity or Occasion that may be (much less in the Time of Peace) neither upon Foreign nor Inland Commodities of what Nature soever, be they never so superfluous or unnecessary, neither upon Merchants, Strangers, nor Denizens, may be laid by the King's absolute Power without Assent of Parliament, be it never so short a time.

By the Statute of Magna Charta, Chap. 30. All Merchants, if they were not openly prohibited before, shall have their Safe and sure Conduits, to enter and depart, to go and tarry in the Realm, as well by Land as by Water, to buy and sell without any evil Tolls, by the old and rightful Customs (except in time of War) and if they be of the Land making War against us, and be found in our Realm at the Beginning of the War, they shall be attached without Harm of Body or Goods,
Goods, until it be known to us or our Justices how our Merchants be intreated there in the Land making War against us. The Statute of which this is a Branch, is the most ancient Statute Law we have, won and sealed with the Blood of our Ancestors, and so reverenced in former times, that it hath been twenty-nine times solemnly confirmed in Parliament.

Custums, Subsidies, Tolls, Excises, Impoists, and other Duties upon Commodities imported or exported are due to the particular Princes or States, by the general Law of Nations, as a Matter inherent to their Prerogatives, as they are the absolute Commanders, Proprietors, and Maintainers of the Harbours, Havens and Ports, where the Commodities are exported or imported: And all Merchants are bound to take notice thereof, and observe the same, according to the Feudal Laws, Constitutions and Proceedings therein used in all Countries respectively, whereby they are secured and defended in their Trade and Traffick. Or otherwise in Breach of not observing such Laws and Constitutions, they are in danger of Mulcts, Fines, Loss and Forfeitures of their Goods and Commodities. To give an exact Account of the Nature, Antiquity, several sorts of Customs, Subsidies, Impoists, and other Duties relating to Merchants, would take up too large a Compass for this Treatise, therefore shall refer as to the Nature of them to the several Books of my Lord Coke in his 2 Inst. upon the Stat. of Magna Charta, Cap. 30. And other Statutes and Books which are many on this Subject.

II. Impositions were in some sort done Consensus Mercatorum, by Edward the First, and Edward the Third: And again in Henry the Eighth, of which the House of Burgundy complained, as against the Treaty of Entercourse.

King Henry the Third finding that such a Modus of Impostion tended to the Destruction of Trade, and apparent Overthrow of Commerce, and was against the Great Charter, made Proclamation Anno 16. in all Ports of England, that all Merchants might come faciendo retitas & debitas consuetudines, nec sibi sit eumant de malis tollis, for that such Impositions had no better Name than Maletolts.

The like was declared and done by Edward the First in the twenty-fifth Year of his Reign; and Edward the Second, in the eleventh and twelfth Years of his Reign.
And though the King cannot lay any Imposition on Merchant or Merchandize without Assent in Parliament, yet the King by his Prerogative may restrain them from Trading (if not from any Christian Foreign Prince) yet from any Infidel Realm, State or People, without his Royal Licence: And the Reason of this is, for that by such Commerce it might give occasion for the Relinquishment of the Catholick Faith, and an Opportunity to adhere to Infidelity; and therefore generally in Edward the Third’s Time, Licenses were frequently granted with this Preamble, that the King having special Trust and Confidence that the Party would not decline from his Faith, did license him, &c. In the seventh Year of King James this very Matter came in Question, upon License granted to a Merchant to trade to the East-Indies.

III. In 2 Ed. III. the Great Charter for free Traffick was confirmed; and about some three Years after there were Commission granted for the raising of a new-kind of Tallow, but the People complained, whereupon the Commissions were repealed, and he promised never to assesse any but as in the Time of his Ancestors.

But this Prerogative Power of imposing inward and outward upon Commodities over and above the ancient Customs of Subsidy without a free Consent in Parliament, is now ceased and settled; and that Question, which for many Ages had been handled by the most Learned of their Times, in the affirering and in the denying, will never more be remembered, the same being now established by Act of Parliament: Which being managed for some time, was afterwards farmed out, and now again managed. The like having been done by former Kings, as did Edward the Third with the New and Old Customs of London for 1000 Marks monthly to be paid unto the Wardrobe.

Richard the Second, Anno 20. farmed out the Subsidy of Cloth in divers Counties.

So Edward the Fourth, Henry the Eighth, Queen Elizabeth, and King James; the same having been used in former Ages even in the best governed State, Rome, which let out Portions and Decim’s to the Publicans.

The Old Hanse Towns, viz. Lubeck, Collen, Brunswick, Dantzick, and the rest, had extraordinary Immunities granted unto them by our Third Henry, for their great Affittance
Assistance, and furnishing him in his Wars and naval Expeditions with so many Ships; and as they pretended, the King was not only to pay them for the Service of their Ships, but for the Vessels themselves in case they miscarried: The King having concluded a Peace, and they being on their return home for Germany, the most considerable Part of their Fleet miscarried by Storm and Strefs of Weather; for which (according to Covenant) they demanded Reparation. The good King in lieu of that which he wanted, Money, granted them divers Immunities; and amongst others, they were to pay but 1 per Cent. Custom, which continued till Queen Mary's Time; and by the Advice of King Philip she enhanced the 1 to 20 per Cent. the Hans not only complained, but clamoured aloud for Breach of their ancient Privileges confirmed unto them by long Prescription from thirteen successive Kings of England, and the which they pretended to have purchased with their Money. King Philip undertook to accommodate the Business, but Queen Mary dying, and he retiring, nothing was effected. Complaints being afterwards made to Queen Elizabeth, she answered, That as she would not innovate any thing, so she would protect them still in the Immunities and Conditions she found. Hereupon their Navigation and Traffick was suspended a while, which proved very advantageous to the English, for they tried what they could do themselves herein; their Adventures and Returns proving successful, they took the whole Trade into their own Hands, and so divided themselves into Staplers and Merchant-adventurers; the one residing constant at one place, the other keeping their Course, and adventuring to other Towns and States abroad with Cloth and other Manufactures. This so nettled the Hans, that they devised all the ways that a discontented People could to draw upon our new Staplers or Adventurers the ill Opinion of other Nations and States: But that proving but of too small a Force to stop the Current of so strong a Trade as they had got footing into, they reported to some other; whereupon they applied themselves to the Emperor, as being a Body incorporated to the Empire: And upon Complaint obtained Ambassadors to the Queen to mediate the Business: But they returned still re infesta. Hereupon the Queen caused a Proclamation to be published, That the Merchants of the Hans should be intreated and used
used as all other Strangers within her Dominions in point of Commerce, without any Mark of Distinction.

This inflamed them more, whereupon they bent their Forces more eagerly, and in an Imperial Diet, at Ratisbon they procured that the English Merchants, who had associated themselves in Corporations both in Embden and other Places, should be adjudged Monopolists; whereupon there was a Comitcal Edict procured against them that they should be exterminated, and banished out of all Parts of the Empire; which was done by Suderman a great Civilian. There was there at that time for the Queen as nimble a Man as Suderman, and he had the Chancellor of Embden to second him, yet they could not stop the Edict, whereby our new erected Society of Adventurers were pronounced a Monopoly: Yet Gilpin played his Cards so well, that he prevailed the Imperial Ban should not be published till after the Diet; and that in the interim his Imperial Majesty should send an Ambassador to England to advertise the Queen of such Proceedings against her Merchants. But this made so little Impression on the Queen, that the Ban grew rather ridiculous than formidable, for the Town of Embden harboured our Merchants notwithstanding, and afterwards the Town of Stode; but the Hanstakers pursuing their Revenge, and they being not so able to protect them against the Imperial Ban, removed and settled themselves in Hamburgh.

This Politick Princefs, in recompence of their Revenge, commanded another Proclamation to be published; 'That the Hanstaker Merchants should be allowed to trade into England upon the same Conditions as they formerly did, provided the English Merchants might have the same Privileges to refide and trade peaceably in Stode or Hamburgh, or any where else within the Precincts of the Hans.' This so incensed and nettled them, that all Endeavours were made to cut off Stode and Hamburgh from being Members of the Hans, or of the Empire: But the Design was suspended till they saw the Success of 88, King Philip having promis'd to do them some good Offices in the Concern.

But the Queen finding that the Hans were not contented with that Equality she had offered to make betwixt them and her own Subjects, but were using such extraordinary Means,
Means, put forth another Proclamation, that they should transport neither Corn, Victuals, Arms, Timber, Masts, Cables, Metals, or any other Materials or Men to Spain, or Portugal. And not long after the Queen growing more redoubted and famous by the Overthrow of King Philip’s Invincible Armado, (as the Pope christened it) the Hans began to despair of doing any good; especially they having about some 60 Sails of their Ships taken about the River Lisbon by her Majesty’s Frigates, that were laden with Ropas de contrabanda. She notwithstanding had Thoughts of discharging this Fleet by endeavouring a Reconciliation of the Difference: But the having Intelligence of an extraordinary Assembly at Lubeck, which had purposely met to consult of Means to be revenged of her, she thereupon made absolute Prize of those 60 Sails, only two were freed to carry home the sad Tidings of their Brethren’s Misfortune. Hereupon the Pole sent a ranting Ambassador in the Behalf of the Hans, who spake of the Injuries done to the Hans in a high Tone. But the Queen herself suddenly answered him in a higher, with a Satisfaction no greater than what she had done to others of the like Quality before.

This fortunate Clashing for the 19 per Cent. on the Customs, has proved ever since advantageous for England, our Merchants have ever since beaten a peaceful and an uninterrupted Trade into High and Low Germany; and by their constant Trade in those Parts have found a way thro’ the White Sea to Archangel and Mosco. The Return of all which hath since vastly increased the Riches and Strength of this Nation.

V. After the Jews became tributary to Rome, (which was acquired by Pompey three score Years before the Birth of our Saviour) certain Officers or Commissiners were appointed by the Romans in all those Places where their victorious Standards had claimed a Conquest, who used to appoint such Officers or Commissiners to collect and gather up such Custom-money or Tribute as was exacted by the Senate. Tho’ that gathered up these publick Payments were termed Publicani, Publicans, and by reason of their cruel and oppressive Exaction, they became hateful in all Nations:

Every
Every Province has its several Society or Company of Publicans; * every Society its distinct Governor: In which respect it is that Zacchaeus is called by the Evangelists, Prin- ceps Publicanorum, the chief Receiver of the Tribute, or chief Publican: And all the Provincial Governors in these several Societies had one chief Master or Superintendent residing at Rome, unto whom the other subordinate Governors gave up their Accounts. These Publicans were hated of all the Roman Provinces, but especially of the Jews, because though it was chiefly maintained by the Galileans, yet it was generally inclined unto by the Jews, that Tribute ought not to be paid by them. This Hatred is confirmed by the Rabbinical Proverb, Take not a Wife out of that Family wherein there is a Publican, for such are all Publicans. Yea, a faithful Publican was so rare at Rome itself, that one Sabinus, for his honest managing of that Office, in an honourable Remembrance thereof, had certain Images with this Inscription, Καλὸς τελευτησαί. For the faithful Publican. No marvel that in Holy Writ Publicans and Sinners go Hand in Hand.

But that most excellent Advice of my Lord Shaftesbury ought never to be forgot, but to be engraven in the Hearts of the Managers so well as over the Door of the Custom-house, viz.

Let me recommend to you so to manage the King’s Justice, and the Revenues, as the King may have most Profit, and the Subject least Vexation. Raking for old Debts, the Number of Informations, Projects upon Concealments, I could not find (in the eleven Years Experience I had in this Court) ever to advantage the Crown; but such Proceedings have, for the most part, delivered up the King’s good Subjects into the Hands of the worst of Men, Clerk of the Court, Custom-house Officers, and Excise-men.

Vide the Earl of Shaftesbury’s Speech to Sergeant Thurland 1673.

But now the World has been so long used to them, that in all or most Nations the particular Princes or States chuse out the most slye and prudent Men for that Employment.

VI. Customs are Duties certain and perpetual, payable to the King as the Inheritance of his Crown, for Merchandizes transported from and beyond the Seas from one Realm to another. *Magna Custuma & antiqua* is payable out of A a Native
Native Commodities, \textit{sicilicet}, Wool, Wool-fells, and Hides, and that is certainly imposed.

And this Custom, which is called \textit{Magna Custuma}, is due to the King of common Right for four Causes.

1. For leave to depart the Kingdom, and to carry Commodities of the Realm out of it.

2. For the Interest and Dominion which the King hath in the Sea, and the Arms thereof.

3. Because the King is the Guardian of all the Ports within the Realm, \& \textit{Custos totius Regni}.

4. For Wharfrage and Protection of Merchants upon the Seas against the Enemies of the Realm, and Pyrates.

VII. The Custom which is called \textit{Parva Custuma}, is a Custom or Duty payable by Merchant Strangers, and begun in the Time of King Edward the First, when they granted him, that they would pay to him and his Heirs Three Pence in the Pound for all Merchandizes exported and imported by them, \&c. And that the Charter was, and may be of great Use, I have here inlerted the fame, as it was faithfully transcribed out of the Roll in the Tower.

For Merchant Strangers, concerning Liberties granted to them.

The King, to his Archbishops, \&c. sendeth Greeting. Concerning the good Condition of all the Merchants of the Kingdoms, Lands, and Provinces under-written: That is to say, Germany, France, Spain, Portugal, Navarre, Lombardy, Tuscany, Provence, Catalonia; Our Dukedoms of Aquitain, Toulouse, Turin, Flanders, Brabant, and all other Lands, and Foreign Places by what Name soever called, coming into Our Kingdom of England, and there remaining.

Pro Mercatoribus Alienigenis de Libertatibus eis concessis.


\textbf{Ehos}
Pos precius cura solici-
tate, qualsuer sub nostro do-
minio tranquillitates, & plene
securitatis, immunitas eis-
dem Honoratis tusuriis
temporibus perpetuas acceptas:
Ut etaque bona ipsorum reddan-
tur ab nostra, & Regni no-
stri servitia promissa; ips-
orum Petitionibus absolv-
habetur annuentes, & pro statu
exposted plenius assicuranc-
do, in forma quod sequitur
ordinantes subscripta, dictis
Honoratis pro nobis &
heredibus nostris in perpetu-
tum durumus concedenda.

Imprimis, utdilicer, quod
omnes Honorati in Regnum &
Terram salvo & secure sub tuitione
& protectione nostra, in dictum
Regnum nostrum Angliae,
& ubique infra postestatem
nostram alibi veniant cum
Merchandis suis quibus
quisque, de Muragio, Pon-
tagio, & Pavaggio, liberi &
quieten, quodque infra idem
Regnum & Postestatem no-
stram, in Civitatibus, Bur-
gis, & Ullis Honoratis
possente mercari, duntaxat in
grosso, tam cum Indigenis
seu Incolis eisdem Regni,
& Postestatis nostre predile
quam cum Alienigenis extra-
neis vel privatis. Ita ta-
men quod, Hesperes que vul-
gariter Merceriae vocantur
et Species, minuciatim vendi
potuisse, prout antea fieri con-

We being very solicitous,
out of Our special Care, that
under our Dominion, a Free-
dom of Tranquillity, and full
Security for the said Mer-
chants may be provided for
the future, so as they may
the more readily apply them-
selves to the Service of Us,
and of our Kingdom, We
graciously answering their
Petitions, and ordaining
more amply for securing
their Condition in form fol-
lowing under-written, are
pleased to grant to the said
Merchants for Us, and Our
Heirs for ever.

Imprimis, That is to say,
That all Merchants of the
said Kingdoms and Lands,
may come from any other
Place safe and secure under
Our Tuition and Protection
into Our said Kingdom of
England, and every where
within Our Dominion, with
their Merchandizes of what
fort ever, and be unmo-
lested and quiet concerning
Murage, † Pontage, and
Pavage, and that within
Our said Kingdom and Do-
minion, they may traffic in
the Cities, Boroughs, and
Market-Towns, only in
gross, as well with Natives
or Inhabitants of this Our
Kingdom and Dominion a-
foresaid, as with Strangers,
Foreign and Dometick:
But so, as their Wares, vul-
N a a garly
garly called *Mercery*, or the *SPECIES thereof*, they may sell by Retail, as formerly hath been accustomed. And that all the said Merchants may carry, or cause to be carried, whither they please, their Merchandize which they have brought into Our said Kingdom and Dominion, or otherwise acquired, except to the Lands of the manifest and notorious Enemies of Our Kingdom, paying the Customs which shall be due. Wines only excepted, which shall not be exported out of Our said Kingdom or Dominion, after they have been imported into our said Kingdom or Dominion, without our Pleasure and especial Licence, by any Way or Means whatsoever.

*Item,* That the said Merchants may lodge in the Cities, Boroughs, and Towns aforesaid, at their own Pleasure, and there stay with their Goods, to the Content of them who entertain them.

*Item,* That every Contract made by the said Merchants with what Persons soever, and from what Places soever, for what kind of Merchandizes soever, shall be firm and stable, so that neither of the Merchants shall depart from, or go back from his Bargain, after a *God's-penny* is given
inter principales personas contrahentes, datu fuerit et receptus. Et si sortes super contractu hujusmodi contentio oriatur, sit in die præbitio aut inquisitionem secundum usus et consuetudines Feriarum, et Uillarum ubi dictum Contractum fieri conugeret, et initii.

Item, Promitimus pretios mercatoribus pro nobis, et heredibus nostris, in perpetuum concedentes. Quod nullam prifam vel arretationem, feu dilatationem occassione prisa de caetero de Mercimonis, Merchandifis, feu aliis bonis suis per nos, vel alium, feu alios, pro aliqua necessitate vel causu, contra voluntatem ipsorum Mercatorum ali quantum usus faciemus, aut fieri patiemur; nisi statim soluto pretio pro quo ipsi Mercatores aliis hujusmodi mercimonia vendere possint, vel eis aliis satisfacio ita quod reputent se contentos, & quod super mercimonia, merchandifas, seu bona ipsorum per nos, vel ministros suis, nulla appreciatio, aut aestimatio imponeatur.

Item, Tolumus, Quondam Ballivi, et Ministrī Feriarum, Civitatum, Boroughum et Uillarum Mercatoriam, Mercatoribus antecedentibus etiam eiusmod junctitiam and received between the principal Persons contracting; and if it happen that a Contention arise on the said Contract, there shall be a Tryal, or Inquisition, according to the Usages and Customs of the Fairs, and Towns where such Contract shall be made or begun.

Item, We promise to the aforesaid Merchants, and for Us, and our Heirs, for ever grant, that we by no means whatsoever will make, nor suffer to be made, any Prize, or Arrest, or Detention by occasion of Prize, for the future, upon their said Wares, Merchandizes, or other their Goods by Us or by any other, or others in any Cafe and Necessity whatsoever, against the Will of the said Merchants, without the Price presently paid, for which the said Merchants might sell to others Wares of the like fort for, or otherwise to satisfy them, so as they shall repute themselves contented. And that no Appraisiment or Value shall be put upon the said Merchants Wares, Merchandizes, or Goods, by Us or Our Ministers.

Item, We will, that all Bailiffs, and Officers of Fairs, Cities, Boroughs, and Market Towns, shall do speedy Justice to the said Merchants, complaining to them, from A a 3 Day
Day to Day, without Delay, according to the Merchant Law, concerning all and every thing which by the said Law may be determined. And if any Defect shall happen to be found in any of Our Bailiffs or Ministers aforesaid, whereby the said Merchants, or any of their Factors shall suffer Loss, although the Merchant recover his Losses against the Party in the whole, yet nevertheless, the Bailiff, or other Ministers, as the Fault requires, shall be punished at our Suit; and we grant the said Punishment in favour of the Merchants aforesaid, forcompleating their Right.

Item, That in all kinds of Pleas, saving in the case of Crime for which the Pain of Death is liable to be inflicted, where the Merchant shall be impleaded, or he impale another, of whatsoever Condition he that is impleaded be of, whether a Foreigner or a Domestick, in the said Fairs, Cities, or Boroughs, where there is a sufficient Plenty of Merchants of the Lands aforesaid, and Inquisition there ought to be made; half of the Inquisition shall be of the said Foreign Merchants, and the other half of honest and lawful Men, where the Plea happens to be: And if a sufficient facient de die in diem sine dilatatione secundum LEGEM MERCATORIAM, et unius verbis et singulis que per eandem Legem poterunt terminati. Et si forte inventatur defectus in aliquo Callistorum vel Ministorum praefectorum unde ibidem Mercatores, vel eosdem alios Mercatus incommodos sustinuerint, vel sustinuereit, litter Mercator velius poterum in principali recuperabere, dandum dua, nisi minus Ballibus, vel Ministorius velius Hoc, prout delictum exigite, puniatur, et punitionem ibidem concinnibus in favorem Mercatorum prae- ditorum pro corum justicia maturanda.

Item, Quod in omnibus generibus placitum, salvo caelo criminis pro quo instigenda fit poena mortis, ubi Mercator implacatus fuerit vel alium implacataverit, cuiusque conditionis ibidem implacatus extiterit, extraneus vel privatus, in Bundinis, Civitatibus, ubi Burgis ubi fuerit sufficiens copia Mercatorum predicis: incertarum terrarum, et inquisitio fieri debat, ut medietas Inquisitionis de eisdem Mercatoribus, & medietas altera de alius probis & legatis hominibus loci illius, ubi placitum illud esse constigerit: Et si de Mercatoribus dictarum Terrarum numerus
CAP. XII.  Customs.

numero non nomen aut lubet, ponatur in Inquisitione illi qui idonei ineunientur ibidem, & residui sint de alis bonis hominibus & idoneis, de locis in quibus placitum illud erit.

Item, Volumus, Ordinamur & Statuimus, Quod in qualibet Villa Mercatoriae & Firma Regni nostrui predicata, & alia infra Potestatem nostram, Pondus nostrum sit certo loco ponatur, & ante ponderationem Statuam in pretia Emptorius & Venditores hacta videntur, & quod brachia utrique aequalia, & ex tene Ponderatur ponderet in aequali & cum Statuam poluerit in aequali, statim amoveat mater suas & quod remaneat in aequam, quodque, per totum Regnum & Potestatem nostram unum sit pondus & una mensura, & signo Standardi nostro signetur, & quod quilibet possit habere Statuam unius Quarteroni & infra, ubi contra Dominum loci, aut libertatem per Post, licet Interesores nostros concassam illud non fuerit, ubi contra Villarum aut Feriarum contrectudicem haecenus obserbatam.

Item, Volumus & concedimus, Quod aliquid certus homo, & libelis, & discretus London resident, assignetur Justitiarius Mercatoribus me-

Number of the Merchants of the said Lands shall not be found, let those be put in the Inquisition who shall be found fit in that Place, and let the Residue be of other good and fit Men, in the Places in which that Plant shall be.

Item, We will, ordain, and appoint, that in every Market-Town, and Fair of our said Kingdom, and elsewhere within our Dominion, Our Weight is to be put in a certain Place, and before weighing thereof, the Scale to be empty in the Presence of Buyer and Seller, and the Arms thereof to be equal; and when he hath set the Scale equal, he is forthwith to take off his Hands, so that it may remain equal, and that throughout our whole Kingdom and Dominion, there be one Weight and Measure, both of them sealed with the Sign of our Standard, and that every one may have a Scale of one Quarter and under, where, contrary to the Governor of the said Place, or Liberty by Us, or our Ancestors, it was not granted, or contrary to the Custome of the Villages and Fairs hitherto observed.

Item, We will and grant, that some certain, faithful and discreet Persons residing in London, may be appointed a Justice in behalf of the
before-mention’d Merchants, before whom they may plead specially, and more speedily recover their Debts, if the Sheriffs and Mayors distribute not to them, Day by Day, compleat and speedy Justice, that then a Commission be granted to the afore-said Merchants, besides this present Charter, viz. concerning those [Goods] which are to be conveyed between Merchants and Merchants, according to the Merchants Law.

Item, We ordain and appoint, and our Will and Pleasure is, for Us and our Heirs, that this Ordinance and Statute be firmly kept for ever, notwithstanding any Liberty whatsoever which we or our Heirs for the future shall grant; the said Merchants ought not to lose their above-written Liberties, or any of them: And for and in consideration of their obtaining the said Liberties and free Usages, and our Prizes to be remitted to them: All and singular the said Merchants for themselves, and all others on their Part, have heartily and unanimously granted to Us, that for every Hoghead of Wine which they shall bring in, or cause to be brought in within our Kingdom or Dominion thereof; and from whence moratis,orem quo valeant Specialiter platicere, et debia sua recuperare celeriter, & Ultercomites & Majores ets non facerent de die in diem celeris justitie complemen tum, & unde fiat Commilto extra chartam presentem concella Mercatoribus antiditis, liciter, de his quo sunt inter Mercatores et Mercatores, secundum LEGEM MERCATORIAM discouenda.

Item, Ordinamus & Statuimus, & Ordinationem illam Statutumque pro Nobis & Heredibus nostris in perpetuum Volumus firmiter observari, quod pro quatem liberatatem quam Nos & Heredes nostris de eis concedemus, praelat Mercatores supra-Scritras Libertates, vel eam aliquam non amittent. Pro supra-ditos autem Libertatibus & liberis Contraetuis nostris obtinendas, & Prizes nostris remittendas eisdem expediri Mercatores universi & singuli pro se & omnibus alis de partibus suis, Nobis concediter & unanimiter concedentur quod de Qualiter Dolio vini quod adducunt, vel adducti faciente infra Regnum & Potestate nostre, & unde Marinariis fretum solvere tenebuntur, solvent Nobis
Chap. XII.

Customs.

<table>
<thead>
<tr>
<th>Item</th>
<th>De quolibet Sacco Lanæ, quem dicit Mercatores, aut aliis nomine ipsorum ement et de Regno nostro educent, aut etc.</th>
<th>Item</th>
<th>For every Sack of Wool, which the said Merchants or others in their Names do buy, and out of this Kingdom transport, or buy to transport, shall pay forty Pence over and above the ancient Custom of half a Mark, which formerly was paid. And for a Laft of Hides carried out of this our Kingdom and Dominion thereof to be sold, half a Mark over and above that, which according to ancient Custom was formerly paid, and likewise for three hundred Woolfels to be carried out of this Kingdom, forty Pence, besides that certain Sum, which according to ancient Custom was formerly given.</th>
</tr>
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<tbody>
<tr>
<td>Item</td>
<td>Duos Solidos de quolibet Scarleta, et panno tinto in grano.</td>
<td>Item</td>
<td>Two Shillings for every Scarlet, and Cloth dyed in Grain.</td>
</tr>
<tr>
<td>Item</td>
<td>Decem et odo denarios de quolibet panno in quo pars grani fuerit intermixta.</td>
<td>Item</td>
<td>Eighteen Pence for every Cloth, in which part of a Grain Colour is intermixed.</td>
</tr>
<tr>
<td>Item</td>
<td>Duodecim denarios de quolibet panno alio fine grano.</td>
<td>Item</td>
<td>Twelve Pence for every other Cloth without Grain.</td>
</tr>
</tbody>
</table>

they are obliged to pay Freight to the Mariners, to pay to Us and to our Heirs, by the Name of Custum, two Shillings over and above the ancient Customs due, and accustomed to be paid in Money within forty Days after the said Wines are put on Shore out of the Ships.
Item, Twelve Pence for every Quintal of Wax.

And whereas some of the said Merchants deal in other Commodities, as Goods weighed with Avoir-du-poïs Weights, and in other fine Goods, as Cloth of Tarfe, of Silk, of Candais, of Hair, and in divers other Merchandizes, in Horses also, and other Animals, Corn, and other Wares and Merchandizes of different sorts, which cannot easily be put to a certain Rate of Custom: The said Merchants have consented to give Us and our Heirs for every Twenty Shillings Estimation and Value of those Wares and Merchandizes, by whatsoever Name they be called, three Pence in the Pound, upon the Entrance of their Wares and Merchandizes into our Kingdom and Dominion aforesaid, within twenty Days after such Wares and Merchandizes shall be brought into our Kingdom and Dominion aforesaid, and there shall be unladen, or fold. And likewise three Pence for every twenty Shillings, at the exporting of what kind soever of Wares or Merchandizes bought in our Kingdom and Dominion aforesaid, besides the ancient Customs formerly given to Us, or to others.
Mercurialisum hujusmodi, de quibus tres denarii de qualibet libra argenti actu predictur sunt solven-
di; creatur ipsis per literas quas de Dominis aut locis suis offendere poterunt, et a literas non habeant, Scitur in hac parte ipsorum mercato-
tum il predictum fuerint, vel balteo dum suo sum in eozundem mercato- tum absen
tia jucundens.

Liceat in super Sociis de Societe mercato- tum predictum infra Regnum et Potestatem nostram predictam, Las ag vendere alios locis suis, et amittere emere ab eisdem abique Custuma solvenda; sed tamen quod dicta Las ad tales manus non debantur, quod de Cu-
tuma nobis debita descendatur.

Et praeterea est scandum, Quod postquam expedias Mercatores semel in uno loco infra Regnum et Po-
testatem nostram Custumam nobis concessam superius, pro Mercurialis suis in tois solvenda superius et suum habeant inde Warran-
tum, erunt liberis et quieti in omnibus alios locis infra Regnum et Potestatem no-
stram predictam, de solutione Custumae hujusmodi pro eis-
And over and above the Va-

lue and Estimation of the

said Wares and Merchandizes: for which three Pence for every twenty Shillings as

aforesaid are to be paid; they are to have Credit by

Letters, by them to be pro-
duced from their Principals

or Partners, and if they have

none, let it be determined in

this case, by the Oaths of

the said Merchants, or in

their Absence, of their Ser-

vants.

Moreover, It may be

lawful for the Society of

the Merchants aforesaid, to

sell Wool to the Fellows of the

said Society, and likewise to

buy the same one of an-

other within our Kingdom and Dominion, without Pay-

ment of Custom: Provided

that the said Wool come not

to such Hands whereby we

may be defrauded of our

Customs.

And furthermore be it

known, that after the said

Merchants have once in any

one Place within our King-
dom and Dominion paid our

Customs granted, as afore-

said, to Us, for their Mer-

chandizes in form aforesaid,

and thereupon they have

t heir Warrant, they shall be

free, and unmolested in all

other Places within our King-
dom and Dominion, from

Payment of the said Custom.
Item, Twelve Pence for every Quintal of Wax.

And whereas some of the said Merchants deal in other Commodities, as Goods weighed with Avoir-du-pois, Silk, of Silk, of * Candatis, of Hair, and in divers other Merchandizes, in Horfes also, and other Animals, Corn, and other Wares and Merchandizes of different sorts, which cannot easily be put to a certain Rate of Custom: The said Merchants have consented to give Us and our Heirs for every Twenty Shillings Estimation and Value of those Wares and Merchandizes, by whatsoever Name they be called, three Pence in the Pound, upon the Entrance of their Wares and Merchandizes into our Kingdom and Dominion aforesaid, within twenty Days after such Wares and Merchandizes shall be brought into our Kingdom and Dominion aforesaid, and there shall be unladen, or sold. And likewise three Pence for every twenty Shillings, at the exporting of what kind soever of Wares or Merchandizes bought in our Kingdom and Dominion aforesaid, besides the ancient Customs formerly given to Us, or to others,
Merchantiorum jusutmodi, de quibus tres denarii de quilibet lirba argente actu predictione solvere possint; credatur etsi per literas quas de Dominis aut locis suis ostenderere poterunt, et si literas non habeant, stetur in hanc parte ipsorum mercatorum si presentes fuerint, vel ballotioij suosum in eozundem mercatorum absentia juraemtis.

Licet in ulter socis de societate mercatorum previdiijus in infra Regnum et Potestatem nostram predictam, Lanas vendere allis locis suis, et similiter emere ab eisdem absque custumal solvenda; sit tamen quod dicitur Lanas ad tales manus non debentiant, quod de custuma nobis debita defrauemur.

Et praeterea est sciendum, quod postquam expedidit Mercatoreslemel in uno loco infra Regnum et Potestatem nostram custumam nobis concedam superius, pro mercantibus suis in forma solvere supra dicta et suum habeant inde Warrantum, erunt liberi et quieti in omnibus allis locis infra Regnum et Potestatem nostram predictam, de solutione custumae hujusmodi pro ets-

And over and above the Value and Estimation of the said Wares and Merchandizes: for which three Pence for every twenty Shillings as aforesaid are to be paid; they are to have Credit by Letters, by them to be produced from their Principals or Partners, and if they have none, let it be determined in this case, by the Oaths of the said Merchants, or in their Absence, of their Servants.

Moreover, It may be lawful for the Society of the Merchants aforesaid, to sell Wool to the Fellows of the said Society, and likewise to buy the same one of another within our Kingdom and Dominion, without Payment of Custom: Provided that the said Wool come not to such Hands whereby we may be defrauded of our Customs.

And furthermore be it known, that after the said Merchants have once in any one Place within our Kingdom and Dominion paid our Customs granted, as aforesaid, to Us, for their Merchandizes in form aforesaid, and thereupon they have their Warrant, they shall be free, and unmolested in all other Places within our Kingdom and Dominion, from Payment of the said Custom for
for the same Commodities or Merchandizes by the said Warrant, whether such Merchandizes remain within our Kingdom and Dominion, or are carried out, except Wines which, without our Leave or Licence as aforesaid, are by no means to be exported out of our Kingdom.

We will also, and for Us, and our Heirs grant, that no Exaction, Prize or Loan, or any other Burden shall be imposed in any Part or Measure on the Persons of the said Merchants, their Merchandizes, or Goods, contrary to the Form before expressed and granted.


Upon an Information for not paying of Custom for Linen Cloth, the Case was thus: The Defendants were born within
within the Realm, their Father being an Alien, but their Mother was born here, the Question was, whether the Defendants so born should pay Aliens Custom or not? Because the Attorney General said, that Directions were lately given in Scaccario, that the Issue of Aliens for the first Generation, should pay Aliens Duties; but here the Defendant's Mother was English, and the Court gave Liberty to find it specially; but the Plaintiff would not insist upon it, because some part of the Goods were clearly forfeited, for not paying any Custom at all, or making any Offer to pay it, save only by Post-entry after Seizure, and a Month lacking 3 Days after the first Entry of the Quantity and Parcels at the Custom-House. And a Verdict passed for the Plaintiff for that Part only, Hardress. 335, 336.

If Goods are landed, and the Custom paid at one Port, and afterwards the Goods are conveyed cross the Land, or by Sea, to another Port, Customs shall not be paid for them at the second Port, and that is not within the Stat. of 3 H. 7. cap. 7. 1 Sid. 264. Bruen. v. Roe.

Banks had feized Cambricks and Hollands, because they were landed at Dover without paying Custom; and it was afterwards agreed, that the Owner should pay the Custom, and have his Goods again, and so it was done; whereupon an Information was brought against Banks for the Goods on the Statute 3 H. 7. c. 7. and he pleaded not guilty, and gave in Evidence, that the Goods were entered in the Custom-House Book. But per Curiam, that was no Discharge to him for the Mischief; for then when Goods are forfeited, every body will redeem them by paying Custom: And therefore the Goods being once forfeited shall be the King's without Redemption, and the Officer is not discharged by delivering them over, as in Trover.

The Plaintiffs were Farmers of the King of his Customs, and the Defendants brought into Port a Ship with Goods and unladen, the Customs not paid: After they compounded with the King for the Forfeiture, (which the Farmers had not in their Grant) after the Farmers brought Debt against them for the Custom of twelve Pence per Pound. The Defendants pleaded this Matter in Bar; and upon Demurrer Judgment pro Quo for this Reason, because the twelve Pence in the Pound became a Duty by bringing the Goods into the Haven, and a Chattel vested. By Tanfield, this Custum...
Custom is due, when a Ship is brought within an Haven, with intent to unladen there, but not when they are cast over-board by Tempest. Salter and Garraway against Malapers. 1 Rolls Rep. 383.

Salt taken from a Spaniard by a Dutchman, by Commission from Scotland, and brought into Scotland, and from thence into England, the Duty shall be paid for it as Scotch Salt: But if it had been taken by English Commission, and only put into Scotland, it should pay as English or Foreign Salt, within the Meaning of the Statutes of the 12 Car. 2. cap. 18. Sel. 16. and 14 Car. 2. cap. 11. Sel. 38.

VIII. Subsidy is a Duty payable for Merchandizes exported and imported, granted by Act of Parliament for the Life of the King. And are,

1. Aids and Subsidies payable out of Native Commodities exported and imported.

2. Tunnage, which is a Subsidy out of Wines of all sorts; and Poundage, which is a Subsidy granted out of all Commodities exported and imported, except Wines and ancient Staple Commodities, and is the twentieth Part of the Merchandise, Imposts or Duties payable for Merchandizes rated and assessed by Parliament; and then they are in the Nature of Subsidies imposed by the King's Prerogative.

The Rates are generally agreed on by the Commons House of Parliament, and are expressed in a Book commonly called the Rates of Merchandise; that is to say, the Subsidy of Tunnage and Poundage, and the Subsidy of Woollen Cloaths or old Drapery, and are subscribed with the Hand of the Speaker.

IX. All Merchant-Strangers bringing in any sort of Wines, are to pay thirty Shillings on the Tun over and above the Rates which the Natives pay, including twenty Shillings the Tun formerly paid to his Majesty by the Name of Southampton Duties, for all Wines of the Growth of the Levant; for which sort of Wines, the Stranger is also to pay to the Use of the Town of Southampton for every But or Pipe Ten Shillings.

Aliens are likewise to pay the ancient Duty of Butlerage, which is Two Shillings per Tun.

Rule, That all such Wines as shall be landed in any of the Out-Ports, and Custom paid, and afterwards brought to the Port of London by Certificate, shall pay so much more Customs
Custom as they paid short of the Duty due in the Port of London.

For every Tun of Beer to be exported in shipping [directions in pounds], built in Money must be paid Two Shillings: And for every Tun of Beer exported in any other Shipping in Money Six Shillings.

X. If there shall happen to be brought or carried out of this Realm any Goods liable to the Payment of Custom and Subsidy which are omitted in the Book of Rates, or are not now used to be brought in or carried out, or by reason of the great Diversity of the Value of some Goods could not be rated; in such case every Customer or Collector for the Time being, shall and may levy the said Custom and Subsidy of Poundage according to the Value and Price of such Goods to be ascribed upon the Oath of the Merchant in the Presence of the Customer, Collector, Comptroller and Surveyor, or any two of them.

XI. Every Englishman shall pay for every short Cloth containing in length not above 28 Yards, and in Weight not above 64 lb. white or coloured, by him to be shipped and carried out of this Kingdom, Three Shillings Four Pence, being after the Rate of Two Farthings and half a Drapery. Farthing per Pound Weight.

And so after that rate for all other sorts of Cloths of greater Length and Weight, allowing not above Twenty-eight Yards, and Sixty-four Pound to a short Cloth; that is to say, for every Pound Weight over and above Sixty-four Pound, two Farthings and a half Farthing: And for all other sorts of lesser Cloths to be allowed to a short Cloth; that is to say, every Stranger shall pay for every short Cloth containing in length not above 28 Yards, and in Weight not above 64 lb. white or coloured, by him to be shipped or carried out of this Kingdom, Six Shillings Eight Pence, besides the old Duty of One Shilling and Two Pence.

And so after that rate for all other sorts of Cloths of greater Length and Weight; and for all sorts of lesser Cloths to be allowed to a short Cloth; that is to say,

Dorset and Somerset Dozens, Rudge-washed, Cardinals, Pin-whites, Straits, Statuets, Stockbridges, Tawestock, leven of each sort shall be allowed to a short Cloth.

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TAUNTONS, BRIDGWATER, and DUNFRIES, the fifty not exceeding 64 lb. in Weight; DEVON. Dozens containing 12 or 13 Yards, in Weight 13 lb. five to be allowed to a short Cloth.

Ordinary Pennystones, or Forest Whites cont. between 12 or 13 Yards, and in Weight 28 Pounds, Shorting Pennystone cont. 13 or 14 Yards, and in Weight 35 Pounds unfeized, four to be allowed to a short Cloth.

Narrow YORKSHIRE Kerlies Whites and Reds, cont. not above 17 or 18 Yards, and in Weight 22 Pound. HAMPSHIRE ordinary Kerlies, Newberry Whites, and other Kerlies of like making cont. 24 Yards, and in Weight 28 lb. Sorting HAMPSHIRE Kerlies cont. 28 Pound, and in Weight 32 Pound; three of them to make a short Cloth.

Northern Dozens, single sorting Pennystone cont. between 13 and 15 Yards, and in Weight 53 Pound frized, two of them to make a short Cloth.

And the Northern Dozens double, one to be accounted for a short Cloth.

All which shall go and be accounted for short Cloths, and shall pay after the rate of the short Cloth before rated, and for over-weight two Farthings and One-half the Pound.

The new sort of Cloth called the Spanish Cloth, otherwise Narrow Lift, Western Broad Cloth not exceeding 25 Yards in Length, and 43 Pounds in Weight, to be accounted Two-thirds of the short Cloth before rated.

And for every Pound Weight exceeding 43 Pounds, Two Farthings and half Farthing the Pound Weight.

Cloth Raffles, alias Cloth Serges, cont. 30 Yards weighing 40 Pounds, to be accounted Two-thirds of the short Cloth before rated.

And for every Pound exceeding 40 Pound Weight, Two Farthings and half a Farthing the Pound Weight.

And for any other sort of Woollen Cloth of the Old or New Drapery, and not mentioned in that Book, to pay Two Farthings and half a Farthing the Pound Weight. And for any other sort of Woollen Cloth of the Old or New Drapery, and not mentioned, is to pay Two Farthings and half a Farthing for the Subsidy of every Pound thereof.

By the Book of Rates annexed to the Act of Tunnage, and Poundage 5l. per Cent. are allowed to the Merchants out of the Subsidy for Poundage, and 10 l. more for ready Money.
CHAP. XII. Customs.

Money: And whereas 12 d. in the Pound is due and payable to the King for Poundage, 6 d. in the Pound more is given by another Act called the Additional Duty. And whether or not 5 l. per Cent. shall be allowed out of this Additional Duty, or not, was the Question. Per Curiam, Papillon, v. Sir John Har- rison. Har- drafi 349.

5 l. per Cent. ought to be allowed out of the Additional Duty, as well as out of the 12 d. per Pound; for it appears in divers Places of the Book of Rates, that 6 d. in the Pound is looked upon as part of the Subsidy of Poundage, and 5 l. is to be allowed out of all Subsidies. The Book of Rates is incorporated into the Act of Parliament, and is part of it, so that whatever is there must be taken as comprised in the Body of the Act itself.

Since our Author wrote, there have been several severe Statutes against running uncustomed Goods; but as it would too much enlarge this Work to give Abstracts of them here, we shall do little more than refer to those of them which are most remarkable; the rather, because the Offences cognizable by them are mostly at Land, and triable by the Course and in the Courts of the Common Law.

By Statute 5 Geo. I. chap. 21. s. 34, 35. If Persons armed, tumultuously assembled, to the Number of Eight or more, foreibly hinder, beat or wound an Officer of the Customs in the due Execution of his Office, they are to be transported, not exceeding seven Years; and returning within that Time is Felony without Benefit of Clergy.

The Statute 9 Geo. II. chap. 35. was a kind of general Pardon to all Offenders concerning the Customs; it enumerates many Offences, and acquits all Persons guilty of them; but under some Restrictions, viz. any Person receiving the Benefit of that Act for any of the Offences which made him liable to Transportation, will be a Felon without Clergy, if he again commits any such like Offence.

And by the same Act three or more Persons armed, who assemble to assist in running, &c. uncustomed Goods are Felons, and to be transported for seven Years; and returning within that Time is Felony, sans Clergy.

Bb  

CHAP.
C H A P. XIII.

Of Impositions Subsequent, Conditional, Temporary, &c.

I. Of Impositions on the Manufactures of France, by Lex Talionis.
II. On Vinegar, Perry, Cyder, and Rape, Customs payable by Denizens and Strangers, and Logwood made importable.
III. On Ships that have not two Decks, and 16 Guns.
IV. On Sale, Beer, Cyder, Perry, Vinegar, a further Duty.
V. Of the Duty called Coynage, and upon what imposed; and the temporary Imposition called the Additional Duty.
VI. Of Goods particularly imported by Aliens; and Rules for petty Customs, and other Matters relating to Duties.
VII. Of Aliens Customs on Fish and other Commodities, and Rates upon the same.

VIII. Impositions on Foreign Liquors, and Rates on the same.
IX. Of Native Commodities, such as were formerly prohibited, may be transported, paying certain Duties.
X. Beer, &c. Exported; Skim, Leather, &c. transportable, paying certain Duties—Bullion and Coin only excepted.
XI. Of Species importable by any Nation.
XII. Of great and lesser Officers Fees, and of Goods not paying an Found Customs in or out, what Fees to be taken.
XIII. Voluntary Gifts from some enforced as Bribes; and Rates about Payment of Fees.
XIV. Of Allowances for Jury, what.

Subsequent Impositions to the Act of Tonnage and Poundage, and the Book of Rates.

12 Car. 2.

This collected as the Tonnage and Poundage is directed.

II. So likewise on Vinegar, Perry, Rape, Cyder, and Cyder-eager imported from Foreign Parts per English, shall answer Six Pounds Ten Shillings per Tun; if by Strangers, then but Six Pounds.

But if they shall export, then Three Pounds Ten Shillings per Tun shall be repaid to the English, and Four Pounds Fifteen Shillings to be repaid to Strangers.

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The Statute of Eliz. prohibiting the Importation of Logwood, repealed; and the same may be imported, paying 5l. per Tun: And in case of Exportation, then to be repaid 4l. per Tun.

III. The Parliament taking likewise again into consideration the Encouragement of Trading in Ships of Force, have imposed on all Goods and Merchandize imported and exported from and to the Mediterranean Sea, beyond Malaga, in any Ship that hath not two Decks and Sixteen Pieces of Ordnance mounted, and two Men to each Gun, to pay over and above the Rates imposed by the Book of Rates one per Cent. This does not extend to Ships laden with Fifth, or half laden with Fifth and other Commodities.

IV. So likewise on Salt out of Scotland into England, One half-penny per Gallon.

Again, there is imposed on Wines, Vinegar, Cyder and Beer, Ten Shillings per Tun; and on Brandy and Strong-waters Twenty Shillings per Tun. For the Coinage Duty, the Monies that arise on this Duty, are to be paid at the Custom-House to the Collectors and Officers, to be by them kept apart from all other Monies, and paid quarterly into the Exchequer without Salary or Fee: The Goods are forfeit-able for Non-payment of this Duty; and the same is to be repaid, if the Goods are transported within one Year.

V. There was likewise an Impostion of 12l. per Tun on Spanish Wines, and 8l. per Tun on French Wines and Vinegar, which was but temporary, and ended the 24th of June 1678.

VI. There are also Duties payable by all Aliens for Goods imported in Aliens Ships, commonly called Navigation Duties.

So likewise all Goods of the Growth, Produce, or Manufacture of Muscovia or Russia, and also of Turkey.

Note. That in all cases where petty Custom inward is payable, it is to be understood of the fourth Part of the full Subsidy, according to the Rates and Value in the Book of Rates, before the 5l. per Cent. is deducted.

Note. Wines of all sorts imported are to pay Aliens Duties.

Note. That the Neat Subsidy of Vinegar, Perry, Rape, Cyder, and Cyder-eager both in London and Out-Ports, is the same with the Subsidy of French Wines, payable in London.
VII. So likewise there is a further Imposition called Aliens Custome for all Fish, Oil, Blubber, Whale-bone, or Whale-fins, not being caught in Vessels belonging to English Men, are to pay double Strangers Custome.

So likewise Custome and Impost to be paid for several sorts of salted or dried Fish not imported in Ships English built, or belonging to England, and not having been stilled and caught in such Ships.

Upon which ACT, Note, That the 5 l. per Cent. is not to be allowed of the Petty Custome.

VIII. There is likewise an Excise or Impost upon Foreign Liquors imported; that is to say, Beer or Ale 6 s. per Barrel; Cyder or Perry the Tun Ten Shillings; Brandy or Strong-waters perfectly made, 8 d. per Gallon.

If any of those Goods be landed before those Duties be fully paid, and Warrant signed, and without Presence of an Officer, they are forfeited, to the Informer half.

IX. There are likewise Duties imposed on several Commodities Exported by several Acts of Parliament subsequent to the Act of Tunnage and Poundage.

Coals transported in English Shipping and Navigation for his Majesty’s Plantations, in lieu of all Custome, shall pay only for one Chaldron of Newcastle Measure 1 s. 8 d. For one Chaldron London Measure 1 s. provided good Security be given for landing the said Coals accordingly.

There are likewise several Native Commodities and Cattle prohibited by divers Acts of Parliament not to be transported unless sold under such Prizes; but non obstante they may now be exported, paying Custome according to the Book of Rates.

X. There is likewise an Imposition on Beer, Ale, and Mum to be exported, to pay 1 s. per Tun and no more; but this is but pro tempore for Six Years.

So likewise Leather of all sorts, Sheep-skins, Calve-skins, tanned or dressed, non obstante any former Law, paying for each hundred Weight cont. 112 l. Weight One Shilling and no more: This ended on the 25th of March 1675, and both of them to the End of the next Sessions of Parliament after.

Likewise all sorts of Foreign Coin or Bullion-of Gold or Silver may be Exported without paying any Duty or Fee for the same, Entry being first made in the Custome-house; the
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the like for Diamonds, Precious Stones, Jewels, and Pearls
of all sorts.

XI. All Persons whatsoever may import from any Place
beyond Sea in English Ships, Mace, Nutmegs, Cinamon,
Clove into England, Wales, Jersey, Guernsey, paying the
Customs thereof. Provided before the laying thereof they
give notice to the Commissioners or Farmers of the Cu-
stoms, of the Quantity and Quality they intend to lade,
with the Name of the Vessel in which they intend to import
the same; and procure a Licence under the Hands of the said
Farmers or Commissioners, or any three of them for the
importing the same.

Note. If Goods are wrecked, and the Lord seizes them,
yet they ought not to pay Custom. * So held by Three
Pl. Courtney against Bower.

like not long since adjudged in the Common Pleas (on a special Verdict found at St. Ed-
mond's-Bury in Suffolk) about Mich. 25, or Hill. 25, & 26 Car. 2.

XII. Fees and Allowances due and payable to the Of-
ficers of his Majesty's Customs and Subsidies in the Port of
London, and the Members and Creeks thereunto belonging;
that is to say, to the Officers of the Petty Customs Out-
wards, Subsidy Outwards, Petty Customs Inwards, Subsidies
Inwards; Great Customs, Clerks Fees Inwards and Out-
wards, the King's Waiters being in number Eighteen, the
Register of the King's Warrants, the Usher of the Customs-
house, Gaugers of French Vessels, chief Searcher, and his
Majesty's five under Searchers in the Port of London; and
the two Searchers at Gravesend, were all fet and entred in
a Table; the same was settled by the Commons House of
Parliament, and signed by the Right Honourable Sir Ed-
ward Turner, late Lord Chief Baron of his Majesty's Court
of Exchequer, and then Speaker to the Commons House of
Parliament; at which time the Question being put, that
for all Goods not paying One Pound Custom in or out,
there shall be but half Fees taken for all Coquets, Warr-
ants, Debentures, Transfires, or Certificates, it was resolved
in the Affirmative.

XIII. Societies or Companies trading in a joint Stock,
and making but one single Entry, the Adventurers being
many, the Table of Fees does not hinder, but the Officers

B b 3
and Waiters may receive such Gratuities as the Company voluntarily give.

All Goods under the Value of 5 l. in the Book of Rates, paying Subsidy the Sum of 5 s. or less, shall pass without Payment of Fees.

English Merchants that shall land out of one Ship at one time, (although the Receipt of the Subsidy be distributed into several Offices) shall not pay any more than for a single Entry.

The Goods of Partnership to pass as if the Propriety were in one single Person.

Fish by English in English Shipping or Vessels Inwards or Outwards all along the Coast, to pay no Fee.

Post-entries Inward to pass without Fee under Five Shillings; if above Five Shillings, and under forty Shillings, then Sixpence: But if the Custom to be paid exceed 40 s. then full Fees.

The Merchant shall pay for all Goods opening that shall be short entred above 10 s. Custom.

The Merchant shall pay for weighing of all Goods that shall be short entred above 20 s. Custom.

The Merchant is not to be at any Charge, if duly entred.

XIV. There is likewise to be allowed to the Merchants a certain Abatement called Tare, for Goods and Merchandise, the which is reduced into a Table, and cannot be deviated from in any case within the Port of London, without special Direction of the Commissioners or Farmers; or in their Absence of the Consent of the General Surveyors and Surveyor of the Warehouse, or of two of them at the least, whereof the Surveyor of the Warehouse to be one; and in the Out-Ports not without the Consent and Advice of the Collector and Surveyor: Or where there is no Surveyor, by the Collector himself, giving speedy Notice to the Commissioners or Farmers of the Reason of so doing.
C H A P. XIV.

Of Scavage, Package, Porterage, Water-Baillage, Ports, Members, Creeks, the Port of London, and Places lawful to land and unland in.

I. Scavage, what, where payable, and to whom.
II. Who pay the same, and how regulated and governed.
III. Goods omitted in the Scavage Table of Rates, how to pay.
IV. Of Package, how governed, and where payable.
V. Where Strangers shall pay as of old.
VI. Of Packets, Water-side Porters, what Duties Strangers are to pay for shipping out their Goods.
VII. Of the Duty of Water-Baillage.

VIII. Of Ports, Members, and Creeks; what are meant and understood by them as in reference to action, lawful or unlawful.
IX. The several Ports, Members and Creeks in England, and Wales.
X. Of the Extent of the Port of London.
XI. Of the several Keys, Wharfs, and other Places lawful for landing of Goods.
XII. What Goods are excepted, which may be shipped or landed at other Places.

I. **Scavage** is an ancient Toll or Custom exacted by Mayors, Sheriffs, &c. of Merchant-Strangers for Wares shewed or offered to Sale within their Precincts, which is prohibited by the Statute of 19 H. 7. cap. 8. in a Charter of King Henry the Second to Canterbury, it is written Secwingsa.

The City of London still retains the Custom, of which in an old printed Book of the Customs of London it is there mentioned, and how to be disposed; of which Custom, halten del apperteynest to the Sheriffs, and the other halten del to the Hostes, in whole Houses the Merchants been lodged; And it is to wet that Scavage is the Shield, by Cautle that Merchants shewn unto the Sheriffs Merchandizes of the which Customs ought to be taken one that any there be sold, &c.

B b 4
II. The **Scavage** that is taken consists of two Parts, that which is payable by Denizens, and that which is required of Aliens: And that all Persons subject to such Duties might not be imposed upon, there are Tables mentioning the particular Duties set up and approved by the Lord Chancellor, Treasurer, President, Privy-Seal, Steward, and two Justices of the King's-Bench and Common-Pleas; and by them subscribed, or any four of them at least: The which Duties are on Goods Inwards and Outwards.

**Note.** All Goods mentioned in the Table of **Scavage**, and not mentioned in the Table of Rates, shall pay after the Rate of One Penny in the Pound, according as they are expressed and valued in his Majesty's Book of Rates, and all others not expressed therein, shall pay the same Rates according to the true Value.

**Note.** That all private Baulks 8 Inches square and upwards, are by the 23d Article annexed to the Book of Rates reputed Timber, and valued at 3d. the Foot, 50 Foot making one Load, the Value of which is 12s. 6d. and the Subsidy for one Load ½ of One Penny, or One Half-penny and half One Farthing, out of which the 5 per Cent. is to be deducted.

IV. There is likewise another Duty called **Package**, the which is likewise set and rated in a Table, and the which is taken of all the several Commodities therein mentioned.

All Goods not mentioned in that Table, are to pay for **Package** Duties, after the Rate of One Penny in the Pound, according as they are expressed or valued in his Majesty's Books of Rates, and all others not expressed therein shall pay the same Rate according to their true Value.

For every Entry in the Packer's Book for writing Bills to each Entry Outward, as usually they have done, 12d.

V. The Strangers are to pay the labouring Porters for making up their Goods, at their own Charge, as always they have done.

Strangers are likewise to pay the Water-side Porters belonging to the Package Office, such Fees and Duties for Landing and Shipping their Goods, as they usually have done within these ten Years.

VI. The Packers Water-side Porters have Tables of Duties for landing of Strangers Goods, and for the Shipping out their Goods; and Goods not mentioned in the Table are
Chap. XIV. Customs.

are to pay Portage Duties as other Goods do of like Bulk or Condition therein expressed.

VII. There is another ancient Duty called Water Bailage, which the City of London have received time out of Mind, viz. for all Goods and Merchandizes imported as well from any Port within the Realm to the Port of London, as from any Part out of the Realm to the same, and so the like Duties (with some Variances) for all such Goods as shall be exported from the Port of London to any other Port within the Realm, so likewise without: Of this Duty all the Citizens and Freemen of the City are exempted; and though the same is very ancient, * and was once but small, in regard, within Memory, it was looked upon as an Honour for a Merchant to be a Citizen of London, and so consequently freed; but now, especially since the late Wars, abundance of Persons eminent both for Honours and Estates being unwilling to entangle themselves in the publick Affairs of the City, do refuse absolutely to accept of the Freedom of the same, since which there have been great Contests with those Traders; and though the Coast Duties have been agreed to, yet the Foreign now arising to some considerable Value, is highly disputed. And though Charters, Acts of Parliament, Common-Councils, continued Tracts and Foot-steps of ancient Evidences and Records are yet extant to evince and make out the most apparent Title that may be, the same nevertheless labours under the &c.

VIII. Port, or locus publicus, are those Places to which the Officers of the Customs are appropriated, and which contain and include all the Privileges and Guidance of all Members and Creeks thereunto allotted.


Members are those Places where anciently a Custom-house hath been kept, and Officers or their Deputies attending, and are lawful Places of Exportation or Importation.

Creeks are Places where commonly Officers are or have been placed by way of Prevention, not out of Duty or Right of Attendance, and are not lawful Places of Exportation or Importation.
**Importation without particular Licence or Sufferance from the Port or Member under which it is placed.**

**Book II.**

**IX.** The several Ports and Members as now they account at the Custom-house, are,

<table>
<thead>
<tr>
<th>Ports</th>
<th>Members:</th>
<th>Creeks</th>
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<tbody>
<tr>
<td>London</td>
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<td>Blackney and Cley</td>
<td>Wells cum Burnham</td>
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<td>Lynn Regis</td>
<td>Wells cum Burnham</td>
<td>Histbam</td>
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<td>Wisbech</td>
<td>Crois Keys</td>
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<td>Boston</td>
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<td>Bridlington</td>
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<td>Scarborough</td>
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</table>

Newcastle
Newcastle upon Tyne

Whitby.
Stockton.
Hartlepool.
Sunderland.
Shields.

Seaton delaval.
Blith nooke.

Aylemouth.
Warnewater.
Holy Island.

East Marches, containing the Coast of Northumberland, bordering on Scotland.

Berwick.

West Marches, containing the Coast of Cumberland, bordering on Scotland.

Carlisle.

Whitehaven.

Wetherington.
Ravinglas.
Milmorpe.

Lancaster.

Poulton.

Wyrewater.
Preston and Rible Water.

Chester.

Liverpool.

Sankey Bridge.
Fradsham.
South Shore of the River of Mersey to the Red Stones.

Chester.
<table>
<thead>
<tr>
<th>Ports</th>
<th>Members</th>
<th>Book II</th>
<th>Creeks</th>
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<td>Chester</td>
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<td>Neath or Briton-Ferry</td>
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<td>Gloucester</td>
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Chap. XIV.  

Customs.

Members.

Ports.

Glocester. —— —— ——

Bristol. —— —— ——

Bridgewater. —— Minhead.

Plymouth. ——

Ilfracombe.

Barnstable.

Exeter.

Creeks.

River Severn from Bridge-North to King-Road.

Pill.  

Uphill.

St. Maures.

St. Ives.

Pensance.

Gweeke.

Falmouth. ——

Fowey.

Lowe.

Penryn.

Truro.

Saltash.

Stonehouse.

Coyland.

Clovelly.

Appledore.

Tincomb:

Starcross.

Bear and Seaton.

Topsham.

Pouldron.

Sydmouth.

Lympton.

Exmouth.

Aylmouth.

Exeter.
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<tr>
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<td>Rurney</td>
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<td>Rye</td>
<td>Sandwich</td>
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Note. All the Ports and Havens in England are infra Corpus Comit. and that the Court of Admiralty cannot hold Jurisdiction of any thing done in them. Holland's Case, Earl of Exeter, 30 H. 6. And because he held Plea in the Admiralty of a thing done infra Portum de Hull, Damages Godbold 260; were recovered against him two thousand Pounds.

X. In regard that the Port of London is of great Concern in relation to the Customs, the Extent and Limits of the same Port is by the Exchequer settled, which is declared to extend and be accounted, from the Promontory or Point called North-foreland in the Isle of Thanet, and from thence Northward in a supposed Line to the opposite Promontory or Point called the Naze, beyond the Gun-fleet upon the Coast of Essex, and continued Westward through the River publ. Portus intitulus fluminis quo ambitur, & subditi loci con- ferre operas debent, lib. 7. C. de oper. Right, Liberty and Privilege to the Ports of Sandwich and Ipswich, and either of them, and the known Members thereof, and of the Customers, Comptrollers, Searchers, and other Deputies, and within the said Ports of Sandwich and Ipswich, and the several Creeks, Harbours and Havens to them or either of them respectively belonging within the Counties of Kent or Essex.

Ad Portus infrauriciationem, quia publicae utilitatis gratiâ fit, omnes subditi loci con-

XI.
XI. And in regard, that when Ships did come up to
the Port of London, there used to be very great Frauds
committed by a promiscuous kind of shipping and landing
of Goods and Merchandizes at several blind or unknown
Wharfs and Keys, by reason of which his Majesty was often
defeated of his Customs, it was provided that a Commission
might issue forth out of the Exchequer to ascertain all such
Wharfs, Keys, or other Places, as his Majesty, by virtue of
such Commission, should appoint, in pursuance of which
his Majesty hath been pleased to allow to be lawful Keys,
Wharfs, and other Places, for the lading or landing of
Goods.

**Brewer's Key.**
**Chester's Key.**
**Gally Key.**
**Wool Dock.**
* **Custom-house Key.**

* The Stone Stairs on the West-side thereof are declared not to be a Place for
  Shipping or Landing of Goods.

**Porter's Key.**
**Bear Key.**
† **Sabb's Dock.**

† Excluding the Stairs there, which are
declared no lawful Place for Shipping
or Landing of Goods and Merchandize.

**Wiggon's Key.**
**Young's Key.**
**Ralph's Key.**
* **Dice Key.**

* The Stairs there declared unlawful for
Shipping or Landing of Goods or
Merchandize.

**Smart's Key.**
† **Som'er's Key.**

† The Stairs there declared no lawful
Place for Shipping and landing of
Goods and Merchandizes.

**Lyon Key.**
**Butolph Wbarf.**
**Hamon's Key.**
* **Gaus's Key.**

* The Stairs on the East declared unlaw-
ful for Shipping or Landing of any
Goods, &c.

**Cock's Key.**

One other Place betwixt Cock’s Key and
**Fresh Wbarf**, called Part of Fresh
Wbarf, the Stairs are declared to be
unlawful for Shipping or Landing of
any Goods, &c.

**Fresh**
Frest Wharf.

To be a common open Place for the landing or bringing in of Fish, Salt, Victuals, or Fuel of all sorts, and all Native Materials for Building, and for Fruit (all manner of Grocery excepted,) and for carrying out of the same, and for no other Wares or Merchandize.

Billingstgatet

Bridge House in Southwark.

Is only allowed for landing of any kind of Corn for the City of London, and not upon any private or particular Person's Account.

XII. It may be lawful for any Person to ship or lade into any Ship or Vessel on the River of Thames bound over Seas, Horses, Coals, Beer, ordinary Stones for Building: Fish taken by any of his Majesty's Subjects, Corn or Grain, the Duties being paid, and Cocquets and other lawful Warrant duly passed for the same.

So likewisely Deal-boards, Balks, and all sorts of Masts and Great Timber may be unshipt and laid on Land at any place between Limehouse and Westminster, the Owner first paying or compounding for the Customs, and declaring at what Place they will land them before he unships them, and upon Licence had, and in the Presence of an Officer they may unlade them; otherwise they incur a Forfeiture.
CHAP. XV.

Provisions and Allowances made notwithstanding the several Clauses in the Acts for the Customs.

I. Custom to be paid for no more than is landed; and when Bulk shall be broken.

II. Of Goods Imported and Exported, what of the Customs shall be repaid back, and by whom; and of the things requisite in the same.

III. Of Agreement or Contracts made, or to be made for the importing and exporting by way of Composition, ratified.

IV. What Allowances to be made to the Exporters of Wines.

V. Of Exporting of Spanish Wool; where the same may be done.

VI. Of Currians Exported, what Allowances shall be made, and to whom, as well to Denizens as Foreigners.

VII. Goods imported not finding Market after a Year; Wine exported when discharged of Custom.

VIII. What Allowances are to be made for Leakage.

IX. What shall be accounted Leakage.

X. Wines proving unmerchantable, what Allowances to be made.

XI. Tobacco’s receiving Detriment or Damage in the Importation, what Allowances to be made.

XII. Strangers paying double Subsidy, where they shall pay double Customs.

XIII. Of Times and Places lawful to unload, and Officers Duties then attendant to be present.

XIV. York, Newcastle, and Hull Men were Custom free, and for what Goods.

XV. Exeter and other Western Men, what free Subsidies shall be allowed in.

XVI. Weston, whether new or old, what Allowances shall be made in Custom or Subsidy.

XVII. Allowances of five in the Hundred for all other Goods.

XVIII. The Customsmen and other Officers Duties in reference to attend their several Duties in the Customs.

XIX. Of Officers their Duties, and the Punishment where made on Complaint.

XX. The several Duties of London, how preferred.

XXI. The like for other Cities for those Duties granted or taken for publick good Uses.

XXII. Where Ships may be visited, and the Officers Duty relating to the same.

XXIII. Timber to be rated, and in what manner must pay.

XXIV. Prevention in Extortion of Customsmen and Officers, and on what Pains and Penalties.

XXV. Where Fees for Cocquets and Certificates shall be paid all together, and by whom he shall detain his own Cocquet till the Vessel has broke Ground.

XXVI. Where the Officers and Customsmen shall allow and make good to the Merchants the Algier Duty, and all other Allowances, and no other Impostion or Duty required by the Book of Rates, shall be required to be paid.

XXVII. If Goods shall happen to be taken by Enemies or Pyrates, or wrecked, and what Allowances shall be paid.

XXVIII. Ships of War and other privileged Vessels subject to search.

XXIX. Of Allowances to be made, and of Shipping out lesser Quantities than are contained in the Certificate, what Operation the same hath.
EVERY Merchant shall have free Liberty to break Bulk in any Port allowed by Law; and to pay Custome and Subsidy for no more than he shall enter and land; provided that the Master or Purser of every such Ship shall first make Declaration upon Oath before any two principal Officers of the Port of the true Contents of his Ship's lading, and shall likewise after declare upon his Oath, before the Cusometer, Collector, Comptroller, Surveyor, or any two of them, at the next Port of this Kingdom, where his Ship shall arrive, the Quantity and Quality of the Goods landed at the other Port where Bulk was first broken, and to whom they did belong.

A Merchant brought eighty Tun of Bay-Salt by Sea to a Port in England, and out of that Ship sold twenty Tun, and discharged the same into another Ship then riding at the same Port, but the twenty Tun were never actually put on Shore, and for the rest, being sixty Tuns, the Master agreed for the Customs and put them on Land; and although that twenty Tun was always water-born, and never were put on Shore, yet adjudged they ought to pay; the Reason was, for the discharging them out of the Ship amounts as much as to the laying them on Land, the same being done in Port; for otherwise the King would merely be defrauded. But if a Ship is carried in by Storm, and to preserve the Vessel part is landed before the Duty paid, Case.

II. All Foreign Goods and Merchandizes (except Wines, Currians, and wrought Silks) first Imported, shall be again Exported by any English Merchant within twelve Months, and such Merchant or Merchants as shall export any such Foreign Goods or Merchandizes (except as before is excepted) shall have Allowance and be repaid by the Officer which received the same, the one Moiety of the Subsidy which was paid at the first Importation of such Goods or Merchandizes, or any Part thereof, so as due Proof be first made by Certificate from the Officers of the due Entry and Payment of the Custom and Subsidy of all such Foreign Goods and Merchandizes inwards, with the Oath of the Merchants importing the same, affirming the Truth thereof, and the Name of his Majesty's Searchers, or Under-searcher in the Port of London, and of the Searcher of any other the Out
Ports, testifying the Shipping thereof to be exported; after all which duly performed in manner before expressed, the Moiety of the Subsidy first paid inwards, shall without any Delay or Reward be repaid unto such Merchant or Merchants who do export such Goods and Merchandizes, within one Month after Demand thereof, as also the whole additional Duty of Silk, Linen, and Tobacco, as before is directed.

If the Officer shall refuse to pay, (admitting there was no Relief had by way of Complaint) whether the Merchant Exporter may not bring an Action against him upon the Debt created in Law, as he that hath a Tally may do *. 

III. And if there be any Agreement now in force, which was formerly made by the late Commissioners of the Customs and Subsidies, with the Merchants Strangers or their Factors, or shall hereafter be made by any Commissioners or Farmers of the Customs and Subsidies, or any other Power, (except by Consent of Parliament) with any Merchant or Merchants Strangers or Factors for any Foreign Goods and Merchandizes, to be brought into the Port of London, or any other Port or Haven of this Kingdom of England, or Principality of Wales, and to be exported again by way of Composition; all other Merchants being his Majesty’s Subjects shall be admitted into the same Composition, and not be excluded from any other Privilege whatsoever granted to the Stranger by any private Agreement or Composition, under the same Condition and with the same Restriction as shall be made with the Merchant Stranger.

IV. Every Merchant, as well English as Strangers, that shall ship and export any kind of Wines, which formerly have paid all the Duties of Tunnage inwards, shall have paid and allowed unto them all the Duties of Tunnage paid inward, except to the Englishmen 20 s. per Tun, and the Stranger 25 s. per Tun; upon due Proof of the due Entry and Payment of Tunnage inwards, and of the Shipping thereof to be exported to be made as above.

V. If any Merchant, Denizen, or Stranger, shall export any Spanish or Foreign Wool, he shall have Liberty so to do, with this further Condition, that such Spanish or other Foreign Wools whatsoever be not exported in any other Ship or Vessel whatsoever, with intent to be arrived beyond the Seas out of the Kingdom of England, and Dominion of Wales,
Chap. XV. Customs.

Wales, than only in English Shipping, upon Pain of Con-

VI. Every Merchant, as well English as Stranger, which
shall ship or export any Curranis which formerly were duly
entered, and paid the Subsidy and Custom inwards, shall
have allowed and repaid unto them respectively all the Cu-
tom and Subsidy paid inwards for the same, except 1 s. 6d.
for every hundred Weight to the English, and 3 s. 8d. and
One-halfpenny for every hundred Weight to the Stranger,
upon due Proof of the due Entry, and Payment of the Cu-
tom and Subsidy thereof inwards, and of the Shipping
thereof to be exported to be made as in the second Article.

VII. If any Merchant, having duly paid all Duties in-
wards for Foreign Goods, and in regard of bad Sale shall
be enforced to keep the same, or any Part thereof in his
Hands, after the Space of a Year shall be elaped; in this
case he or any other Person is to be permitted to ship the
same out for Parts beyond the Seas, if they think fit, with-
out Payment for any Subsidy for the same outwards, upon
due Proof that the same was duly entered, and Subsidy paid
inward.

VIII. Every Merchant bringing in any sort of Wines
into this Kingdom by way of Merchandize, and shall make
due Entries of the same in the Custom-house, shall be al-
lowed 12 per Cent. for Leakage.

IX. Every Hoghead of Wine which shall be run out,
and not full seven Inches, shall be accounted for outs, and
the Merchant to pay no Subsidy for the same.

And by same its conceived, that no Freight shall be paid
for the same, but the Merchant may fling them up to the
Master for Freight; but that should seem hard, for non con-
flat any Fault in the Master, but the same may be in the
Casks, or in the ill stowing (the Master by Custom having
no Charge of the Stowing of Wines, especially French, but
the same belongs to certain Officers beyond Seas, from
whence they are imported) besides the Goods, be they empty
or full, take up Tunnage in his Ship; and should all the
Wines on Ship-board have the same Misfortune, it would
seem hard; however, it is pity Opinion in this case should
amount to a laudable Custom.

X. If any Wines shall prove corrupt and unmerchant-
able, and fit for nothing but to distil into hot Waters, or to
make

Boyes warf.
Cole fam. &
Cole jun.
Hill. 27 Car.
2. in B. R.
make Vinegar, then every Owner of such Wines shall be abated in the Subsidy, according to such his Damages in those Wines, by the Discretion of the Collectors of the Customs, and one of the principal Officers.

XI. If any Tobacco or other Goods or Merchandise brought into this Kingdom shall receive any Damage by salt Water or otherwise, so that the Owner thereof shall be prejudiced in the Sale of such Goods, the principal Officers of the Custom-house, or any two of them, whereof the Collector for the Time being to be one, shall have Power to choose two indifferent Merchants experienced in the Values of such Goods, who upon visiting of such Goods, shall certify and declare upon their Corporal Oaths first administered by the said Officers, what Damage such Goods have received, and are lessened in their true Value; and according to such Damage in relation to the Rates set on them in the Book of Values, the Officers are to make a proportionable Abatement unto the Merchant or Owner of the Subsidy due for the same.

By an Act 12 Anne c. 8. § 8. There is to be no Allowance for damaged Tobacco; but the Merchant refusing to pay the Duties, such Tobacco is to be burnt.

XII. All Merchants Strangers, who, according to the Rates and Values set in the general Book of Values and Rates, and do pay double Subsidy for Lead, Tin, Woollen Cloth, shall also pay double Custom for Native Manufactures of Wool; and the said Strangers are to pay for all other Goods, as well inwards as outwards, rated to pay the Subsidy of Poundage, three Pence in the Pound, or any other Duty payable by Charta Mercatoria, besides the Subsidy.

XIII. That the Merchants trading into the Port of London, have free Liberty to lade and unlade their Goods at any lawful Keys and Places of Shipping and lading Goods between the Tower of London and London-Bridge, and between Sun-rising and Sun-settting from the Tenth Day of September to the Tenth Day of March; and between the Hour of Six of the Clock in the Morning, and Six of the Clock in the Evening, from the Tenth Day of March to the Tenth of September, giving Notice thereof to the respective Officers appointed to attend the lading and unlading of Goods; and such Officer as shall refuse upon due Calling to be present, he shall forfeit for every Default 5l.
the one Moiety to the King, the other to the Party aggrieved, he suing for the same.

XIV. The Merchants of York, Kingston upon Hull, and Newcastle upon Tyne, and the Members thereof, shall be allowed free of Custom and Subsidy two of the Northern Cloths and Kerfies in ten to be shipped in those Ports in the Name of Double Wrappers, as formerly has been there allowed them.

XV. The Merchants of Exeter and other Western Parts shall be allowed free of Subsidies one Perpetana in Ten for a Wrapper, and three Devon Dozens in Twenty for Wrappers, the same to be shipped out of the Ports of Exeter, Plymouth, Dartmouth, Barnstable, Lyme Regis, or the Members thereof.

XVI. All Merchants transporting any sort of Woollen, whether new or old Drapery, as also all Bayes and Cottons, shall be allowed one in Ten for a Wrapper free of Custom and Subsidy.

XVII. Every Merchant shall be allowed upon all other Goods and Merchandize appointed to pay to any the Subsidy of Poundage, according to the Rate in the Book of Values, to be imported five in the Hundred of all the said Subsidies of Poundage so appointed to be paid.

XVIII. The Officers who sit above in the Custom-house of the Port of London, shall attend the Service of their several Places from Nine to Twelve in the Forenoon, and one Officer, or one able Clerk, shall attend with the Book in the Afternoon, during such time as the Officers are appointed to wait at the Water-side, for the better deciding of all Controversies that may happen concerning Merchants Warrants, all other the Officers of the Out-Ports shall attend every Day in the Custom-house of every respective Port for Dispatch of Merchants and Ships, between the Hours of Nine and Twelve; and Two and Four in the Afternoon.

XIX. Every Merchant making an Entry of Goods either inwards or outwards, shall be dispatched in such order as he cometh; and if any Officer or his Clerk, shall either for Favour or Reward put any Merchant or his Servant duly attending and making his Entries as aforesaid, to draw any other Reward or Gratuities from him than is limited in the Act of Tunnage and Poundage, and the general Book of Values,
Values, if the Master Officer be found faulty herein, he shall, upon Complaint to the chief Officers of the Custom-house, be strictly admonished of his Duty; but if the Clerk be found faulty therein, he shall upon Complaint to the said chief Officers be presently discharged of his Service, and not permitted to fit any more in the Custom-house.

XX. The Lord Mayor, Commonalty, and Citizens of the City of London, their Officers, or Deputies for and touching Offices of Package, Seavage, Baleage or Portage of any Goods or Merchandize of Aliens, or their Sons born within this Kingdom or Unfreemen, imported or exported into or out of the City of London, or the Liberties or Ports thereof, unto or from the Parts beyond the Seas, for or concerning the receiving or taking of any Fee or Rates heretofore usually taken, for or in respect of the said Offices, or any of them, might and may receive and take the same, any thing in the Act of Tunnage and Poundage, or any other Act or Thing to the contrary notwithstanding.

XXI. All ancient Duties heretofore lawfully taken by any City or Town Corporate, their Farmers, Deputies or Officers, under the Name of Town-Custom, or the like, for the Maintenance of Bridges, Keys, Harbours, Wharfs, or the like, shall and may be received and enjoyed as formerly, any thing in the said Act, or any other Act to the contrary in any wise non obstante.

XXII. The Under-Searcher or other Officers of Gravesend have Power to visit and search any Ship outward bound, but shall not, without just and reasonable Cause, detain any Ship under Colour of searching the Goods therein laden above three Tides after her Arrival at Gravesend, under Pain of Loss of their Office, and rendering Damage to the Merchant and Owner of the Ship; and the Searcher or Officer of the Custom-house in any of the Out-ports having Power to search and visit any Ship outward bound, shall not without just and reasonable Cause detain such Ship, under Colour of searching the Goods therein laden, above one Tide after the said Ship is fully laden and ready to set sail, under Pain of Loss of the Office of such Offender, and rendering Damage to the Merchant and Owner of the Ship.

XXIII. All Timber in Balks, which shall be of eight Inches square and upwards, that shall be imported or brought from any Part beyond the Seas into the Realm of England,
England, Dominion of Wales, Port and Town of Berwick, or any of them, shall be rated according to the Measure of Timber, the Foot square 3d. for the Value thereof, and according to that Rate shall pay for Subsidy 12d. in the Pound according to Poundage; and all under eight Inches square, and above five Inches square, shall pay for Subsidy, according to the Rates mentioned in the Book of Rates for middle Balks, and all of five Inches square or under shall pay according to the Rate of small Balks.

XXIV. For avoiding of all Oppressions by any the Officers of the Customs in any Port of this Kingdom, in exacting unreasonable Fees from the Merchant, by reason of any Entries or otherwise touching the shipping or unshipping of any Goods, Wares or Merchandize, it is ordered that no Officer, Clerk, or other, belonging to any Custom-house whatsoever, shall exact, require, or receive any other or greater Fees of any Merchant or other whatsoever, than such as are or shall be established by the Commons in Parliament assembled; and if any Officer or other offend contrary to this Order, he shall forfeit his Office and Place, and be for ever incapable of any Office in the Custom-house.

XXV. All Fees appointed to be paid unto the Customer, Comptroller, Surveyor, or Surveyor General in the Port of London, for any Cocquets or Certificate outwards, shall be paid altogether in one Sum, to that Officer from whom the Merchant is to have his Cocquet or Certificate above in the Custom-house; and after the Merchant hath duly paid his Custom and Subsidy, and other Duties above in the Custom-house, as is appointed above by the Book of Rates, he is to be Master of and keep his own Cocquet or Certificate, until he shall ship out his Goods so entered, when as he is to deliver the same to the Head Searcher, or his Majesty’s Under Searcher in the Port of London or other Ports, together with the Mark and Number of his Goods.

XXVI. The Officers of the Custom-house for the Time being, shall allow and make unto all Persons all such Monies as are or shall be due unto them for the half Subsidy, and also the Algier Duty of Foreign Goods formerly exported now due and unpaid.

The Duties and Sums of Money appointed to be paid by the Act of Tunnage and Poundage passed this Parliament, and
and by the Book of Rates therein mentioned, and no other, shall be paid to his Majesty’s Officers during the Continuance of the said Act upon Goods imported and exported, any Law, Statute, or Usage to the contrary notwithstanding. Nevertheless the Duty of Prizage and Butlerage, and the Duty of 12 d. of every Chaldron of Sea-coal exported from Newcastle upon Tyne to any other Port or Ports of this Realm, shall be continued.

XXVII. If any Merchant Denizen born shall happen to have his Goods and Merchandize taken by Enemies or Pyrates at Sea, or perished in any Ship or Ships, the Duties being either paid or agreed for, upon due Proof thereof, may ship out of the same Port the like Quantity as shall amount unto the Custom without paying of any thing for the same.

If the Importer shall pay ready Money, be shall be allowed 10 per Cent. for so much as he shall pay down.

XXVIII. Ships of War may be entered and searched for prohibited and unaccustomed Goods, and to bring them ashore to the King’s Warehouse, and the Commissioners or Head-Officers may leave aboard Officers to look after them, that none be unladen or embezzled, on Pain of Forfeiture of 100 l. And if Goods are concealed on Ship-board after such time as the Ship is cleared, to forfeit 100 l. and then any with a Writ of Assistance out of the Court of Exchequer to go in the Day-time to any Place, and enter and seize.

Goods conveyed secretly into Ships, and carried away without paying the Subsidy and Duties, the Owners and Proprietors forfeit the double Value, except Coals, which only forfeit the double Custom and Duty.

XXIX. There are Allowances to be given Merchants for defective and damaged Goods of 5 per Cent. on all Goods imported, and 12 per Cent. on all Wines to be allowed upon Debentures; but if they shall ship out less than is in the Certificate, then the Goods therein mentioned, or the Value thereof, shall be forfeited, and the Owner or Merchant shall lose the Benefit of receiving back any of the Subsidy: And Goods shipped out are not to be landed again in England, on Pain of Forfeiture of those Goods.

All Goods coming out of, or carried into Scotland, by Land, shall pass through Berwick or Carlisle, and pay Custom as others, on Pain of Forfeiture.
Chap. XV.  

Customs.

And although that by this Act there are many Allowances to be made, especially to Merchants Denizens, yet the Parliament have ever been so careful as to bound the same, that is, it shall be to such who traffick in Ships; (which are indeed the Bulwark of this Isle) and therefore if such Merchandize shall be transported out in any Galley or Carack, they are obliged to pay all manner of Customs, and all manner of Subsidies, as any Alien; but in regard that Herring and Fish are, and have been accounted, one of the principal Commodities, and generally finds a Vent or Market in those Kingdoms and Countries that usually employ such sort of Vessels, those Commodities may be transported in them as well as Ships from any Port or Harbour within this Realm, without paying any Subsidy or Poundage for the same; but then such Fish must be taken by the Natives of the Kingdom, and transported by them, otherwise to pay as Aliens.

And whereas all manner of Woollen Cloths, as well white as coloured, unrowed, unbarbed, and unthorn, and not fully dressed, are prohibited by Law to be transported, His Majesty was graciously pleased to grant unto Francis Countess of Portland, as well for her Alliance in Blood, as also for the many Crosses and Calamities which she hath suffered by the Loss and Death of her nearest Relations in his Majesty’s and his Royal Father’s Service, full Power for one and thirti Years, to licence the transporting of such Goods non obstante such prohibitory Laws; the which is now put in Execution by Agreement, and the Composition with her Deputies at the Custom-house.

Chap.
CHAP. XVI.

Of the Right of Passage: Of imposing on the Persons and Goods of Strangers for Passage through the Seas.

I. Of the Right of harmless Utility excepted tacitly in the primitive Dominion of Things.

II. Where Passage ought to be open, and where the same might be implicitly provided for in the first Institution of Property, and under what Cautions.

III. Of the same Right in reference to Goods and Merchandize.

IV. If Passage admitted, whether Tribute or Toll may be imposed.

V. Where Imposition may lawfully be laid, and for what Causes; And of the King's Prerogative in that Point.

VI. Whether lawful to stay in others Country, and to build for a Season.

HAVING in the foregoing three Chapters observed somewhat of Customs and Impositions laid de facto within the Realm, and that by Acts of Parliament, or the Consent of the three Estates, it may not seem amiss to inquire what Imposition the King of his Prerogative may impose on Strangers and their Goods passing through his Territories and Seas; and in that to inquire of the same in reference to Persons and Goods.

Besides the Right of Necessity which seems to be excepted in the first Institution of Dominion, there is another Reliquy of old Communion, namely, the Right of harmless Utility: For why should one (faith Cicero) when without his own Detriment be may, communicate to another in those things that are profitable to the Receiver, and to the Giver not chargeable? Therefore Seneca faith, It cannot be called a Benefit to give leave to another to light his Fire by yours.

We read in Plutarch, it is not lawful to spoil our Victuals when we have more than enough, nor to stop, nor hide a Fountain, when we have drunk our Fill; nor to abolish the Way-marks either by Sea or Land, which have been useful to us: So a River as a River is proper to that Prince, or that Lord, or that People, within whose Dominion or Royalty it runs, and they may make a Mill on it, (unless it be common, as a High-way) and may take what Fift the River

Cic. de Offic. 1.

Sen. de Benef. 4.

Symph. 7.

Ltg. quadem
D. de rer. di-
Chap. XVI. Of Passage.

River yields, but the same River as a running Water remained common as to drinking or drawing of it, notwithstanding as to the Fishing, and the like, it may be peculiar.

II. Again, Lands, Rivers, nay, if any part of the Sea be come into the Dominion or Property of any People, it ought to be open to those that have need of Passage for just Causes, namely, being expelled by Force out of their own Country they seek void Places, or because they desire Commerce with remote Nations: The Reason here is the same which hath been mentioned elsewhere, because Dominion might be introduced with a Reception of such Use + which profits thee, and hurts not those; and therefore the Authors of Dominion are to be supposed willing rather to have it so, than that such a Restriction, which perhaps in the end may destroy Society: However this hath its quantum; for though harmless Passage may be excepted in the first Institution of Dominion, yet that is to be understood when Leave is granted: And though Fear of the Multitude, which is to pass, cannot take away that Prince his Right through whose Territories or Seas they go; yet it follows as naturally, that in the Institution of such Liberty that Prince or People may provide, and if they have any probable or any reasonable Cause, interdict the Passage till Security or Harvests are pledged for their peaceable Passage, nay, without declaring their Reason, may interdict them absolutely any manner of Passage, if there be any other way to pass in Safety; and therefore at this Day, by the Laws of England, the King may interdict any Nation or People whatsoever to pass through his Seas without Leave first obtained to that Purpose, and may visit all Ships, be they of War or Traffick that shall occur or be in the same.

Plutarch relates, that Cyrus going to aid the Lacedemonians, led his Army through Corinth, but being reproached by the Corinthisans for not asking Leave of the City: Nam qui fores alienas pulsat, non intrat nisi domini permisso: at vos, inquit, Chionorum & Macaronum fores non pulsatis sed porrogistis concedes omnia patere debebre plus valentibus. However, Passage is and must be requested; but in lieu of that, the striking of the Flag, and lowering the Top-sail, is in Token of that Right due to his Majesty in the British Seas. Vide lib. 1. cap. 4. and Selden's Mare Claustrum.

III. Nor is Passage only due to Persons, but to Merchandize also; for no Man hath Right + wilfully to obstruct + That is, by the way of Commerce to any Nation with any other that is remote, because the Permission of Trade is for the Interest of human Society, and is not discommodious to any one, and to that Purpose Pbiio speaks: On the Sea all Ships of Burden

Bald. 3. conf. Lib. 1. c. 1. § 3, § 4. Serv. ad 7. Æn. li. 165. regamus innum. cumus, cujus vindicatio, ait, nulli possit nescere.
Burden safely pass according to that Right of Commerce which is between all Nations arising from the Desire of natural Society, while they supply one another mutually with what the one wants, and the other can spare; for Envy bast never invaded either the whole World, or the greater Parts thereof. And Plutarch speaking thus of the Sea: This Element bast made our Life sociable and perfect, that otherwise would be wild and without Correspondence; it supplies our Wants with mutual Aids, and by Exchange of Things needful, it procures Fellowship and Friendship. And the Wisdom of God is highly to be admired, who hath not granted all things to every Land, but hath distributed his Gifts to several Countries, that Men having need of one another, might maintain Society for their common good; therefore hath he endowed Man with Knowledge and Understanding to invent and build Ships, to govern and guide them by those Lamps of Heaven, and other Instruments of his Divine Wisdom, enabling thereby the Merchant to convey to all what any Place affords: According to that of the Poet,

What Nature any Land denied,
By Navigation is supplied.

But as the Sea is free and open for Traders, yet nevertheless the Passengers are subject to such Restrictions, Laws and Ordinances, as those Sovereign Princes shall make of Force in those Places where they have an Accession of Property or Sovereignty.

IV. But admitting that such free Passage may be granted, as above, whether Tribute may be imposed by him that rules the Land, upon Merchandize passing by Land or by River, or by part of the Sea, which may be called an Accession of the Land, (that is, the Place through which they pass, is as much under the absolute Jurisdiction of the Prince, as the very Land itself:) certainly whatsoever Burdens have no Relation to the Merchandize, no Equity suffers the same to be imposed on the same; neither can Poll-

Vide Strabo.
lib. 8. & lib. 16.
Money put on the Inhabitants to sustain the Charge of the Commonwealth, be exacted ofPassengers.
V. Nevertheles, if either to secure the Passengers Goods and Vessels from Pyrates and others, or for the erecting of Beacons, Light-houses, and other Sea-marks, and such like, * there indeed, some Compensation may be laid upon the Commodities or Ships passing through, so that the Measure of the Cause be not exceeded; or as my Lord Coke observes in the Case of the Halage-money, † it be reasonable; for upon that depends the Justice of Tributes and Toll: And upon those Reasons the Venetian in the Adriatick, the King of Denmark in the Baltic Sea does demand the same; and the King of England may do the like in the Chambers of his Empire, and that by his Prerogative; for the same is not so much compulsory to any to pay, but to them that will take Benefit of such Accommodation.

Les Comons paient que luy le Roy des Progeniturs de long temps haut etre Seigneur de Mer, & c'est est venus que le Roy Seigneur des CoIts de ambieue partes du Mer, & par cec paissent le Roy de imposer un imposition sur Etrangers paissant purmp la Mer.

Strabo relates, that the Corinthians, even from the most ancient of Times, received Tribute of the Commodities, which to avoid the compassing of Malta, were carried by Land from Sea to Sea. So the Romans received a Price for the Passage of the Rhyme. But this Right of imposing on Ships and Goods passing through some Territories, is found cruel, especially when they must pass through the Territories of a powerful and fierce People, then it is heavy to the Merchant to compound, for it's often done on hard and grievous Terms.

VI. Again, to stay some time for Health Sake, or for any other just Cause, ought also to be permitted to Passengers, for this too is among the innoxious Utility; wherefore Illenius in Virgil, * when the Trojans were prohibited to stay on the Shore of Africk, is bold to invoke the Gods as Judges: And the Complaint of the Megarenses against the Athenians, who drove them from their Havens † against the Lacedemonians esteemed no Cause to create a War more just:
Of Passage.

just: Hence it is, that at this Day it is held by all Lawyers, that it is lawful (either in cases of Wreck, or any other Exigency upon such landing) for Passengers to build a Cottage or Hut on the Shore to shelter them for a Season, though we grant the Shore to be possessed by the Inhabitants: 'Tis true, Pomponius does think there ought to be the Praetor's Decree; but certainly that extends only to those Passengers, that, being expelled their own Countries, desire perpetual Habitation, and a Subjection to the Government of the Place where they desire to dwell.

The End of the Second Book.
### BOOK III.

#### CHAP. I.

**Of Freedom, Bondage, Slavery, Exile, and Abjuration.**

| II. Of the Actions that subject Man to Bondage. | VIII. Of Manumission and Freedom by the Hebrew and Roman Law, and by the Laws of England. |
| III. Of the Dominion over Slaves, Bond-men and Captives. | IX. Of disfranchising, the several ways. |
| IV. Of the Cause, or Reason of such Dominion. | X. Of Abjuration and Exile; and what Operation it hath. |
| V. That this Right or Dominion was not a Law universal. | XI. Of Freedom in Cities and Corporations, in reference to Merchants, Traders and Foreigners. |
| VI. Of Bondage or Slavery, utmost discontinued by the Christians and Mahometans. |

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I. **IN** the primitive State of *Nature*, no Men were Servants; yet it is not repugnant to natural Justice, that by the Fact of Man, that is, by *Covenant* or *Transgression*, Servitude should come in; therefore Servitude is brought in by the *Laws of Nations*.

II. Hence it is, that those that will yield up their Persons, or promise Servitude, are accounted *Slaves*; so likewise all that are *taken in Publick War*, and brought within the Guards of their Conquerors; nor is *Transgression* necessary, but the Lot of all is equal after the War is begun, even those, whose ill Fortune subjected them to be apprehended within the Enemies Bounds; nor are they Servants only themselves, but all their Posterity for ever.
III. The Privileges of this Right or Dominion are infinite; for there is no Suffering which may not be imposed on such, nor Work which may not every way be extorted from them: So that even the Cruelty of Masters became almost unpunished, till the Municipal Laws of Countries set Bounds to their Rigour and Power.

Nor are the Persons become theirs only that have the Power of them, but also all that they have; for such unhappy Persons can have nothing of their own.

Hence it was, that that excellent Law in favour of such, was introduced by the Romans, called Lex Cornelia, which was, when a Captive, intra presidia boetium, died in his Captivity; if he had made a Will, before his being taken Captive, yet such a Captive should in favour of such Will, and for the upholding of the same, be feigned to be dead, and in puncto temporis, immediately before such his being taken Captive; and so by that Legal Fiction of Death, his Will became firm and valid, as if he had really died without ever being taken by the Enemy. So likewise if one had been made a Slave, yet if he had returned out of his Captivity, that for the Preservation of his Right and Propriety, he was feigned as if he had never been absent, and was immediately re-integrated into his pristine State and Condition.

IV. Now all these Privileges and Immunities were introduced by the Laws of Nations, for no other Reason, but that their Captors, tempted by so many Immunities, might willingly abstain from that cruel Rigour of slaying their Prisoner.

Hence it is, that the Captor's Dominion is extended to the Children; for should such use their biggest Right, they would not be born; but Children that are born before that Calamity, and were never taken Prisoners, are freed from that unhappy State.

V. Though this Dominion or Right was generally acquired in most Nations, yet was not the same an universal Law; for amongst the Jews, Refuge was granted to Servants
vants who fell into that Calamity by no Fault of their own. And the State of Christendom at this Day is apparent, That Prisoners taken in War do not become perfect Slaves, as of old, but only remain in the Custody of the Captor, till Ransoms are paid, whose Valuations are generally at the Pleasure of the Conqueror; yet Persons of eminent Quality, as Generals, and the like, such Persons, if taken by a common Soldier, yet he has no Advantage by the same; for such a Captive is become Prisoner immediately to that Prince or State under whom the Captor served: But if it be the Lot of an inferior Soldier to become a Prisoner of War, he is then become absolutely the Captors to dispose of; but he wanting those Neccessaries in the Field for himself, which he ought to provide for his Prisoner, commonly waves that Interest, and generally yields him up as a Prisoner of War to be disposed of by that Prince or State under whom he serves.

VI. Slavery in Christendom is now become obsole"te; and in these latter Ages the Minds of Princes and States having as it were universally agreed to esteem the Words, Slaves, Bondman, or Villain, barbarous, and not to be used; and that such as are taken in War between Christian Princes, should not become Servants, nor be sold, or forced to work, or otherwise subjected to such servile Things, but remain till an Exchange of Prisoners happen, or a Ransom paid, as afore: Nay, the very Turks and Mahometans at this Day generally observe this among themselves, not to make Slaves of those of the Mahometan Religion, though taken in War; and that which is most to be admired, a Christian fallen into that miserable State, renouncing his Religion, and becoming a Mahometan, immediately upon his Circumcision obtains his Freedom with a Remompence. The Cruelty of those Infidels to those unhappy Persons, together with the Reward of renouncing, hath given Cause to many a brave Person to become Renegado; the which being considered by the Parliament of England, they made a Provision for such miserable Persons as should be taken by Turkish and Moorish Pyrates.

those of England. Anno 1671. 2. Quam non sit ardua virtus servitium fugisse mans, it is none of the hardiest Virtues to embrace Death to avoid Slavery. 
† 16 Car. 1. cap. 24. it's expired. Mr. Thomas Butter, a Turkey Merchant, left a very considerable Sum of Money to the Ironmongers Company, to be laid out in the Purchase of an Estate, the Produce of which is appropriated to the Redemption of British Slaves.

D dna 2  

VII.
Of Freedom, Bondage, Slavery, &c. Book III.

VII. Though Slavery and Bondage are now become dis
continued in most Parts of Christendom, and to that Degree,
that for the Person of a Man, be he Moor or other Indian,
a Trower is not maintainable by the Laws of England; yet
there may be a Servitude which may amount to a Labour or
Suffering equal to that of Captives; the which may be
justifiable; for Men, either through Poverty, and the like,
may oblige themselves by Contract for Maintenance to a
Servitude that's perpetual, i.e. for Life, and so for Years;
but at this Day there is no Contract of the Ancestor can
oblige his Posterity to an hereditary Service; nor can such an
accept those Servants, exercise the ancient Right or Domini
onion over them, no nor so much as to use an extraordinary
Rigour, without subjecting themselves to the Law. If an
Eye or a Tooth had been struck out injuriously, by the Hebr
ew Law Freedom was immediately due; and by the Grec
ks, if Servants had been ill treated, it was lawful for
them to demand a Sale of themselves to others. At Rome
the Statues became Sanctuaries for Servants to implore the
Help of the Governors against Rigour, Hunger, or any
other intolerable Injury inflicted by their Masters; and even
in London at this Day in Servitude, (amongst the many
Causes, as not Inrollment of the Indentures, not instructing
in the Art, Want of Necessaries, infra statem 14, &c.)
Cruelty, Hunger, Rigour, immoderate Correction, and the
like, are Causes sufficient, on a Monstrance or Petition to the
Chamberlain, to dissolve the Contract, though under Hand
and Seal, and to decree all or part of the Dowry, or Sum
given (if any) to the Servant; and if Cruelty hath been in
the Case, to expose the Master to answer Damage to the
Servant.

VIII. Ulpianus observes, after that by the Laws of Na
tions Servitude came in, then followed the Benefit of Mana
numission. By the Hebrew Law, after the Expiration of
the Time agreed on, the Servant was to be manumitted,
and that not without Gifts, like London's Freedom; by the
Custom of which the Master is always at the Charge of
Cloathing, and discharging the Chamberlain's Fees. By
the Roman Law, every Son was in such Subjection to his
Father, that before he could be released of this Subjection,
and made free, he should by an imaginary Sale be sold three
times by his natural Father to another Man, who was called
by
by the Lawyers *Pater Fiduciarius*, that is, a Father in Trust, and then be bought again by his natural Father, and so manumitted by him, and then he became free: This Form of setting free was by them called *Emancipatio*, or Freedom.

Their Victory pleased them so highly, that thereupon they called themselves by a new Name, Slaves, which is in their Language, Glorius; but in after time, (that warmer Climate having thawed their Northern Hardines, and not ripened their Wits) when they were conquered, and made Servants to their Neighbours, the Italian, which kept many of them in Bondage, began to call all their Bond-men Slaves. *Sir Walter Raleigh*, Vol. I. p. 282. Edit. 1736.

That Roman Darling was to be obtained three Ways:

1. By Birth; *both, or at least one of their Parents being free, and such were called Gvoes Originarii.*

2. By Gift and Coemption; when the Freedom was bestowed on any Stranger or Nation, and then they were termed *Civitat Di Donati*: And so we read that Caesar took in whole Nations into the Freedom.

Lastly, by Manumission; which was thus: When as the Servant was present before his Master before the Conful or Praetor, the Master laying his Hand upon his Servant’s Head, used this Form of Words, *Hunc liberum esse volo*; and with that turning his Servant round, and giving him a Cuff on the Ear, he did *mittere servum à manu*: The Praetor laying then a certain Wand or Rod, called *VindisTa*, upon the Servant’s Head, replied in this manner, *Dico eum liberum esse more Queritum*; then the Licitor or Servient taking the Wand, did strike the Servant on the Head, and with his Hand struck him on the Face, and gave him a Puff on the Back; and after this he was registered for a Freeman. This being performed, the Servant having his Head shaven purposely at that time, received a Cap as a Token of Liberty.

*Tertullian* observes, that at this Time of their Manumissions, the Servants received from their Masters a white Garment, a Gold Ring, and a new Name added to their former.

By the Laws of England, every Subject born within the *Magna Charta*, King’s Dominions, is a Freeman of this Realm, as appears by the *Grand Charter*, cap. 14. yea, though he be a Bondslave to a Subject: *But a Stranger born is no Freeman.* As to some till the King have made him a *Denizen*, in whose Power alone,
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alone, without the Help of any other, one may be made free.

To be a Freeman of the Realm, the Place of Birth, is held more considerable than the Quality of the Person; yet by the Opinion of Hussy Chief Justice, and in Calvin's Case of the Post-Nati, it is held for Law, that if Ambassadors of this Realm have Children born in France, or elsewhere, the Father and Mother being natural born Subjects, the Children are free of the Realm of England: But if either the Father or Mother of such Children were an Alien, then are not those Children free.

Bacon's Cafe.
Croke Charles 601.

Jenkin's Cent. 1, 2, 3.

Issue born beyond Sea.

But the Law is conceived to be otherwise at this Day. The Statute de Natis ultra mare, 25 E. 3. declares the Issue born of an English Man upon an English Woman, shall be a Denizen; for upon the Construction of this Statute it has been adjudged more than once, that if an English Man marry a Foreigner, and has Issue by her born beyond Seas, the Issue is a Natural born Subject.

If Baron and Feme English go beyond Sea without Licence, or terrry there after the Time limited by the Licence, and have Issue, that the Issue is an Alien, and not inheritable; contrary to the Opinion of Hussy, 1 R. 3. 4. Hide against Hill. Cro. Eliz. 3. Cro. Charles 602. Steven's Cafe, cited in Bacon's Cafe.

An English Merchant had Issue by a Polish Woman in Poland, and devises his Copyhold Land to the Use of his Children, per Crook, the Children are not Aliens. 1. Because the Father went with Licence, being a Merchant.

2. In our Law, Partus non sequitur Ventrem. 3. Blood is between him and his Issue. Several of the Judges held, that the Words in the Stat. 25 Ed. 3. cap. De natis ultra mare, whose Fathers or Mothers be or shall be of the Allegiance of our King, shall be taken distributive, Father or Mother, and not copulative, Littleton's Rep. 23, 26, 27.

IX. Disfranchising by the Romans, called Capitis dimutio, was three-fold, Maxima, Media, and Minima; the least Degree was, when the Censors pulled a Man from a higher Tribe down to a lower, and left honourable; or when by any Censure they disabled a Man from suffraging or giving his Voice in the publick Assemblies; such as were thus in the last manner punished, were termed Aeratorii, and in ararios veluti, quia omnia alia jura Civium Romanorum praterquam...
By the ancient Laws of England, and by the Great Charter, no Freeman shall be taken or imprisoned, but by the lawful Judgment of his Peers (that is, by Jury, Peers for Peers, ordinary Juries for others who are their Peers) or by the Law of the Land; which is always understood by thirty times due Process of the Law, and not the Law of the Land generally; for otherwise that would comprehend Bond-men, (whom we call Villains) who are excluded by the Word Liber; for such Bond-man might be imprisoned at the Pleasure of his Lord, but a Free-man neither could nor can, without a just Cause; nor does the Privilege extend to private Actions, or Suits between Subject and Subject, but even between the Sovereign and the Subject. Hence it is, that if a Peer of the Realm be arraigned at the Suit of the King for a Murder, he shall be tried by his Peers, that is, the Lord Morly and Montgoles's Cafe for the supposed Murder, and likewise their Freehold; for by the fame Charter it is declared, that the King, or his Ministers, shall out no Man of his Free-hold without reasonable Judgment; and so it was ruled upon a Petition in Parliament, setting forth, that a Writ under the Privy Seal, went to the Guardian of the Great Seal, to cause Lands to be seized into the King's Hands, and that thereupon a Writ issu'd forth to the Exc cheater to seize, against the Form of the Great Charter; upon Debate of which, the Party had Judgment to be restored: The greatest and most explanatory Act, which succeeded in Point of Confirmation, was that of Edward the Third; the Words are, That no Man, of what Estate or Condition soever he be, shall be put out of the Lands and Tenements, nor taken, nor imprisoned, nor disabled, nor
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not put to Death, without he be brought to answer by due
Process of the Law, that is, by the Common Law.

2. Diminitio media, was an Exilement out of the City,
without the Loss of ones Freedom; the Words of
the Judgment or Sentence were, Tibi aquae & igni interdico.

3. Diminitio maxima, was the Loss both of the City and
the Freedom, and by his Judgment or Sentence was obli-
ged and limited to one peculiar Country, all other Places
in general being forbidden him.

There was a fourth kind of Banishment, disfranchising,
called Relegatio; which was the Exilement only for a Sea-
son, as that of Ovid's.

Ovid. de Trist. lib. 3.

Adde quod edictum quamvis immite minaxque,
Aitamen in pane nomine lene fuit:
Quippe relegatus, non exul dicer in illo.

The Laws of England in this Matter have some Resem-
blance with those of the Romans; for Bracton observes four
Distinctions:

In London the
same is done
by exhibiting
an Informa-
tion in the
Name of the
Common Ser-
gent, in the
Mayor's Court
there against
any Citizen
that shall just-
ly deserve so
great a Disho-
four.

1. Specialis, hoc est, interdictio talis Provinciae, Civitatis,
Burgi aut Villa.

2. Generalis, Interdictio totius Regni, & aliquando est.

3. Temporaria, pro duobus, tribus, quatuor, aut pluri-
bus annis, aut, &c.

4. Perpetua, pro termino vitæ, & exilium est aliquando
es arbitrio Principis, sicut in exiliando Duces Hertfordiae
& Norfolciae, per Regem Richardum Secundum, & ali-
quando per Judicium Terræ, ut fit in eaus Piers de Gaveston,
& etiam in eaus Hugonis de le Spencer Junioris, qui ambo
fuerunt exili per Judicium in Parlamento. So likewise
was that of the Banishment of the Earl of Clarendon, who
died beyond Sea.

Mr. Selden ob-
erves, that in
the Time of
K. Hen. the
First, and of
a Ward, and of
the other Kings,
both before and after him, that if any Man, accused of a Capital Crime done at Sea,
being publickly called five times by the Voice of the Cryer, after so many several Days
assigned did not make his Appearance in the Court of Admiralty, he was banished out
of England; & de mere appartenient au Roy d'Angleterre, for forty Years more or les,
according to his Offence. Mar. Claus. fol. 12.
CHAP. I. Of Freedom, Bondage, Slavery, &c.

Value of his Marriage, must abjure the Realm; and this is a general Exile. And by the Statute made 31 Ed. 1. Butchers are to be abjured the Town, if they offend the fourth time, in selling meazled Flesh; and this is a special Banishment.

A Man exiled does forfeit these things.

1. He loseth thereby the Freedom and Liberty of the Nation out of which he is exiled.

2. He forfeits his Freedom in the Borough or City where he was free; for he which forfeits the Freedom of the whole Realm, forfeits his Freedom in every Part.

3. The Law accounts him as one dead; for his Heir may enter, and so may his Wife enter into her own Lands, and may sue an Action as a Feme sole.

4. He shall forfeit those Lands which he shall purchase in the Realm, during his Banishment; for he, during his Banishment, is as much disabled to purchase as an Alien; for fit alienigena by his Banishment, and he is observed to be in a worse Condition than an Alien; for he is marked with indignatio Principis. 'Tis true, he cannot forfeit neither Title of Honour, or Knighthood, nor the Lands he had before Exile, unless there be special Sentence or Judgment, as that of the Spencers.

If the Father be in exile, this hinders not the Freedom of the Son, for the same is not a thing descendible; for should it be so, then the Banishment of the Father would make a Forfeiture of the Freedom; but the Son has this Freedom by his own Birth, as a Purchase, and not by the Death of his Father by Descent: Like the Cafe where J. S. hath many Children, and then he confesseth himself a Villain to J. D. in a Court of Record; yet his Children formerly born are Freemen, and no Villains; the Reason is, because they were free by their own Births; but the Inheritance is in thrall, because it is to come to the Heir by Descent.

XI. A Freeman of a City or Borough may be made divers ways, as my Lord Coke observes.

1. By Service.
2. By Birth, by being the Son of a Freeman.
3. By Purchase or Redemption.
4. At Bristol by Marriage.
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Sir John Davies in his Irish Reports observes the same for Law. St. Paul was born at Tarfus in Cilicia, which was under the Obedience of the Romans, by virtue of which he challenged the Privilege of a Roman Citizen; but it was accounted no more than a National Freedom; like that of Calvin, who claimed the general Freedom of an Englishman, being born in Scotland, but under the Obedience of the King of England; but that Challenge made not St. Paul free of the private Customs, Privileges, and Franchises of Rome, no more than Calvin's Birth made him a free Citizen of London, to the particular Customs of that City.

King Edward the Third granted to John Falkner de Luce, an Apothecary of the City of London, quod ipsum omnibus libertatis quas Civis Civitatis predictis habent in ipsam Civitatem alibi infra Regnum Angliae nosorum habeat, gaudent et utatur, &c. Rot. Pat. 32 R. 3. in the Tower; yet it was held, that this Grant did not make him a Freeman of the City, for it cannot be attained but by one of those ways. * Case of the City of London, Co. 8. Report.

If one born in a City, of Parents that are not free, the Child hereby is no Citizen by Birth; and if one be born of free Parents out of the Place of Privileges, as London, &c., he yet is a Freeman by Birth; yet in the Charter granted to Yarmouth, the Words were, Concessimus Burgensibus de Magna Yarmutha de villa predicta oriundis, that they should have such Liberties: So that special Words may alter the Case.


LONDON had many Royal Franchises granted them from time to time, and were often by former Kings successively confirmed, nor wanted they a Share when the great Charter was granted, to have their ancient Liberties secured; nor were the succeeding Princes slack in their Royal Grants and Confirmations; but especially Richard II. who in Parliament granted and confirmed to them all their ancient Customs and Liberties, with this Clause, Licet us non fuerint vel abusi fuerint, and notwithstanding any Statute to the contrary; amongst the Number of their own Privileges, the Freedom of the same was accounted of no small Importance, since in divers Parliaments it was very much aimed at, and endeavoured to be impaired; but at last they obtained
obtained a most gracious and Royal Confirmation in Par-
liament of their ancient Liberties, amongst which it is de-
clared, that no Merchant, being a Stranger to the Liberty
of the said City, should sell any Commodities within the
Liberty of the said City, to other Merchant-Strangers; nor
that any such Merchant-Stranger should buy of any other
Merchant-Stranger such Merchandise within the Liberty of
the said City, without Forfeiture thereof, saving that any
Person, Lord, Knight, &c. may buy within the Liberties
of any Merchant-Stranger Merchandizes in gross for their
own Use, so that they do not sell them again to buy any
other. And as this City by Custom may preclude any
Person, not being free of the same, to sell in such manner
upon such Pain; (a) so any other City, which are Boroughs
or Cities by Prescription within this Realm, may have the
like Custom, and the Goods sold or bought by such, may
be subjected to Forfeiture; but the same cannot be good
by Charter or Grant. 8 Co. 125. a.

A compleat Freeman is such a one as hath challenged his
Freedom, and taken the Freeman's Oath, and is admitted
into the Society and Fellowship of the Freemen, Citizens,
and Burgesses; otherwise, he hath but a bare Right to his
Freedom.

A Bond to restrain a Man from trading in a particular
Place, if made upon a reasonable Consideration, is good;
focus if it be on no reasonable Consideration, or to restrain
a Man from trading at all.

CHAP.
CHAP. II.

Of Aliens, as in relation to their Estates Real and Personal.

I. Of an Alien his Ability and Disability in the taking and enjoying of Estates Real and Personal.

II. Of his Capacity in purchasing, and Disability to transfer by an hereditary Defect.

III. Of the Rules of Descents, according to the Laws of several Countries.


V. Of Impediments in one that is not the medium antecessor.

VI. Of Impediments in one that is the medium antecessor lineal and collateral.

VII. Of the Statutes of Natis ultra Mare, and Issues born beyond Seas.

VIII. The Lord Coke's Opinion, that if an Alien has Issue two Sons Denizans, the one purchases Land, and dies, the other cannot inherit them, disputed and refuted.

IX. Of Foreign Births, which do not create a Disability.

X. Of Aliens not disabled by Laws to bring either real or personal Actions.

XI. Of Office that must entitle the King to an Alien's Estate.

XII. Of some particular Immunitie, and other Matters relating to an Alien.

AN Alien is one born in a strange Country, under the Obedience of a strange Prince and State; and out of the Legiance of the King of England, and can have no real or personal Action for, or concerning Lands; and therefore if he purchase Lands, Tenements, or Hereditaments, to him and his Heirs, albeit he can have no Heir, yet he is of Capacity to take a Fee-simple, but not to hold; for the King upon Office found shall have it by his Prorogative.

So it is if he purchase Lands and dies, the Law doth cast the Freehold and Inheritance upon the King.

But if he purchase or take a Lease for Years of a House or a Warehouse, which is for the accommodating him as a Merchant-Stranger, whose Prince or State is in League with ours, there he may hold the same, for that the same is incident to Commerce.

And in that case, if he departs and relinquishes the Realm, the King shall have the same; so it is, if he be no Merchant.

The
The like Law is, if he take a Leaf of Meadows, Lands, Woods or Pastures, the King shall have the same; for the Law provides him nothing but a Habitation to trade and traffick in as a Merchant.

II. Though he may take by Purchase by his own Consent, that which he cannot retain against the King, yet the Law will not enable him by an Act of its own to transfer by hereditary Descent (the Alien dying, his Issue a Denizen born, the Land will not descend) or to take by an Act in Law; for the Law, Quae nihil facit frustra, will not give him an Inheritance or Freehold by an Act in Law, for he cannot keep it.

Therefore the Law

1. By Descent.
2. By Courtefy.
4. By Guardianship.

And in respect of that Incapacity he resembles a Person Attainted, but with this Difference;

The Law looks upon a Person Attained as one that it takes Vide Leg. 8. as notice of, and therefore the eldest Son attained overliving the Father, though he shall not take by Descent in respect of his Disability, yet he shall hinder the Descent to the younger.

But if the eldest Son be an Alien, the Law takes no notice of him, and therefore as he shall not take by Descent, so he shall not impede the Descent to the younger Brother: As for instance, if there be three Brothers, the eldest an Alien, the other two naturalized, and the middle Brother purchase, and dies without Issue, the younger Brother shall have the Land.

III. Concerning the Rule of Descents, we are not to govern ourselves therein by the general notions of Love, or Proximity of Nature, but by the Municipal Laws of the Country wherein the Question ariseth; for the various Laws of divers Countries have variously disposed the manner of Descents, even in the same Line and Degree of Proximity: For instance, the Father certainly is as near of kin to the Son, as the Son is to the Father, and is nearer in Proximity than a Brother, and therefore shall be preferred as next of kin in Administration to the Son’s Estate.

According
According to the Jews, for want of Issue of the Son, the Father succeeds, excluding the Brothers; and that hath been the Use and Construction of the Jewish Doctors upon Num. xxvii. 9. but the Mother was wholly excluded.

2. According to the Provision of the Greeks for the Succession or Exclusion of the Father, is left doubtful.

3. By the Roman or Civil Law, according to the Estimation of the twelve Tables, the Father succeeded in the Purchase of the Son for want of Issue of the Son, under the Title proxim. agnato, and so was the Use; but my Lord Coke supposes the contrary.

But taking the whole Institution of Justinian, the Son dying without Issue, his Brothers, Sisters, Father, or Mother, do succeed him as well to Land as Goods, in a kind of Coparcenary.

4. According to the Laws of Normandy, (which in some things have a Cognition with our Law) his Brothers are preferred before the Father, (if the Son die issueless) but his Father before his Uncle.

5. According to the Laws of England the Sons dying sans Issue, or Brothers, or Sisters, the Father cannot succeed, but it descends to the Uncle.

IV. There be two kinds of Descent, according to the Common Laws of this Realm.

1. Lineal, from the Father or Grandfather to Son, or Grandson.

2. Collateral or transversal, as from Brother to Sister, Uncle to Nephew, and e converso: And both these again of two sorts.

1. Immediate, as in Lineals from Father to Son.

2. Mediate, as in Lineals from Grandfather to Grandchild, where the Father dying in the Life-time of the Grandfather, is the medium different between the Descent. Collateral, as in Lineal, from Uncle to Nephew, or e converso.

And this mediate Descent, or mediate Ancestor, though to many Purposes it be immediate; for the Father dying in the Life of the Grandfather, the Son succeeds in point of Descent in the Lands immediately to the Grandfather; and in a Writ of Entry shall be supposed to be in by the Grandfather, and not in the post & cui.
This is called a mediate Descent, because the Father is the Medium through whom the Son derives his Title to the Grandfather.

In immediate Descents there can be no Impediment, but what arises in the Parties themselves: For, in instance, the Father seized of Lands, the Impediment that hinders the Descendant must be in the Father or Son, as if either of them be Attaint or an Alien.

In mediate Descents, a Disability of being an Alien or Attaint, in him that is called the medius anteceffor, will disable a Person to take by Descent, though he himself have no such Disability.

In Lineal Descents, if the Father be Attaint or an Alien, and hath Issue a Denizen born, and die in the Life-time of the Grandfather, the Grandfather dies seized, the Son shall not take, but the Land shall esbeat.

In Collateral Descents, A. and B. Brothers, A. is an Alien or Attaint, has Issue C. a Denizen born, B. purchases Lands and dies without Issue, C. shall not inherit, because A. which was the medius anteceffor or medium differens, is incapable.

V. But in any Descents, the Impediment in an Ancestor that is not medius anteceffor, from whom and to whom, will not impede the Descent.

As for instance, the Grandfather and Grandmother both Aliens, or Attaint of Treason have Issue, the Father a Denizen, who hath Issue the Son a natural born Subject, the Father purchases Lands, and dies, the Son shall be Heir to the Father, notwithstanding the Disability of the Grandfather, (and yet all the Blood which the Father hath is derived from his disabled Parents) for they are not medii antecessores, between the Father and the Son, but paramount.

The Law does not hinder, but that an Alien is of the same Degree and Relation of Consanguinity, as natural born Subjects, or Denizens born, the Son, the Father and Brother, though Aliens; the Son, Father and Brother, our Law 8. 9. takes Notice of, as well as natural born Subjects, and so it was adjudged, for he shall be preferred in Administration, though an Alien, as next of kin.

But in Cases of Inheritance the Law takes no notice of him, and therefore as he shall not take by Descent, so he shall not impede.
impede the Descent to the younger Brother! As for instance, A. an Alien, B. and C. naturalized by Act of Parliament, (Brothers) B. purchases Lands, and dies, then prole, C. shall inherit, and not A.

Ramsey's Case. A. an Alien, B. and C. his Brothers, both naturalized by Act of Parliament, B. purchases Lands, and dies without Issue, the same shall not come to A. nor to his Issue, though a Denizen, but shall come to C. and his Issue; the Law taking no notice of A. as to impede the Succession of C. or his Issue, though it work a consequential Disability to bar the Issue of A. parallel to what the Law calls Corruption of Blood, which is a Consequent of Attainder.

VI. Again, in Lineal Descents, if there be a Grandfather a natural born Subject, the Father an Alien, Son natural born Subject, the Father is made a Denizen, he shall not inherit the Grandfather; and if the Father dies in the Life of the Grandfather, the Grand-child, though born after the Denization, doth not remove neither the Personal nor Consequential Impediments or Incapacity of the Father.

In Collateral Descents, the Father a natural born Subject has Issue two Sons Aliens, who are both made Denizens, and dies without Issue, the other shall not inherit him.

A. an Alien marries an English Woman, who is seized of Lands, and has Issue, the Father and Mother dies, yet the Issue may inherit the Mother, non obsitante the Incapacity of the Father being an Alien.

VII. The Statute de Natis ultra Mare, declares the Issue born of an English Man upon an English Woman shall be a Denizen; yet the Construction has been, though an English Merchant marry a Foreigner, and has Issue by her born beyond the Seas, that Issue is a natural born Subject.

But if an English Woman go beyond the Sea, and there marry an Alien, and have Issue beyond the Sea, that Issue are Aliens.

If an English Woman marries an Alien beyond the Seas, and then comes into England, and has Issue, they are not Aliens, but may inherit.

VIII. My Lord Coke in his Commentaries on Littleton, seems to be of Opinion, that if an Alien has Issue two Sons born in England, one dying without Issue, the other shall not inherit him. But the Law is otherwise taken at this Day,
CHAP. II.  Of Aliens.

Day, as I conceive the Reasons that have been given, are,

1. Though the Descent from one Brother to another Brother be a collateral Descent, yet it is an immediate Descent, and consequently if no Disability or Impediment can be found in them, no Impediment in another Ancestor will hinder the Descent between them.

That this is an immediate Descent, appears,

First, In Point of Pleading, one Brother shall derive himself as Heir to another, without mentioning any other Ancestor.

Secondly, According to the Computation or Degrees, Brother and Brother make but one Degree, and the Brother is distant from his Brother or Sister in the first Degree of Consanguinity, and no more, by the Laws of England.

According to the Civil Law, Brother and Brother make but one Degree, for the Brother is in the second Degree from the Brother, yet both make but one Degree.

According to the Canon Law, + Frater & Frater, or Frater & Soror sunt in primo gradu.

And therefore the Laws prohibiting Marriage between Kindred in the fourth Degree, take Brother and Sister to be the first Degree of the four.

The Laws of England, in Computation of the Degrees of Consanguinity, agree with the Canon Law, and reckon the Brother and Brother to be the first Degree.

Herewith agree the Customs of Normandy, which, though in some cases differ from the Laws of England, yet herein, and in divers other Particulars touching Descents, they agree.

Another Evidence to prove, that the Descent between Brothers is immediate, is this, (viz.) the Descent between Brothers differs from all other collateral Descents whatsoever, for in other Descents collateral the half Blood does inherit, but in a Descent between Brothers the half Blood does impede the Descent, which argues, that the Descent is immediate.

The Uncle of the Part of the Father has no more of the Blood of the Mother, than the Brother by the second Venter, the Brother by the second Venter has the immediate Blood of the Father with the Uncle (viz. the Father's Brother)
ther) has not but only as they meet in the Grandfather; the Brother of the half Blood is nearer of Blood than the Uncle, and therefore shall be preferred in Administration.

It is apparent, that if in the Line between Brother and Brother, the Law takes notice how the Father was the Medium thereof, the Brother of the second Venter should rather succeed to the other Brother, because he is Heir to the Father; therefore in a Descent between Brothers the Law respects only the immediate Relation of the Brothers as Brothers, and not in respect of the Father, though it is true, the Foundation of their Consanguinity is in their Father or Mother.

Again, if the Father, in case of a Descent between Brothers, were such an Ancestor as the Law looked upon as the Medium that derives the Descent from the one Brother to the other, then the Attainder of the Father would hinder the Descent between the Brothers: But the Attainder of the Father does not hinder the Descent between the Brothers; the Reason is, because the Father is not such a Medium or Nexus that is looked upon by the Law, as the Means deriving such a Descent between the two Brothers: As for instance of three Cases, two whereof evince the first Proposition, (viz.)

That although the Descent from one Brother to another Brother, though it be a collateral Descent, yet is an immediate Descent, and that if no Disability or Impediment arises in them, no Impediment in another Ancestor will hinder them.

The younger Brother has Issue, and is attained of Trea- son, and dies, the elder Brother has Title to a Petition of Right, dies sans Issue without a Restitution, the younger Brother's Son has lost that Title; for though the Title were in the Ancestor that was not attaint, yet his Father that is the Medium, whereby he must convey that Title was attaint, and so the Descent was obstructed.

Henry Courtney had Issue Edward, and was attainted of Treason, and died, Edward purchased Lands, and died without Issue, the Sistres and Heirs of Henry were disabled to inherit Edward; yet neither Edward nor his Aunts were attainted, or their Blood corrupted; yet because Henry was the Medium through whom the Aunts must derive their Pedigree
digree and Confanguinity to Edward, who was attainted, the Descent was obstructed till a Restitution in Blood.

But if the Grandfather of Edward had been attainted, and not Henry, this would not have hindered the Descent from Edward to the Aunts, because that Attainer had been paramount to that Confanguinity which was between Henry and his Sister, and that is proved by this third Case.

William Hobby had Issue Philip and Mary, and was attainted of Treason, and died, Philip purchases Lands, and died without Issue; it was adjudged in that case, that non obstante the Attainer of William Hobby, Mary should inherit, because the Descent and Pedigree between Philip and Mary was immediate, and the Law regards not the Disability of the Father.

If the Heir of the Part of the Father be attainted, the Land shall escheat, and shall never descend to the Heir of the Part of the Mother; but if the Son purchase Lands, and has no Kindred of the Part of the Father, but an Alien, it shall descend to the Heirs of the Part of the Mother.

IX. Those that are born sub fide, legianitia, obedientia Domini Regis are not Aliens; and therefore those that were born in Gascoyn, Normandy, Aquitain, Tournay, Callis, Guyan, whilst they were under the Dominion of the Kings of England, were natural born Subjects, and not Aliens.

Scotland is a Kingdom by Union, and therefore those that were born in Scotland under the Allegiance of the King, as of his Kingdom of Scotland, before the Crown came united, were Aliens born, and such Plea against such Persons was a good Plea; but those that were born since the Crown of England descended to King James are not Aliens, for they were born sub fide & legianitia Domini Regis; so those that are born at this Day in Virginia, New-England, Barbadoes, Jamaica, or any other of his Majesty's Plantations and Dominions, are natural born Subjects, and not Aliens; so likewise those that are born upon the King of England's Seas are not Aliens.

X. But if an Alien be made an Abbot, Prior, Bishop, or Dean, by the Plea of an Alien, we shall not disable him to bring any real or mixed Action concerning the Possessions that he holds in his politick Capacity, because the same is brought in auter droit.

E e 2
The like Law is for an Executor or Administrator, because the Recovery is to another’s Use, 3 Cro. 683. Yet see the same Book 142. pl. 7.

If an Action is brought against an Alien, and there is a Verdict and Judgment against him, yet he may bring a Writ of Error and be Plaintiff there, and that such Plea is not good in that Case.

Though an Alien may purchase and take that which he cannot keep or retain, yet the Law hath provided a mean of Inquiry before he can be divested of the same, for until some Office be found, the Freehold is in him.

And this Office, which is to gain to the King a Fee or Freehold, must be under the Great-Seat of England, for a Commission under the Exchequer-Seat is not sufficient to entitle the King to the Lands of an Alien born, for the Commission is that which gives a Title to the King, for before that the King hath no Title; but in cases of treason, there upon Attainder the Lands are in the King without Office, and in that case, to inform the Court a Commission may go out under the Exchequer-Seat.

An Alien cannot purchase Lands for his own Benefit; but he may for that of the Crown. Lucas’s Reports 91. 94. 120. 122. 136.

Therefore if Land be devises to an Alien, the Crown shall have it, ibid. 94. Yet if an Alien, Tenant in Tail, suffers a common Recovery before Office found, the Recovery is good, ibid. 124.

XI. If an Alien and a Subject born purchase Lands to them and to their Heirs, they are joint Tenants, and shall join in Aßize, and the Survivor shall hold Place till Office found.

By the finding of this Office the Party is out of Possession, if the same be of Houses or Lands, or such things as do lie in Livery; but of Rents, Common, Advowsons, and other Inheritances incorporeal which lie in Grant, the Alien is not out of Possession (be they appendant or in gros) therefore if an Information or an Action be brought for the same, the Party may traverse the Office in that Court, where the Action or Information is brought for the King.
And if the King obtains not the Possession within the Year after the Office found, he cannot seize without a Seire facias.

It is not for the Honour of the King (an Alien purchasing of a Copy-hold) to seize the same, for that the same is a base Tenure; and so it was adjudged, where a Copy-hold Styles 20. was surrendered to J. S. in Trust, that one Holland an Alien, should take the Profits thereof to his own Use and Benefit; upon an Inquisition taken, it was adjudged the same was void and should be quashed, because the King cannot be intitled to the Copy-hold Lands of an Alien, nor to the Use of Copy-hold Lands, as the principal Cafe was.

XII. An Alien Infant under the Age of 21 Years, cannot be a Merchant Trader within this Realm, nor can he enter any Goods in his own Name at the Custom-house.

If an English Man shall go beyond the Seas, and shall there become a sworn Subject to any Foreign Prince or State, he shall be looked upon in the Nature of an Alien, and shall pay such Impostion, as Aliens; if he comes and lives in England again, he shall be restored to his Liberties.

An Alien is robbed, and then he makes his Executor, and dies, and afterward the Goods are waft, the Lord of the Franchise shall not have them, but the Executors. Vide 13 E. 4.

All Personal Actions he may sue as on a Bond, so likewise for Words; for the Common Law, according to the Laws of Nations, protects Trade and Traffick, and not to have the Benefit of the Law in such cases is to deny Trade.

But yet Aliens and Denizens are restrained by the Statute of 5 Eliz. to use any Trade, not having served seven Years as Apprentices within the Realm. Vide the Statute what Trades, Trim. 12 Car. 1. at Sergeant's Inn in Fleet-street, by all the Judges. Hutton's Reports, fol. 132. but querre that Resolution.

An Alien Enemy commorant here by the King's Licence, and under his Protection, may maintain Debt upon Bond, although he came not with safe Conduct.

Where an Alien should take by course of Descent, there the Estate shall go over to him, to whom it would have gone in case the Alien had been already dead; as, where Tenant in Tail has Issue two Sons, and the eldest is an Alien, the younger Brother shall inherit. Lucas 116. Yet if an Alien be Tenant in Tail, Remainder to a natural born Subject, the Remainder-man cannot come in until the Estate Tail be spent. Lucas 120.
C H A P. III.

Of Naturalization and Denization.

I. Whether the Kings of England can naturalize without Act of Parliament.

II. What Operation Naturalization hath in reference to remove the Disability arising from themselves.

III. What Operation Naturalization hath in reference to remove Defects arising from a lineal or collateral Ancestor.


V. A Kingdom conquered, and united to the Crown of England, whether by granting them a Power to make Laws can implicitly create in them such a Sovereignty, as to impose on the Realm of England.

VI. Of Persons naturalized by a Kingdom dependent, whether capable of imposing on one that is absolute.

VII. Of Kingdoms obtained by Conquest, how the Empire of the same is acquired, and how the Conqueror succeeds.

VIII. Ireland, what Condition it was accounted before the Conquest in reference to the Natives of the same, and whether by making it a Kingdom, they can create a Foreigner as a natural born Subject of England.

IX. Of Aliens in reference to the Transmission of their Goods and Chattels by the Laws of France.

X. Of the Privileges the Kings of England, of old, claimed in the Estates of Jews dying commorant here, and bow the same at this Day stands.

XI. Of Persons born in Places annexed or claimed by the Crown of England, how esteemed by the Laws of the same.

XII. Of Denization, and what Operation it hath according to the Laws of England.

XIII. Where an Alien is capable of Dower by the Laws of England, and whether not, and of the total Incapacity of a Jew.

XIV. Whether a Denizen is capable of the Creation and Retention of Honour, by the Laws of England.

I. The Father and Mother are the Fountain of the Blood natural, and as it is that that makes their Issue, Sons or Daughters, so is it that that makes them Brothers and Sisters; but it is the civil Qualifications of the Blood that makes them inheritable one to the other, and capable of enjoying the Immunities and Privileges of the Kingdom; but that is from another Fountain, viz. the Law of the Land, which finding them legitimate, doth transplant them into the Civil Rights of the Land, by an Act called Naturalization; which does superinduce and cloath that natural Consanguinity with a Civil hereditary Quality,
Of Naturalization.

Quality, whereby they are enabled not only to inherit each other, but also to enjoy all the Immunities and Privileges that mere natural born Subjects may or can challenge.

II. According to the Laws of Normandy the Prince might Senv. lib. 2. naturalize; but such Naturalization could not divest the cap. 12. Defect already vested.

But according to our Law by no way but by Act of Par. 1 Inf. 129. a. liament, and that cures the Defect as if they had been born in England, and no Man shall be received against an Act of Parliament to say the contrary.

Therefore if the Father an Alien has Issue a Son born here, and then the Son is naturalized, the Son shall inherit.

If the Father, a natural born Subject, has Issue an Alien Com. Lit. 129. who is naturalized, the Father dies, the Son shall inherit.

III. Naturalization does remove all that Disability and Incapacity, which is in Aliens in respect of themselves, and so puts them entirely in the Condition as if they had been born in England.

The Relative Terms, as if born in England, is generally used to supply the personal Defect of the Parties naturalized, arising from their Birth out of England, and therefore shall never be carried to a collateral Purpose, nor cures a Disease of another Nature, as half Blood, Illegitimation, and the like; but all Diseases, whether in the Parties themselves, or resulting from the Ancestor, it cures.

Acts of Parliament of this Nature may be so penned, as to cure Defects in the Father or Ancestor, or in the Parties themselves.

If Restitution in Blood be granted to the Son by Act of Coke 3. Infl. Parliament, this cures that Disability that resulted from the Act. Father's Attainder, and that not only to the Son, but also to the collateral Heirs of the Father; the true Reason of this is, because the Corruption of the Blood by the Attainder is only of the Blood of the Father, for the Son's Blood or collateral Heir was not at all corrupted; for the Scope of the Act taking notice of the Father's Attainder, does intentionally provide against, and remove it, for otherwise the same had been useless.

But in Naturalization, without express Words, it takes no notice of the Defects in the Father or other Ancestor, nor removes them.

E e 4 And
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And therefore such Acts of Parliament as take no other notice but of the Person naturalized’s Foreign Birth, the same cures not any Difiability of Trafiition hereditary between the Father, Brother, or any other Ancestor, resulting from the Difiability of them without actually naming of them; As for instance, the Father an Alien, the Son naturalized by Act of Parliament, the Father or any other Ancestor an Alien purchases Lands and dies, the Son shall not take by reason of the Disability in the Father, but there may be Words inferred in the Act that may take away the Impediment.

IV. There are four ways by which Men born out of England, may inherit in England, besides by the Statute of Edward the Third, De Natris ultra mare.

1. If they be born in any Dominion of the King’s, when he is actually King of England.

2. If they be made inheritable by Act of Parliament in England.

3. If they be born Subjects to a Prince holding his Kingdom or Territories as Homager and Leigeman to the King of England during the Time of his being Homager: So the Welsh were inheritable in England before 12 Ed. 1. though Subjects to the Princes of Wales, who were Homagers to the King of England. So were the Scotch in Edward the First’s Time; but when once the Homage determines, then they become Aliens, otherwise Subjects, and upon that Reason Magdulph a Scot appealed from the Judgment of his Prince to Edward the First ut Superiori Domino Scotiae; but then it must be understood where such Prince is Homager subjectioinis, and not only infeodationis, for another King may hold of the King of England an Island or other Territory by Tenure, and not be his Subject.

4. If the King of England enters in a hostile manner the Territories of another Prince or State, and any be born within any of the Places or Guards possessed by the King’s Army, they are looked upon in Law to be within his Protection, and such Person born is a natural born Subject of England; but then he must be of Parents Subjects, not hostile; and therefore a Bastard born in Tangier is capable of purchasing Land in England, if his Parents were Subjects.

V.
V. Those that are born in Ireland, and those that are born in Scotland, are all alike; for their Births are within the King's Dominions, and they are born under the like Subjection and Obedience to the King, and have the like Band of Allegiance *ad fidem Regis*; yet if a Spaniard comes into Ireland, and by the Parliament is there naturalized, though perhaps this may qualify and cloath him with the Title of a natural born Subject of Ireland, yet it has been conceived, that it will not make him a natural born Subject of England.

For the Union of Ireland to that of England, is different from that of Scotland; for the first is dependent as a King-dom conquered, the latter independent. Though Henry the Second, after his Conquest of that Nation, did remit over from England the ancient modus tenendi Parliamentum, enabling them to hold Parliaments, which after was confirmed by King John; yet that was by no other Force than bare Letters Patents. Now when a Nation is once conquered, there remains no Law, but that of the Conqueror; and though he may incorporate such conquered Nations with his own, and grant unto them their ancient Parliamentary Ways of making of Laws; yet the Conqueror can no ways grant unto them a Power, by virtue of such Grant or Confirmation, as to impofe upon his own Country; for he himself before such Conquest, could not make a natural born Subject without Act of Parliament, and most certainly his Conquest adds nothing to his Power, tho' it does increase his Dominion.

The Doctrine with respect to Scotland is entirely altered by the Union since our Author wrote.

VI. Again, Kingdoms that are absolute under one Prince, *ad fidem Regis*, there the Acts of each other are reciprocate, and one naturalized by the Parliament of Scotland, is as naturalized in England, because Scotland is a Kingdom absolute, and yet in the Case of Crawford and Ramsey, *it is there held, that an Alien naturalized in Scotland remains an Alien notwithstanding; but Ireland is a Kingdom dependent and subordinate to the Parliament of England, for the Parliament in England can make an Act to bind Ireland, but not *e contrario*. Now to be a Native of Ireland, is the same as to be born belonging to the Crown of England, but to the King of England. *Vangban 301.*
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Book III.

born in Ireland, but that is by the Laws of Ireland; but to be born in Ireland, and to be the same as to be born in England, must be by the Laws of England: But there is no Law that hath enabled them with such a Power, as to naturalize further than their own Laws extend; but the Law of Ireland does not extend into England, therefore Naturalization in Ireland operates only in Ireland, because of the Failure of Power.

VII. Again, Kingdoms that are conquered, the Empire of the same may be acquired by the Conqueror, only as it is in a King, or other Governor, and then the Conqueror only succeeds in his Right, and no further; or also as 'tis in the People, in which Case the Conqueror hath Empire, so as that he may dispose of it, or alienate it as the People themselves might; for 'tis one Thing to inquire of the Thing, another, of the Manner of the bolding of it, the which are applicable not only to corporal Things, but incorporeal also: For as a Field is a thing possessed, so is a Passage, an Act, a Way; but these things some hold by a full Right of Property, others by a Right of Usufructuary, others by a temporary Right. Again, by the Will of the Conqueror, the Kingdom or Republick that is so conquered, may cease to be a Kingdom or Commonwealth, either so that it may be an Accession of another Kingdom or Commonwealth, as the Roman Provinces, or that it may no ways add hereto any Kingdom or Commonwealth, as if a King waging War at his own Charge, so conquer and subject a People to himself, that he will have them governed, not for the Profit of the People chiefly, but of the Governor, which is a Property of that we call Herile Empire †, not of Civil; for Government is either for the Profit of the Governor, or for the Utility of the Governed; this hath Place among Freedmen, that among Masters and Servants. The People then that are kept under such Command, will be always for the future not a Commonwealth, but a great Family: Hence it is that we may plainly understand, what kind of Empire that is, which is mixed of Civil and Herile, that is, where Servitude is mixed and mingled with some personal Liberty: For if the People are deprived of Arms, commanded to have no Iron but for Agriculture, to change their Lan-
Language and Course of Life, and abstain from the Use of many of their Customs, to be confined * to their own Houses, Castles, or Plantations, nor wander abroad; to be governed by such Laws as the Conqueror should transmit to them †, all which are the Tokens of a Nation by Conquest made subordinate to the Conqueror, and are part He- rite, and part Civil; and though they may remain a King- dom, and absolute within themselves as to the making of Laws, to oblige each other, yet they can no ways impose on their Conqueror; for though that be true, which in Quintilian is alleged on the Behalf of the Thebans, That only is the Conqueror’s which he holds himself; but an incorporeal Right cannot be holden, and the Condition of an Heir and of a Conqueror is different, because the Right pasteth to the former by the Descent, but only the Thing to the last by virtue of the Conquest. But certainly that is no Objection, for he that is Master of the Persons, is also Master of the Things and of all Right which does belong to the Persons: for he that is possessed, doth not possess for himself, nor hath he any thing in his Power who hath not himself; and so it is if he leaves the Right of a Kingdom to a conquered People, he may take to himself some things which were the Kingdom’s, for it is at his Plea- sure to appoint what Measure he will to his own Favour: From hence it is we may observe what sort of Empire that Kingdom is at this Day.

VIII. Now Ireland, before the same became united to the Crown by the Conquest of Henry the Second, the Natives were mere Aliens, and out of the Protection of the Laws of this Realm; yet when once they became a conquered People, and subject to the Crown of England, and united ad fidem Regis, then did arise their Allegiance; but that Union neither made them capable of the Laws of England, nor of their own, till such time as the Conqueror had so declared them: Now what do they desire in order to revive their Government? First, they humbly beg of King Henry the Second, that since he was pleased that they should remain as a distinct Dominion, that their ancient Customs or Usages should not continue; that be would be pleased to or-
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* For at a general Council at Caffels of all the Clergy there, Ann. 1170. Ecclesiastical Laws of England were established, and made of Force in Ireland, Geraldus Cambrensis Topographia Hiberniae, lib. 3. cap. 18. Pat.


Now here is no continuing or reviving their ancient Government, but the introducing a new one, part Civil, and part Herile; nor indeed had they before any such thing as a Parliament there, or general Assembly of the three Estates; for when Henry, the Second went over, there were several Kings or Scepts, who had their several and distinct Assemblies; but when they submitted, this great Assembly of Estates which he constituted, was a collection out of all of them, for their future well Government; so that whatsoever modus of Regimen the Conqueror declared, it was no more than for the well governing of the Place, and making such Laws as were necessary, and proper amongst themselves: But for them to impose, by virtue of an Act of Naturalization, upon an absolute Kingdom as England, without the Consent of the three Estates of the same, surely was never intended, much less effected: The Cafe is both great, dubious, and curious, therefore quare.

IX. By the Laws of France all Persons not born under the Legiance of that King, are accounted Aliens, and if they die, the King is entitled to their Estates; for all shall be seized into his Exchequer, or Finances; but if they make a Will, the Prerogative is disappointed: Yet that extends only to Chattels personal, in which Strangers paffing through the fame, have greater Immunities than Aliens there resident; for Travellers dying without Will, the Heirs
Heirs or Executors shall have Benefit and Possession of their Estates.

X. The like Privilege the Kings of England formerly claimed in the Goods and Estates of the Jews after their Death, if the Heir sued not, and paid a Fine to the King to enjoy them, as by this Record appears.

Juratores super sacrum suum dicunt quod pradatum Messuagium fuit quondam Eliae le Bland, qui, &c. diem clausit extremum, et quia mos est Judaismi quod Dominus Rex omnia bona Caftalla Judaei mortui de jure dare poterit cui veluerit, nisi propinquior bares ejusdem Judaei finem fecerit pro ejusdem; dicunt quod Dominus Rex dixit Messuagium dare Esbeat Am. poterit cui veluerit fine injuria alicui facienda, si et si quod bares dixit Eliae, finem non fecerit pro Catallis ejusdem Eliae babendis, &c.

But whether the same is now used, may seem doubtful; for the Goods of Aliens escheat not at this Day to the Crown, but Administration shall be committed to the next of kin.

XI. By the Laws of France, Flanders, Milan, Savoy, and the Frenche Compte, though possessed by several other Princes, yet the Natives of the same partake in the Immunities with the natural born Subjects of France, and if they die without Will, their Heirs claim their Estates; the Reason given, because, say they, those Countries were never alienated from them, but were always annexed to the Crown of France, who acknowledges them to be his Subjects to this Day.

But in England it is otherwise, for those that are born in Gascoin, Normandy, Aquitaine, and those other Territories which were formerly the Possessions of the Crown of England, in which if any had been born when subject to the same, they would have been natural born Subjects, yet now are esteemed Aliens; and so was the Case vouched by Sbard, of a Norman, who had robbed together with other English, divers of his Majesty's Subjects in the narrow Seas, being taken and arraigned, the Norman was found guilty only of Felony, and the rest of Treason; for that Normandy being lost by King John, was out of the Allegiance of Ed. III. and the Norman was accounted as an Alien.

Note. This was before the Statute of 25 Eliz. 3. it's vouched by Sbard in 40. Aitze pl. 24. See Calvin's Case, 7 Report.
XII. In France the Kings may there Denizze, so likewise here in England, but with this Difference, the Letters of Deniznation by those of France remove the total Disability and Incapacity of the Alien:

But in England the Charter of Donation or Denization is but a temporary, partial, and imperfect Amotion of the Disability of an Alien; for though it puts the Person indenized, as to some Purposes, in the Condition of a Subject, and enables a Transmition hereditary to his Children, born after the Deniznation, yet it does not wholly remove the Disease or Nonability, as to the Points of Descent or hereditary Transmition, and resembles a Person in case of an Attainer; and therefore if he purchases Lands and dies without Issue, the Lord by Escheat shall have the Lands.

And therefore in lineal Descents, if there be a Grandfather natural born Subject, Father an Alien, Son natural born Subject, the Father is made Denizen, he shall not inherit the Grandfather; and if the Father dies in the Life of the Grandfather, the Grand-child (though born after the Denization) shall not inherit the Grandfather, for the Denization does not remove, neither the personal, nor the confessional Impediment, or Incapacity of the Father.

So likewise in collateral Descents; as for Instance, the Father a natural born Subject, had Issue two Sons Alions, who are both made Denizens, and one dies, the other shall not inherit him.

XIII. The like Law in Dower, a Man seized of Lands in Fee, takes an Alien to Wife, and then dies, the Wife shall not be endowed: But if the King takes an Alien to Wife, and dies, his Widow Queen shall be endowed by the Law of the Crown. Edmund, Brother of King Edward the First, married the Queen of Navar, and died, and it was resolved by all the Judges, That she should be endowed of the third Part of all the Lands whereof her Husband was seized in Fee.

A Jew born in England, takes to Wife a Jew born also in England, the Husband is converted to the Christian Faith, purchases Lands, and enfeoffeth another, and dieth; the Wife brought a Writ of Dower, and was barred of her Dower. Quia vero contra justitiam est quod ipsa domino et stat, vel babet de tenemento quod suit viri sui ex quo in versione sua soluit ei adhærere, & cum eo convertere.
Chap. III. Of Naturalization.

XIV. If an Alien be a Dissiector, and obtains Letters of Denization, and then the Dissiector releafe unto him, the King shall not have the Land; for the Release hath altered the Estate, and it is as it were a new Purchase; otherwise it is, if the Alien had been Feoffee of the Dissiector.

And though Aliens are enabled by Charter of Denization to a Transmigration hereditary to their Posterity of Lands, yet a Denizen is not capable of Honour, nor to a Transmigration of the same, without Naturalization by Parliament; for by the Charter of Denization he is made quasi, seu tanguam ligeus; but to be a Member of Parliament, he must be ligeus revera, & non quasi, for by his becoming a Nobleman, he claims the Place of Judicature in Parliament, the which he cannot till naturalized by Act of Parliament, and then he may claim as eligible to the same, or any other: And the same Law is at this Day in France, where no Foreigner can hold any Honour or Dignity in the State or any Part of the Government. 'Tis true, Cardinal Mazarine, who was an Italian, held a great Share in the same, but it was vi, et manu forti, and was the Occasion of introducing a Civil War in that Kingdom; and yet the late Duke of Richmond claimed the Honour or Dignity of a Peer of France, as Lord of Aubigny, but that was a Title rather annexed to the Tenure of that Seigniory than otherwise.

And though his Majesty has been pleased to confer the Dignity of Dutchefs of Portsmouth on the Lady Querouaille, yet the same is rather Honorary than a Title consistenf with the Laws of England: For though his Majesty is the Fountain of Honour, and may call the meanest of his Subjects to the highest of Dignities, yet it is their Civil Qualifications which make them capable of enjoying the Immunities and Priviledges of Peers; but that flows from another Fountain, even the Law of the Realm, which as to Denizens disable them to take so signal a Mark of Sovereignty without Act of Parliament.
C H A P. IV.

Of Aliens, and Tryptals per Medietatem, where allowed, and where not.

I. Of the manner of Aliens obtaining Trials per Medietatem, at the Common Law, and of the Antiquity of the same.
II. Of the making the same a Law universal within this Realm, as to some Persons, afterwards general, as to all.
III. Of the Writ and some Observations on the Summons of such an Inquest.
IV. Of the Opportunity lost or gained by praying this Immunity.

V. Of the awarding of Tales upon Request on such Enquiries.
VI. Where this Immunity does not extend to Aliens, and where it is in Matters Civil and Criminal.
VII. Of the Validity of a Witness Alien, and of an Infidel.
VIII. The Title of a Renegade.
IX. Of the Benefit of the King's Pardon, whether it extends to an Alien, whose Abode is here, but happens to be absent at the Time of the promulgating.

I. TRANATIO bilinguis or per medietatem lingue, by the Common Law was wont to be obtained by Grant of the King, made to any Company of Strangers, as to the Society of Lombards or Almaignes, or to any other Corporation or Company; when any of them were impleaded, the Moiety of the Inquest should be of their own Tongue; this Trial per medietatem in England is of great Antiquity, for in some Cases Trials per medietatem was before the Conquest, Viri duodecim iure Consulti, Anglies sex, Walliae totidem, Anglus & Wallis jus dicunt, and as the Commentator observes, it was called Duodecim virile Judicium.

II. This Immunity afterwards being found commodious to us Islanders, became universal; for by the Statute of 27 E. 3. cap. 8, it was enacted, that in Pleas before the Major of the Staple, if both Parties were Strangers, the Trial should be by Strangers; but if one Party was a Stranger, and the other a Denizen, then the Trial should be per medietatem Lingue: But this Statute extended but to a narrow Compass, viz. only where both Parties were Merchants or Ministers of the Staple, and the Pleas before the Major of the Staple: But afterwards in the twenty-eighth Year of the same King's Reign it was enacted, That all manner
manner of Inquests, which was to be taken or made amongst Aliens & Denizens, be they Merchants, or others, as well before the Major of the Staple, as before any other Justices or Ministers: Although the King be Party, the one half of the Inquest or Proof shall be Denizens, the other half Aliens, if so many Aliens and Foreigners be in the Town or Place where such Inquest or Proof is to be taken, that be not Parties, nor with the Parties in Contract, in Plea, or other Quarrel, whereof such Inquest or Proof ought to be taken; and if there be not so many Aliens, then shall there be put in such Inquests or Proofs as many Aliens as shall be found in the same Town or Places, which be not thereto Parties, as aforesaid; and the Remnant of Denizens, which be good Men, and not suspicious to one Party or other.

By which Statute the same Custom or Immunity was made a Law Universal, although it be in the Case of the King, for the Alien shall have his Trial per medietatem. Vide contra. 

It matters not whether the Moiety of Aliens be of the same Country, as the Alien Party to the Action is; for he may be a Dutch Man, and they Spaniards, French Walloons, &c. because the Statute speaks generally of Aliens.

III. The Form of the Venire facias in this Case, is, De Vicino, &c. quorum una medietas sit de Indigenes, & alte- ra medietas sit de alienigenis natis, &c. And the Sheriff ought to return twelve Aliens and twelve Denizens, one by the other, with addition which of them are Aliens, and so they are to be sworn; but if this Order be not observed, it is holden as a misreturn.

It has been conceived of some, that it is not proper to call it a Trial per medietatem Lingue, because any Alien of any Tongue may serve; but that surely is no Objection, for People are distinguished by their Language, and Medietas Lingue is as much as to say, half English, and half of any other Tongue or Nation whatsoever; nor matters it of what sufficiency the Jurors are, for the Form of the Venire facias shall not be altered, but the Clause of quorum quilibet habeat 4. l. &c. shall be in.

If both Parties are Aliens, then the Inquest shall be all English; for though the English may be supposed to favour themselves more than Strangers, yet when both Parties are

\[21 H. 6. \]
Aliens Trials.

Where an Issue is joined between a Denizen and an Alien, and a Venire facias awarded per Medietatem Linguae; and the Sheriff returns 12 Denizens and 12 others for Aliens, whereas in Truth there are not 12 Aliens nor 6 Aliens returned: In this Case it seems that the Alien may challenge the Array, for otherwise he hath no Remedy, if he shall be concluded by the Sheriffs Return.

But if he doth not challenge, and so they are impanelled, &c. it is sufficient; yet if eight Denizens and four Aliens are impanelled it is ill, because it appears in this Case that the Trial is not per Medietatem.

If a Writ of Inquiry of Damages be awarded in an Action between a Denizen and an Alien, the Inquest shall be all of English, and not Part of Aliens for it is out of the Statute.

IV. If an Alien is party, who slips his Opportunity, and suffers a Trial by all English, the Judgment is not Erroneous; for if he will be so negligent as to slip that Advantage which the Law gives him, it is his Fault; (a) for the Alien, if he will have the Benefit of that Law, must pray a Venire facias per Medietatem Linguae, at the Time of the awarding the Venire facias: But if a neglect of that Opportunity happens, yet if he prays it after the awarding a general Venire facias, the same may be retrieved, so as it be before the Venire be returned and filed, for then he may have Venire facias de novo, or otherwise he cannot, (b) nor can he afterwards challenge the Array for this Cause, if it falls out the Juries are all Denizens; though Stamford seems to be of a contrary Opinion, for the Alien must pray it at his Peril, Heyward against Lipson.

V. If there be a general Venire facias, the Defendant cannot pray a decem Tales, &c. per Medietatem Linguae upon this, because the Tales ought to pursue the Venire facias: But if the Venire facias be per Medietatem Linguae, the Tales ought to be per Medietatem Linguae, as if five Aliens and five Denizens appear on the principal Jury, the Plaintiff may have a Tales per Medietatem; but if the Tales be general de circumstantibus, it hath been held good enough, for there being no Exception taken by the Defendant upon the awarding thereof, it shall be intended well awarded.
If an Alien that lives here under the Protection of the King of England, and Amity being between both Kings, commits Treason, he shall by Force of the Act of 1 and 2 Philip and Mary, be tried according to the due Course of Law by all the Judges of the Common Law, and shall not in that Case be tried per mediatatem Linguae.

But in the Case of Petit Treason, Murder, Felony, &c. Dyer 144. if he prays his Tryal per mediatatem Linguae, the Court ought to grant it.

 handled, Co. Instit. 3. part. fol. 27.

Yet if an Information be exhibited against an Alien, and Moore 57. an Englishman, the Tryal is not per mediatatem, but according to the Common Law.

If an Alien in League bring an Action (if there be Cause) the Defendant may plead in Abatement; but if it be an Alien Enemy he may conclude in the Action.

In an Action for Words the Defendant pleaded Not Guilty, and said he was an Alien born, and prayed Tryal per mediatatem Linguae, which was granted, and at the nisi prius in London, but fix Englishmen and five Aliens appeared, and the Plaintiff prayed a Tales de Circumstantibus per mediatatem Linguae, and it was granted, so there wanted one Alien, and the Record was:

Ideo alias Alienigena de Circumstantibus per Vic. London, 16 Cr. 104. 2. ad requisitionem infra nominati Julii Caesaris, per mandatum Justiciariorum de novo apposito, cujus nomen pannello praeiit. affidavit, secundum formam Statuti in bujusmodi casu nuper editi & provisti; qui quidem Jurator sic de novo appositus, viz. Christianus Dethiok Alienigena exaltus venit, ac in Juratum illam simul cum aliis Juratoribus praeiti. prius impaillatis & juris juratus fuit, &c. It was found for the Plaintiff, and afterwards moved in Arrest of Judgment, That no Tales was to be granted de Circumstantibus, when the Tryal is per mediatatem Linguae, by the Justices of Nisi prius, by the Act of 35 H. 8. because in the Act it is spoken of Freehold of Jurors, and an Alien is not properly laid of any Country, or to have any Freehold; but it was adjudged because the Statute was made for speedy Execution, that it should be expounded favourably, according to the Intent and Meaning of the Makers of the Act; and though in this Case the Tales was prayed by the Plaintiff, where it F f 2 ought
ought to have been *ad requisitionem Defend entis*, yet that should be taken to be but a Misprision, and would be amended.

VI. If the Plaintiff or Defendant be *Executor* or *Administrator*, though he be an *Alien*, yet the Tryal shall be by *English*, because he sueth in *alter duct*; but if it be averred, that the *Testator* or Intestate was an *Alien*, then it shall be *per medietatem Linguae*.

*Sherley* a *Frenchman*, who joined with *Stafford* in the Rebellion, in taking of *Scarborough Castle* in the County of *York*, he being taken, was arraigned in the King's Bench upon an *Indictment of Treason*, and the *Indictment* was *contra legi tantiam suam debitam*; and the *Indictment* was ruled to be good, although he was no Subject, because it was in the Time of Peace between the *Queen* and the *French King*. But if it had been in the Time of *War*, then the Party should not have been *indicted*, but *ransomed*. It was likewise ruled there, that the Tryal was good, although the *Venire facias* awarded in *York* was general, and not *de medietate Linguae*; for such Tryal *per medietatem Lingue* does not extend to *Treasons*, and the *Indictment* ought to omit the Words, *Naturalem Dominam suam*, and begin that he intended *Treason contra Dominam Reginam*, &c. *Hill. 36 Eliz. in B. R. Stephano Ferrara de Gama's Cafe in Dr. Lopez's Treason*.

If an *Alien Enemy* come into this Realm, and be taken in *War*, he cannot be indicted of *Treason*, for the *Indictment* cannot conclude *contra legi tantiam suam debitam*, for he never was in the Protection of the King; and therefore he shall suffer Death by *Martial Law*, and so it was ruled in *13 H. 7. in Perkin Warbeck's Cafe*, who being an *Alien* born in *Flanders*, feigned himself to be one of the Sons of King Edward the Fourth, and invaded the Realm, with intent to take upon him the Dignity; who had his Judgment and Tryal by *Martial Law*, and not by the *Common Law of England*.

VII. The Kingdom of *Ireland* was a Dominion separated and divided from *England* at the first, and came to the Crown of *England* by *Conquest*, in the Time of *Henry the Second*; and the meer *Irish* were as *Aliens, Enemies* to the Crown of *England*, and were disabled to bring any *Action*, and were out of the *Protection of the Laws of this Realm*.
CHAP. II.  Aliens Tryals.

Realm; and five Scepts of the Irish Nation were only enabled to the Laws of England, viz. O'Neil de Ultonia, O Mollogbliin de Media, O Connogbor de Connacia, O Brian de Thelmona, and Mac Morougb de Lagenia, as appears by the Records of the Dominion of Ireland, and several Grants have been made to the Irish, which proves them to be mere Aliens. But afterwards, though the same was a separate and divided Kingdom, yet whilst they were under the Subjection and Obedience of the Kings of England, if High Treason had been committed by an Irishman, he might be arraigned, indicted, and tried for the same within England, and by the Laws of England; and so it was resolved by all the Judges of England in Oruke's Cafe, 33 Eliz. and also in Sir John Perrot's Cafe, that Ireland was out of England, and yet that all Treasons committed there, were to be tried in England, and that by virtue of the Statute of 38 H. 8. cap. 23. Sir Arthur Crobagen, an Irishman, was arraigned, for that he being the King's Subject, at Lisbon in Spain used these Words, I will kill the King (inuendo Dominum Caro-
tum Regem Angliae) if I may come unto him, because he is a Heretick; that afterwards he came into England, and was taken, and tried by a Jury of Middlesex, and was found guilty; and it was held High Treason by the Courte of the Common Law, for his traiterous Intent, and Imagination of his Heart is declared by these Words, and within the Sta-
tute of 25 E. 3. he confessed he was a Dominican Fryer, and Priest in Spain.

Brafon says, that an Alien born cannot be a Witness; but that is to be understood of an Alien Infidel; for the Bishop of Ross, being an Alien born (a Scot) was admitt-
ed to be a Witness, and sworn.

Yet an Infidel may bring an Action against another Mer-
chant, or any other however *, and that without Con-
* 11 H. 8. fol. 4.

VIII. The Testimony of a Renegadoe is not to be re-
ceived at this Day, by the Laws of any Christian Kingdom or Republic; he that hath once renounced his Faith can never be believed, therefore he cannot be a Witness; and so it was ruled where one Domingo de la Cardre, a Ren-
gadoe, who was sworn, and gave Evidence; afterwards a new Tryal being granted, his Testimony was rejected, and he not suffered to be sworn, it being at his Tryal proved, that

Hill. 17, 18. Car. 2. in B. R. Robles ovvfas Langston.
that he was a Spaniard, and a Christian by Birth and Education, and after became a Jew.

IX. If an Alien be Resident, and commits an Offence, he shall have the Benefit of the King's general Pardon; but if he is not in the Kingdom at the Time of the Pardon promulgated, then he loses the Benefit of the same; for he is no otherwise a Subject, but by his Residence here.

C H A P. V.

Of Planters.

I. Of Possession and its Original Right.

II. Of Vacancies natural, which give a Right to Planters.

III. Of Civil Vacancies, how far the same might be possessed.

IV. Of Persons expelled, whether just to deny such to plant in Places vacant.

V. Of Planters, whether they have a firm Right, so as to dispose by Will, or only a Usufruudary Possession.

VI. Of Planters, wanting Things necessary for the Support of human Life, generally considered according to the Laws of Nature.

VII. Wherefore one Man may naturally have more than another, and what Conditions are annexed to such Fortunes, for those that are in Necessity.

VIII. Whence it is, that there was at the Beginning, and is still a tacit Condition of re-assigning or original Rights, in case of extreme or natural Necessity for natural Community.

IX. Of Necessity considered in a Christian Community.

X. Of the Primitive Communism, considered in reference to its Restrictions and Limitations.

XI. Of those things that are dedicated to God, and holy Use, whether subject to the Relief of our Necessity.

HAVING in the first Chapter of this Work discourse of the Original of Property, deducing its Inception to that which we call Possession or Mens, and how the same may be altered by War, it may not seem unnecessary to discourse of the acquiring of Property in the new Discoveries of those vast Immunities of America, which being possessed, seem to deny us legally that Title which we pretend to.

Possession by Law is esteemed the highest Title that Men can pretend to what they enjoy, which is nothing else but positio pedis; as if the Ancients had no other Seal to confirm their Tenures, but the Prints of their Feet: And good Reason,
De Planters.

Reason, seeing the Mind is not able to take up a Place so well as the Body; for many Men's Wills may concur in (wishing and liking) the same thing, but many Bodies cannot concur to the posseffing it: Besides the Mind cannot set an outward Mark on what it likes, that thereby others might be warned to abstain from it, all which the Body properly doth. Abraham and Lot going to plant, declared no more than this, *there was Room or Vacancy enough;* and therefore, without further Examination or Scruple, they knew they might turn to the right Hand or to the left, to possefs what they would to themselves.

II. This Vacancy, which gives us a right to plant, is to be considered in two Respects; 1. Natural: 2. Civil: The first is in things which may be posseffed, but actually are not, neither in Property nor Use; such a Vacancy which is *nullius in bonis,* might be occupied by Switzers, who, as Cæsar faith, would fain have changed their rough Hills for some near Campania; and Defarts or Places uninhabited may be posseffed and appropriated to the first Planter, and that without all Controversy, but especially by those who being expelled from their own Seats or Estates, seek Entertainment abroad: The *Anatabrians* in Tacitus, cry *Tacit. Annal. out, As the Heaven to the Gods, so is the Earth granted to 13. Mortals, and what is void is publick:* Looking up to the Sun and Stars, they did openly as it were inquire of them, *Whether they were pleased in beholding any Ground empty, and without Inhabitants, they should rather cast forth the Sea,* and *overwhelm the Spoilers of the Earth.*

III. Civil Vacancy is where it is not absolutely incorpo-rated, as among the roving *Arabians* and *Moors* in Barbary, and other *Africans* and *Americans,* who possefs one Place to Day, and another to morrow; these by their frequent Returns shew, that they abandon not the Places they remove from, *as derelicta qua quis in bonis amplius numerare non vult;* we cannot say, that their natural or volumptuary Interest in them is no way improved; for Grotius seems to be of Opinion, *that if there be some Defert or barren Ground,* the same ought to be granted to Strangers upon their Request, and, says he, *It is also rightly seized on by them,* giving this Reason, *For that Lands ought not to be eft-ened occupied which are not cultivated; but only as to the Empire, which remains intire to the first People,* they do no Offence.
who inhabit, and manure a Part of the Land that lies ne-
glested.

But we must press this Argument of Grotius very tenderly, left by the same Reason others conclude, that those Estates which are not competently improved, are derelict and occupiable by others, which would introduce perpetual Confusions, and easily persuade every Man that he could husband his Neighbour's Lands better than himself: However, this is a clear Case for all Planters, that those Waifes, or aperi montes, which the Natives make no use of, nor can receive any Damage by their being possessed by others, may lawfully be impropriated by them.

IV. Again, if a Nation or People expelled their own Country, should desire to seek void Places, or at least such as might not absolutely endanger a People into whose Territory they come, they may justly plant; the Reason is, for that Dominion or Property might be introduced with a Reception of such Use which profits such distressed People, and hurts not those; and therefore the Authors of Dominion are supposed willing rather to have it so; but to give away that which we have but a bare Right to, and no Possession, can neither be just in the Giver, nor lawful in the Receiver. We have an eminent Example of this amongst the Turks; for the Tartars having over-run the North of Asia, and many Nations, fled from their own Countries for fear of them, amongst other the Corahines, a warlike People, being thus unkenelled, they had their Recourse to the Sultan of Babylon, and petitioned him to bestow some Habitation upon them; their Suit, according to the Rules of Policy, he could neither safely grant nor deny; to admit them to be Joint-tenants in the same Country with the possessed Turk would turn to a present Inconvenience and a future Mischief, and to deny them, might perhaps edge their Discontents into Desperateness; therefore instead of giving them Gold, he sent them to the Mines, yet so as they took it as a very great Courtesie; for he bestowed on them all the Lands which the Christians held in Palestine, liberally to give away what was none of his, and what the others must purchase before they could enjoy: Sad was the Donation; for by virtue of that Conveyance they became Conquerors of Jeru-

Sal, and of the whole Strength of the Christians.
CHAP. III.  

Of Planters.

V. But admitting that Planters may appropriate a Plantation for their Living, whether such may dispose of the same by Will (we supposing the Possessor having no Heir) for that he might seem to have but an usufructuary Possession, till a Defect had been cast, which then perhaps may turn the same into a Right: † Without all Controversy the very immediate possession and planting creates a right against all, but he that hath Empire there, and that very right, the Party in his Life-time might have actually transferred over to another. Now though the Devil in the Will operates not till after his Death, yet the Gift is made during his Life; according as the French have it, Se desponiller avant que s'en aller coucher, that is, Man first puts off his Cloaths, and then goes to Bed.

‡ As it is consonant to Nature that my Share of Subsistence, which was before uncertain, should now be fixed, so it is necessary, that the Consent which others gave to this at first should stand fixed, especially if there was no Obligation or Declaration at the first to the contrary. Vide Sedulius de Jure Nat. & Gen. ad mens. Heb. id. obligat. quod est ex officio quod legis est: But the Sanction of a Law supposes the Nullity of a State of Nature, not of a Right of Nature.

VI. Again, Persons having arrived in those Territories, and planted, but before they have reaped the Fruits of their Labour, Necessity is found within their Huts, and a Supply of Things for the Support of human Life is wanting, whether such may seek the Means of Subsistence by the Laws of Nature, and in case of Refusal (after Request) force them from their Neighbour Planter? Surely that which is necessary for my natural Subsistence, and not necessary to another, belongs justly to me, unless I have merited to lose the Life which I seek to preserve. There were a Defect in God’s creating our Natures, such as they are, if he did not provide Means to uphold their Beings, according to the natural Faculties which he hath given them. A good Mother divides her Bread among her Children, so as a Morsel may come to each; let us therefore judge this Case by those Rules of Justice, by which we judge other Cases: If a Father in his Will pats by a Child, or names him, but upon false Causes leaves him nothing, he is notwithstanding by the Equity of the Civil Law admitted to a Child’s Part, as legitimate, and may form his Action contra Testamentum inofficium. Men are all akin, and we derive one from another, and to let others settle in our Places, who may justly expect as much due to them, for their natural Subsistence,
Of Planters.

Book III.

as was to those who before went out of the World, to make place for them, yea though they assign them nothing at their Departure.

Man were of all living Creatures most miserable, if he might not during this Life have that Measure, which God would not have an Ox defrauded of; thus hath every Dunghil-Fly a Right to live, and to remain infectile, which besides Existence hath Sense, and may not justly be deprived of that its chiefest Felicity, unless it be importunate to a nobler Creature.

VII. 'Tis very true, that no Man can pretend to share in the Sweat of another Man's Brows, or that the Pains, and wafting of another Man's Life, should be for the Maintenance of any but his own; nay, though it be granted, that those Neighbour-planters, who being settled before us, and having acquired either by Industry, or lawful Donation, the Fruits of other Men's Labours, and consequently must enjoy more Plenty than a new Comer or Planter, yet all that they possess is not properly theirs; for if another by extreme Necessity be perishing, and they have above what they can consume in a natural way, then they have no fuller a Property in that Plenty than Stewards have, and for this Regard they are so called in Scripture: The Earth shall be the Lord's, and the Fulness of it is his, for he made it of his own Matter, and for the Fashion of it used not our Aid; yea, it is his Sun which shall produces, and his Clouds which drop Fatness: We can only pretend the Contribution of a little Pains for that which is our natural Share; so that in plain Reason we may not expect to be otherwise qualified than Stewards, for all that which is not probably necessary for our own Subsistence, or for theirs, who subsist only by us: Wherefore if Lazarus ready to perish (not by Fault, but by Misfortune) had taken Divine his Crumbs, contrary to his Will; yet he had sinned no more than he who takes something which the Lord or Master hath given him, tho' the Steward contradict it: But if it so happen, that both the Planters are in pari necessitate, then melior est conditionis possentis; or, as St. Paul's Words are, when he excited the Churches Charity and Alms, for the Relief of the distressed Members of Christ, Not (quoth he) that other Men be eased, and you burdened.

VIII.
Of Planters.

VIII. The Will of those who first consented mutually to divide the Earth into particular Possessions, was certainly such as receded, as little as might be, from natural Equity; for written Laws are, as near as possible, to be interpreted by that; and therefore in Cases of such Extremities we are not without Examples, of taking the Goods of one to supply the Necessities of many: And therefore at Sea, if Provisions begin to fail in a Ship, every one may be forced to bring out openly, what he laid in for his Passage in particular; so a Ship at Sea, having in Stress of Weather, spent her Sails, Cordage, and Anchors, meeting other Vessels at Sea, may take a Supply of such as shall be wanting; but yet governed according to St. Paul’s Words, So that such taking straights not the other Ship. So when the Sea breaks in upon a Country, we may dig in the next Man’s Grounds to make a Bank, without staying for the Owner’s Permission, yea, tear down any Man’s Hedge, or Fence, when the common Passage is stopped: For in such cases of Necessity human Laws (as is mentioned afore) do not so much permit as expound their natural Equity, and that which Men give to those who are so innocently distressed, who borrow Life only from the Shadows of Death; Et pita se tempestate tenuitur, is not so properly a Charity to them as a Duty; and if he be a Christian that gives, perhaps he doth more Charity to himself than to the Receiver.

IX. The Reason of this Christian Charity or Communion is as far above the natural, as Christ himself was above Nature; this requires an equal Beating of all Pulses, that as Fellow-Members we have a homogenea Sense and Palpitation; we are to divide a Crude of Oil, and a few Handfuls of Meal, with one of Christ’s Flock, with an abandoned Creature; and what can be in more Extremity than a poor Planter in a strange Place, destitute for the present Supports of human Life?

And surely the Violation of this Jus Charitatis is no less than Theft in those, who having extended Fortunes, never defalcate a Gibeonite’s Crust perhaps for a wandering Angel; these steal even the shipwrack’d Man’s Picture from him, which as his whole Inheritance he carried at his Back, to move Compassion, and by the infatiable Sea of their Avarice and Luxury, they wreck him over at Land.
X. But this free primitive Communion had, and hath its Bounds, and its quantum in Contributions, as well as the natural; otherwise it might be fraudulent, and thieving: For they who possess but a little, would contribute it all, on purpose to share equally with those who possess very much, which would introduce a visible Decay and Ruin in all; as Tiberius rightly observed * on M. Hortalus his petitioning an Alms for Augustus Caesar’s Sake, Idleness would increase, and Industry languish, if Men should entertain no Hope nor Fear to themselves, but securely expect other Men’s Relief, idle to themselves, and burdensome to us?

Wherefore in the midst of that primitive Communion, we find that the Apostles went domatim, from House to House breaking of Bread, therefore they even then retained by their Houses in Property; which Property is supposed by the eighth Commandment, as well as it is by Christian Charity: For no Man can steal, but by invading the Right of another; and as for Charity, it is necessary he have something of his own, to be able to fulfil its Commands, and to make a Dole at his Door; and it is very convenient that he give it rather with his own Hand, than by some publick Collectors, For Charity is heated most with the Sense of its own Action. Moreover under the Law, Jews were commanded to love one another as themselves; yet this Command took not away Property then, therefore it takes it not away now, notwithstanding we owe the Use or Usufruct of our Properties to the distressed, though ourselves be at the same time in Distress; just as we are commanded, by the Peril of our own Lives, to endeavour to secure our Neighbours Life, which is yet a Charity more transcendent than the other, by how much Life is above a Livelihood. And though the various Laws of Countries have variously provided Punishment for those, who out of meer Necessity take something out of another’s Plenty; yet that proves not the Act to be Sin, or repugnant to Equity or Conscience, but rather repugnant to the Convenience of that Kingdom or Republick where the Act is committed; and the true Reason of the same is, left thereby a Gap might be laid open to Libertinism; besides, Reason of State, we know, considers not Virtue so much as publick Quiet and Conveniency, or that Right which is ad alterum.

Mat. 7. 11.
XI. We will now consider those things which are God's, which yet are not his in such a strict rigorous Sense, but that they lie open to the Exceptions of our just Necessities; hence that which is devoted as a Sacrifice to him, in case of Necessity, may be made our Dinner, witness the Action of David: Wherefore the Consequence of our Saviour's Answer was very strong, when he defended his pulling the Ears of Corn in another's Field: That if it was lawful for David in his Necessity to eat that Bread, which was provided for the Table of God, then how much more was it lawful for him and his Apostles in their Necessities to take a refreshing out of that which belonged to Man? By the Decretals of Gratian, lib. Synodus Nicaenensis, Can. Synodus Aurelianensis, Can. Concilium Toletanum.

Upon what hath been said, it may not seem an Injury, if a Planter (wanting those things for the Support of human Life) requesting a reasonable Proportion of his Neighbour (having it to spare) with an Intention to repay, if denied, by force to take the same from him; for that Reason which creates a Punishment in a settled Commonwealth, for the like Actions, does in such Places fail.
C H A P. VI.

Of the Jews.

I. Of Considerations touching their various and several Forms of Government down till their total Extirpation.
II. Of their first coming into England, and when.
III. Of their State and Condition after their inhabiting here.
IV. Of their Privileges and other Immunities in reference to their Monies and Charters.
V. Of their Chefs and Stars, and the Manner of Proceedings for the recovering of their Debts.
VI. Of their Charters and Immunities, and of the Confirmation of the same.
VII. Of the Consequences and Inconveniences that fell and were occasioned by reason of their Courts, as to the Ecclesiastical Cognizance.
VIII. Of their Power in erecting of Synagogues, and of the Foundation of the House of Converts, now called the Rolls.
IX. Of their Charter obtained of the Priesthood of all the Jews of England.
X. Of Places totally exempted in England from their Society.
XI. Of the Endowment of their Wives, according to the Law of the Jews, and of their Power of Excommunication of each other.
XII. Of the real State and Condition that they remained in, notwithstanding all their various and several Immunities.
XIII. First, in reference to their Persons, being obliged to wear Badges or Tables on their Breasts, as Notes of Distinction, and having entered the Realm, could not depart without Licence.
XIV. Secondly, as to their Estate, the same being solely at the Will of the King; for at their Death the same escheated; they could not sue without Leave or Licence, the King might requisite or release the same, and have nothing but what was solely at the Direction of the State; continued to all their total Banishment out of the Realm.

I. S INCE the Remainder of that mighty Nation, which of old were elected a People peculiar, are now by him that first chose them, dispersed over the Face of the Earth, and are become the moft politick of Traders now extant, having by their Industry cemented themselves into the principal Revenues and Traffick of the Univerfe, but more especially among thofe Nations who remain in Darkness, and in the Shadows of Death. It might not feem improper to examine how their Condition stood of old in this Nation, what Advantages and Disadvantages they brought to this Realm, and how the Laws of the fame stand in reference to the People at this Day.
At the first the Fathers of their several Families, and the First-born after them, exercised all kind of Government both Ecclesiastical and Civil, being both Kings and Priests in their own Houses, they had Power over their own Families, to blest, curse, cast out, disinherit, and punish with Death, as is apparent by Noah towards Cham, Abraham towards Hagar and Ishmael, Jacob towards Simeon and Levi, &c. In Moses's Days then did this Prerogative of Primogeniture cease; and as Aaron and his Posterity were invested with the Right and Title of Priests, so Moses and Joshua governed the People in a kind of Monarchical Authority.

After Joshua succeeded Judges, their Office was of absolute and independent Authority, like unto Kings when once they were elected; but there were long Vacancies and Chasms (commonly) between the Cessation of the one, and the Election of the other; yea, for the most part they seldom chose a Judge but in the Time of great Troubles and eminent Dangers, which being overpast, he retired to a private Life, much symbolizing with the Roman Dictators, and continued with them according to the Computation of some 329 Years. In the Vacancies or Diftances of Time between Judge and Judge, the greater and weightier Matters were determined by that great Court of the Seventy called the Sanhedrim, in which respect the Form of Government may be thought Aristocratical; Kings succeeded the Judges, and they continued from Saul to the Captivity, that is, about 500 Years.

From the Captivity unto the coming of the Messiah, which is thought to have been 536 Years, the State of the Jews became very confused, sometimes they were ruled by Vicegerents, who had not Supreme Authority in themselves, but as it pleased the Persian Monarchs to assign them; they were called Heads of the Captivity, of which was Zorobabel and his Successors down to Josiah, which were thought to have been of the Posterity of David; so likewise the other succeeding ten chief Governors under Alexander the Great, in the last of those ten, Government departed from the House of David, and was translated to the Maccabees, who descended from the Tribe of Levi, and from them the Sovereign Authority continued to Herod the Ascalonite his Reign, at which Time our Saviour Christ was born according
Of the Jews.

Book III.

Gen. 49. 10. 

ing to Jacob’s Prophecy: The Scepter shall not depart from Judah, nor a Law-giver from between his Feet, until Shiloh (that is, the Messiah) come; which Scepter was given to Judah, that is, to the twelve Tribes from the Time of Moses, and that it was taken fully from them in Herod’s Time, and given to him who was a * Proselyte, and no ways descended from that holy Stock, for such was Herod.

Their Condition since the Extermination of their Commonwealth, and their dispersing over the Face of the whole Earth, after the sacking of their Metropolis, is fully related by Josephus, Eusebius, and others, and what Condition, and how used in most Nations they have been since then, is fully illustrated by Heylin in his Microcosm.

II. When they came first into this Realm is not certain, related by any of the Historians in their Writings of British or Saxon King’s Reigns; however, this certainly appears, that William the Conqueror translated the Jews in Roan, from thence to London, ob numeratum pretium, for a Sum of Money given by them to him, who accordingly appointed them a Place to inhabit and trade in, which being assigned them, they were under the Protection and Patronage of the King, and as his meek Vassals, their Persons and Goods being his alone, and that they could dispose of neither of them without his Licence; and this appears by that ancient Law related by Sir Henry Spelman.

De Judaeis in Regno constitutis.

Spelman Con. cill. 623.

Eisendum est quoque, quod omnes Judæi ubi cumque in Regno sunt, sub tutela et defensione Domini Regis sunt; nec quilibet eum sumum alteri habet se potest subdere sine Regis licentia. Judæi, omnia sua Regis sunt. Quod si quidem detinuerit eis pecuniam suam, perquireat Rex tanquam suum proprium, (or detinuerit eos, del pecuniam eum, perquireat Rex ut bute, tanquam suum proprium) as Sir Henry Spelman renders it.

III. These People, after they had planted themselves in this Isle, and being thus protected, drove on the Trade and Traffick of the same with a mighty Hand, to such a Height, that by the End of King Rufus’s Time, they became powerful, rich and numerous, and to that Degree so zealous
zealous for their Religion, that they not only held open Disputes, but endeavoured to bring over by Monies the poor and needy to be of their Opinion. So high and insolent were they grown up in a short time, which continued till King Henry the Second’s Reign, at which time their Condition became a Grievance to the Nation, by reason of their Oppressions, Murders and Infolencies, which that King taking into Consideration, banished the wealthiest of them, and the rest he fined at 5000 Marks. The most pernicious Act of Murder which they were accused of, was, that generally on a Good Friday they would, if possible, get a Child of Christian Parents, and crucify him in derision of his Religion.

IV. King Richard, after his Return from the Holy Land, taking into Consideration the Necessities and Straits that that expensive Expedition had brought him under, and being desirous to reduce the Monies and Estates of the Jews into such a Condition, as if Necessity should compel him to seize on the whole; but before the same could be done, it was pronounced, that the King declaring his being sensible of the State and Condition of the Jews, a Means might be found out for the setting and peaceable driving of Commerce between the Christians and them; whereupon Judges were appointed to hold Courts touching the Government of the Jews, and their Commerce was appointed out in these Words:

All the Debts, Pawns, Mortgages, Lands, Houses, Rents and Possessions shall be registered, the Jew, who shall conceal any of these, shall forfeit to the King his Body, and the Concealment, and likewise all his Possessions and Chattels; neither shall it be lawful to the Jew ever to recover the Concealment; also six or seven Places shall be provided, in which they shall make all their Contracts, and there shall be appointed two Lawyers that are Christians, and two Lawyers who are Jews, and two legal Registers, and before them and the Clerks of William of the Church of S. Maries, and William of Chimilli shall their Contracts be made, and Charters shall be made of their Contracts by way of Indenture, and one Part of the Indenture shall remain with the Jew sealed with this Seal, to whom the Money is sent, the other Part shall remain in the Common Chest, wherein shall be three Locks and Keys, whereof the two Christians G 8
shall keep one Key, and the two Jews another, the Clerks of William of St. Maries Church and William of Chimilli shall keep the third; and moreover there shall be three Seals to it, and those who keep the Seals shall put the Seals thereon. Moreover the Clerks of the said William, and William shall keep a Roll of the Transcript of all the Charters; and as the Charters shall be altered, to let the Roll be likewise; so every Charter there shall be 3 d. paid, one Shilling thereof by the Jew, and another Shilling by him to whom the Shilling is sent, whereof the two Writers shall have 2 d. and the Keeper of the Roll the 3d. and from henceforth no Contract shall be made with, nor any Payment made to the Jews, nor any Alteration made of the Charters but before the said Persons or the greater part of them, if all of them cannot be present, and the aforesaid Christians shall have one Roll of the Debts and Receipts of the Payment which from henceforth are to be made to the Jews, and the two Jews one, and the Keeper of the Roll one. Moreover, every Jew shall swear upon his Roll, that all his Debts and Pawns, and Rents, and all his Goods and Possessions, he shall cause to be enrolled, and that he shall conceal nothing, as is aforesaid; and if he shall know that any one shall conceal any thing, he shall secretly reveal it to the Justices sent unto them, and that they shall detect and shew unto them all Falsifiers and Forgers of Charters, and Clippers of Monies, when and where they shall know them, and likewise all false Charters.

See Purchas's Pilgrimage, 1. 2. c. 10. § 7.

It's conceived the Star-Chamber was the old Receipt where the Chest for Westminster remained with the Stars of that City, and not so called, as it is mentioned, Ca. 4. Inf. 66. Some of them are now extant in the Treasury of the Exchequer in King John's Reign.

V. This Chest was called Arca Chirographica, or Chirographorum Judæorum, and the Notaries and Registrers of them titled Chirographi Christiani and Judæi Arca Chirographica London, Oxon, or other such City where such Chests were usually kept. All their Deeds, Obligations and Releases were usually called Stars and Starra, Starrum, Star in our Latin Records, from the Hebrew Word (as Mr. Selden observes Seter contracted by the Omission of be) which signifieth a Deed or Contract. These Stars were for the most Part writ in the Hebrew Tongue alone, or else in Hebrew on the one Side or Top of the Parchment, and in Latin on the other Side or Bottom of the Deed after the Hebrew.
CHAP. VI.

Of the Jews.

If any Christian became indebted to any Jew by such Star or Writing put up and referred in his Chest, and paid not his Money at the Day appointed, together with all the Interest where any Interest was referred, then he sued forth Letters by way of Process against him both for the Debt and Interest under the Notary's or Register's Hand, to appear before the Justices especially appointed for the Government and Custody of the Jews, to recover the same; but yet such Jew could not obtain such Licence till he had paid a Fine to the King for the obtaining of such Letters, unus Befantium, viz. Befantium for every Pound, and such Stars were in the Nature of Judgments, upon which Extents were sued forth, and the Lands of the Debtors were seizable, notwithstanding in whose Hands forever they came, after the Star was entred into*. And if it happened, that any Persons denied their Deeds, or any Controversy did arise upon which there was any Tryal, the same was by a Jury half of Christians, and the other of six legal Jews.

Such Stars or Chest-Judgments were assignable to Christians, together with the Extents upon them, and the Assignee might vouch over the Assignor to Warranty in such case. So likewise to the King they might assign over Debts to pay their Taxes.

VI. At this Politick Prince had provided this Means for the discovering of their Estates, so did he from time to time award Commissions to Justices for the Tryal of Causes and Controversies that arose between Christian and Jew, and granted them divers Liberties and Privileges, which afterwards were confirmed by these two ensuing Charters of King John.

Johannes Dei Gratia, &c. Declaris nos conterellis omni 

nibus Judæis Angliæ & Normaniae, libere & honorifice 

habere residential in terra nostra & omnia illa de nostris; 

omnia illa que modo rationaliter tenant in terris & 

sevis, & habitis adatis suis: & quod habeant omnes liber- 

tates & consuetudines suæ fuerit eas habuerunt tempore 

predici Regis H. Abi patris nostrorum, melius & quiros 

honestiibius, & a quælibet orta fuerit inter Christianum 

& Judæum, ille qui alium appellaverit ad queclam tam 

dationendam, habeat Textos, licet legitiimum Christi-

* Vide Fine Rolls 6. Jo- 

ban. m. 17. 

and likewise in H. 3. & 

Ed. 1. 

Fines 9. 

Job. memb. 5. 

Pat. pari 2. 

An. 3. Hen. 3. 

m. 1.

Anglia.
Of the Jews.  

Of the Jews. Book III.


Chart. 2. Joh. 

n. 53. 

confirmatio 

Judaorum de 

Libert. juet.

Of the Jews.

VII. This Court being thus erected for the Government of the Jews, under Colour of the same, there were many evasions found out to avoid the Punishments which they justly acquired for their several Delinquencies; and therefore when any of these Jews were convicted before any of the Ecclesiastical Judges for Offences against an Ecclesiastical Person, or for Ecclesiastical things, or for Sacrilege, or for laying of violent Hands upon a Clerk, or for Adultery with a Christian Woman, the Conunence of the Cause was always avoided by the King’s Prohibition, because (as was alleged) they had their proper delegated Judges who should and ought to have Conunence of such things; so that if a Jew happened to be convened before the Judges assigned for such things, upon denial of the same by the Person alone, the simple Assertion of another Jew and of one Christian without the administering of any Oath, they might have purged themselves, the Proof of the Prosecutor being utterly rejected.

VIII. By the Canon Law no Jew could build or erect a Synagogue; for if he did, the same was seizable into the Crown: The like was so done in the Year 1231, when they had erected and new-built a curious Structure for a Synagogue, the same was taken into the King’s Hand, and dedicated.
dedicated to the Blessed Virgin, and afterwards granted to
the Brethren of St. Anthony of Vienna, and called St. An-
thony's Hospital; but yet an old Synagogue they might
repair.

King Henry the Third finding that many of the Jews
were converted to the Christian Faith, but yet were not-
withstanding persecuted by their Brethren, erected a con-
venient House and Church, with all necessary Accommo-
dations, and called it by the Name of the House of Con-
verts, in which Place, if any would live a retired Life, they
had all Accommodations granted them for their Lives;
which Place continued a House of Alms and Receptacle for
the converted Jews constantly down till 18 Ed. 3. and then
there proved a Failure of such Converts, and the Place be-
came empty and ruinous; whereupon that Prince in the
eighteenth Year of his Reign granted the same House to
other poor People who had nothing to live on, with the Be-
nefit and Accommodation of the Gardens and other things,
and an Alms of 1d. a Day out of the Exchequer to each poor
Person: Which Place one William de Bunstal being made
Guardian of, and likewise at that time Master of the Rolls,
afterwards obtained of that King to annex the same House
and Chapel of the Converts to the Master of the Rolls and
his Successors for ever.

The Constitution of this Society (when it was in being)
was pursuant to the Cannon Law; for by that it was de-
creed, reciting, That in regard the Companies of evil Men
do oftentimes corrupt even the good, how much more then
those who are prone to Vices? Let therefore the Jews, who
are converted to the Christian Faith, have no further Com-
munion henceforth with those who still continue in their old
Jewish Rites, lest peradventure they should be subverted by
their Jewish Society. Therefore We decree, That the Sons
and Daughters of those Jews who are baptized, and that do
not again involve themselves in the Errors of their Parents,
shall be separated from their Company, and placed with
Christian Men and Women fearing God, where they may be
well instructed, and grow in Faith and Christian Manners.
And further by the same Council it was decreed, That if a
Jew should have a Wife converted to the Faith, they should
be divorced, unless upon admonition the Husband would
follow.
X. However these People having got footing for their Persons, soon obtained Licence notwithstanding against the express Canons, not only for the erecting of Synagogues, but also obtained a Charter, whereby was granted to one James of London, a Jewes Priest, the Priesthood of all the Jews throughout all England, to have and to hold it during his Life freely, quietly, honourably and entirely, without molestation, Trouble, or Disturbance by any Jew or Englishman in the Exercise thereof, &c. And in the very close of the same there is also granted, That he should not be imploied for any thing appertaining to him, but only before the King himself, or his Chief Justice. This Charter was made at Roan, from whence the Conqueror first transplanted these People into this Realm.

X. And though they obtained footing in most of the great Places of England; yet some there were who obtained such favour as to be exempted of their Company, as New-castle, to which Corporation it was granted, That no Jew from thenceforth should remain or reside in their Town during the Reign of King Henry the Third, or his Heirs; so likewise they of Southampton, Winchelsea, Wiccomb, Newberry, Berkhamsted, and other Places.

If a Jew died and left an Infant, the House did escheat to the Crown, until the same was redeemed by the Heir at full Age, and in the interim the King might grant the same till he came of Age, together with all his Goods, Chattels, Lands, Tenements and Hereditaments, and then upon Payment of their Fines, they had a special Writ of Restitution awarded to give them actual Possession.

XI. By the Laws of England, if a Man died leaving Issue divers Sons, the Lands descended to the Eldest; but if a Jew dying, leaving Issue divers Sons, after the Fine paid to the King, they all inherit Lands, Goods and Chattels in a kind of Coparcenary*. So likewise by the Law of the Realm, if a Jew died seized of Lands, his Wife could not by the Common Law, bring a Writ of Dower; yet she might bring a Plaint before the Justices assigned for the Jews in the Nature of a Writ of Dower, and should there recover, nevertheless subject to anwer the King a Fine, nay, though the Husband was converted to the Christian Faith†.

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* But that was by the Etablisment of the Justices appointed for the Jews in the Nature of a Writ of Dower, and should there recover, nevertheless subject to anwer the King a Fine, nay, though the Husband was converted to the Christian Faith.
Of the Jews.  

The Power of Excommunication was granted to the Jews to excommunicate any of their own Profession; but the same could not be done by them without Licence.

XII. Notwithstanding all these Privileges and indulged Liberties which were granted to them by those Kings from the Conqueror to that their fatal Year in 18 E. 1. yet they were in no other Condition but most absolute Bond-slaves, and exquisite Villains, for their Names were enrolled in the King's Exchequer for the Jews, and they confined to live and abide only in such Places as those several Kings, or their Justices assigned for their Custody, should prescribe and allot them, from which they might not remove without special Licence, but always be resident, that so the King's Officers might on all Occasions find both them and their Families, and then as often as the King's Pleasure was, were they translated from Place to Place, and not suffered to have any Habitation but where they had a common Chest, and where Taxes were imposed on them, or Debts were owing from them to the Crown, their Persons, Wives, Children, Infants, Families were imprisoned and sent to remote Places and Castles, nay banished, executed, and put to Fines and Ransoms upon all such Occasions as those Kings thought fit; they were sold either Person by Person, or in wholesale, as Bondslaves or Villains in gros by the King, and mortgaged to those who would accept them as a Pledge, or otherwise advance any Monies upon their Assignment.

XIII. And that they might be distinguished from others, they were obliged always to bear a Badge and Table on their outmost Garments, as well Females as Males, wherever they rode or went, to distinguish them from Christians, with whom they were to have no intimate Communion, nor could the Christians be Servants or Nurses to the Jews in any kind, their State and Condition being such, that they were all of them meer Slaves and Servants to the King in one kind or other.

When they had entered the Realm, they were absolutely prohibited to depart without special Licence; the which they hardly and but seldom could obtain, and if they attempted it, the which they sometimes would do to avoid the heavy Taxes that were laid on them, they were imprisoned and put to severe Fines and Ransoms.
CHAP. VI. Of the Jews.

XIV. As for their Real and Personal Estate, it was wholly at the Disposal of the King; for he might seize all their Lands, Houses, Rents, Annuities, Fees, Stars, Mortgages, Debts, Goods and Chattels whatsoever, and sell, grant, release and give them to whom he pleased at his Pleasure.

At their Deaths their whole Estate, both Real and Personal, escheated to the King; neither could their Heirs or Executors, Wives and Kindred have or enjoy them without making Fines, Releafes, and Compositions, with the King for them.

And when they had Occasion to sue or implead any Person upon any Account, Real or Personal, they could not proceed till Licence obtained, which always was upon Fines made; and those very Actions, after they were commenced, he could stay, and the very Debts which they prosecuted for, he might repulse Payment of Principal or Interest, and give what Time he pleased; nay, he could not only lower or lessen the Sums mentioned in their several Charters, but he might release them for ever; and though the King might pardon or release a Debt, yet he might notwithstanding revive the same. And those publick Chefts, the common Repository of all their Fortunes, they often seized and sealed up the same, and disposed what of them they pleased to the King's own Use, notwithstanding their Charters and Grants of Privilege, nay, forced them sometimes to tax and distress one another under Pain of perpetual Imprisonment, Banishment, Confiscation of all their Estates, and the most severe Penalties that could be inflicted, they living purely under an incessant and arbitrary Will of those several Kings; and that which was the more to be admired, that if they turned Christians, they immediately upon their Conversion forfeited all their Estates to the Crown. At length King Edward the First having fought all ways that might be to reform the exorbitant Usuries and Oppressions which they daily committed, did, through the earnest Sollicitation of the Commons, publish an Edict in Parliament for their total and universal Banishment, which accordingly was done, and the King at that Time sent his Letters and Letters Patents to several Seatowns, reciting, that he had prescried a certain Time for their Departure out of the Realm, commanding them not to
its Foundations from the Courage of Men, and from their 
Valour, there is certainly no Vocation in which there is 
so much required as in this; they are not only to encounter 
and strive amongst Men, but sometimes against the four 
Elements together, which is the strongest Proof that can be 
of the Resolution of Man. This hath been the Occasion, 
that some have been of Opinion, that they should open this 
Door to Merchants to attain to Nobility, so as the Father 
and Son have continued in the same Trade, and to suffer 
Noblemen, who are commonly the richest in Estates, to 
practise themselves (without Prejudice to their Condition) 
in this of Commerce; the which would be more honour- 
able unto them than to be Usurers and Bankers, as in Italy; 
or to impoverish themselves in doing nothing but spend, and 
make Consumption of their Fortunes, and never gathering 
or laying up.

The most usual way of buying and selling of Commodi-
ties, between Merchants beyond Seas, is by Bills of Debt, 
or Obligatory, called Bills Obligatory, which are there by 
the Law Merchant Alienable or Assignable, tho' not by our 
Law, as being held as chofes en Action, where no Property 
can pass by Assignment or Alienation, though certainly it 
would be of great Convenience, were they by Act of Par-
liament made assignable, as, by Custom, their Bills of Ex-
change are by Endorsement. Lex mercat. 71.

The Form of such a Bill Obligatory.

I, A.B. Merchant of Amsterdam, do acknowledge by 
these Presents to be truly indebted to the honest C.D. Eng-
lish Merchant dwelling at Middleborough, in the Sum of 
500 l. current Money for Merchandise, which is for Com-
modities received of him to my Contentment; which Sum of 
500 l. as aforesaid, I do promise to pay unto the said 
C.D. (or the Bringer hereof) within Six Months next after 
the Date of these Presents. In Witness whereof, I have 
subscribed the same at Amsterdam, the 10th Day of July 
1704.
Sometimes, and in some Countries, this Bill is sealed. And if such Bill be made beyond Seas, by 2, 3, or more Persons, as having bought a Commodity as Partners together, or taking up Monies together at Interest; wherein they bind themselves all as principal Parties or Debtors, yet every one is bound to pay but his own Part, by the Civil Law, and Custom of Merchants.

Merchants ought to be very wary and circumspect in their dealing as to each others Ability, lest unawares they become Sureties, where not so much is intended. To which End I shall cite a Case in Lex Mercat. cap. 10. fol. 69. which was this. A Merchant being at Frankfort in Germany, during the Mart-Fair there, went into a Merchant's Warehouse to confer of some Business with him, where he found another Merchant of his Acquaintance cheaping a Parcel of Silk Wares of the said other Merchant, to whom this Man (as it seemed) was unknown; whereupon the Seller of the said Silk-Wares took occasion to ask of him, whether he were a good Man, and of Credit, who answered he was. So the Bargain was made, and the Goods delivered to the said Merchant, the Buyer, to the Value of 460 l. For which he made a Bill Obligatory, payable the next Fair following; at which time the Buyer not appearing, Demand was made of the Merchant that gave the Buyer the Character of being a good Man, and of Credit, who in his Defence did alledge, that what he said was but only a bare Character, and at most was but Nudum Pactum ex quo non oritur Actio, and so not bound to pay the same, as having had no Consideration for it: And upon Suit thereupon, he was adjudged to pay the said 460 l. All he had for a Recompense to reimburse himself, was the Buyer's Bill Obligatory made over to him, which proved of no Avail, for that the Buyer became insolvent. Note, this was by the Civil Law and general Law and Custom between Merchants. Though I conceive this would not in any wise avail in our Law, but thought fit to add this Case as a Caution to Merchants. If he had said, he is taken or reputed to be a Man of good Credit, or, I take him to be so, he had been cleared by the Law, and the Custom of Merchants.

Action of Debt was brought by a Concessit forvere, according to the Law Merchant, and the Custom of the City of Bristol, Goddons. 49.
Two Partners one makes a Factor.

Account by one joint Factor for the other.

Sale by a Factor, to one that becomes Bankrupt.

Account against him.

Factor buys generally.

Where Account, not Assumpsit, lies against a Factor. 1 Vent. 113.

Merchants Account Stat. of Limit. pleadable.

If two Men be Partners of Merchandize in one Ship, and one of them appoints and makes a Factor of all the Merchandizes, both of them may have Writs of Account against him, or they may join in one Writ, Tamen quere, Godboli. 90. Fashio & als cont. Dawson, 2 Leon. 75, 76.

One joint Factor may account without his Companion by the Law of Merchants, for Factors are oftentimes dispersed, so as they cannot be both present at their Accounts. Goore & als cont. Dawbney, 2 Leon. 75, 76.

A Merchant delivered Kerbes to be sold in Spain, the Factor sells them to one who becomes a Bankrupt (and there is a Law in Spain, that if the Factor enter this before a Register, and had a Testimonial, that he shall be discharged) we judge here that he shall be discharged. In Capps and Tucker’s Case, 2 Rolls. Repls. 497.

Account for Goods received ad Mercandizandum is good by Ch. Just. Hales. And though declared against as Receptor general, yet shall not anwer other Profits, and shall have Charges as a Bayliff. Burdet cont. Threels. 3 Keble 387.

If a Servant or Factor buy Goods generally, and doth not upon the Contract declare that he only buyeth as Servant or Factor, he is chargeable in his own Right. Degelder against Savory. 2 Keble 812.

In account ’twas held per Curiam, that if a Man delivers Money to his Bayliff or Factor to lay out for him in Commodities, he cannot bring an Assumpsit, but only an Account; for it may so happen, that the Factor hath laid out more Money than he hath received.

Indebito Assumpsit for 1000 l. for Monies had and received, and also an Insinual computassoit, upon Account; the 1000 l. became due; the Defendant pleaded the Stat. of Limitations. The Plaintiff replied that he is a Merchant, and the Proviso and Exception for Merchants Accounts. By Twysden, Rainesford & Moreton absente Keling, stated Accounts between Merchants as this Case is, are not within the Proviso, but only Accounts Currant, Webber cont. Tyrell. 1 Levinz 287. 2 Keble 622. 2 Sand. 124. Where Judgment for the Defendant. Yet the Case of Martin and Delboe, 1 Levinz 298. to the contrary upon an Account stated between Merchants; yet the same Case, 1 Mod. 70. Judgment for Defendant, 2 Keble 674. 1 Vent. 89 & 1 Sid.
Of Merchants.

II. Hence will grow many Advantages both to the publick and private: To the publick, for that they that should deal in Commerce, having Means, Courage, and Sufficiency for this Conduct, it would be far greater in the furnishing more Ships to Sea, and better armed, the which the State at need might make use of for the Safety of the Publick, and would add to the Reputation of the Nation in all Parts, they knowing that an Indignity or Damage offered to such, would require Satisfaction with a strong and powerful Hand; the which they cannot do, who being poor, and having but small Stocks, or what they borrow from Bankers, or are indebted for the Cargo which they send forth, have not the Courage to hazard themselves and their All in an Enterprize that is great. Besides, such who have Honour, Riches, and Courage, would keep up the Reputation of their several Commodities, by not lessenning the Market, whereas the poorer sort, (to pay Customs, Freight, Bills of Exchange, and other contingent and necessary Charges, which accompany the importing and exporting,) are often forced to fall for an inconsiderable Gain; nay, some rather than their Wants should be known, will for ready Money sell their Goods for even less than they cost: All which would be prevented, if such Persons of Value would apply themselves to a prudent Management of the same; for whatsoever Hazard they run, there would be more gotten by such in two, than by the poorer sort in three or four Voyages, and by that means it would be the Occasion of avoiding many Expences, and prevent the importuning their Prince for Places, when perhaps they might get more at Sea in one Year, than in ten at Court. Besides, Experience hath taught, and doth daily manifest, that where the most Substantial have dealt in Commerce, it hath enriched both them and the State under which they lived; and this present Practice of the Venetians, Portuguese, Spaniards and Hollanders, plainly demonstrates.

Stat. 9, 10 W. 3. c. 15. Of ending Suits by Arbitra-

ment. After the 11th of May 1698. All Merchants and Traders and others desiring to end any Controversy, Suit or Quarrel, for which there is no other Remedy but by personal Action or Suit in Equity, by Arbitrament may agree,
that their Submissions of the Suit to the Award or Umpirage of any Person or Persons should be made a Rule of any of his Majesty's Courts of Record, which the Parties shall chuse, and may insert such their Agreement in their Submission, or the Condition of the Bond or Promise; and upon producing an Affidavit of such inserting, and upon Reading and Filing such Affidavit in the Court so chose, the same may be entered of Record, that the Parties shall submit to, and finally be concluded by such Arbitration or Umpirage. And in case of Disobedience thereto, the Party neglecting or refusing, shall be subject to all the Penalties of contemning a Rule of Court, and Proceeds shall issue accordingly, which shall not be stopped or delayed, unless it appear on Oath, that the Arbitrators or Umpire misbehaved themselves, and that such Award was corruptly or unduly procured. In which case such Arbitration or Umpirage shall be void and set aside by any Court of Law or Equity, so as such Corruption or undue Practice be complained of, in the Court where the Rule is made for such Arbitration, before the last Day of the next Term, after such Arbitration made and published to the Parties.

Which Clause may be to the Purpose following, at the End of the Condition, viz. And the abovementioned A. B. doth agree and desire that this his Submission to the Award above-mentioned be made a Rule of His Majesty's Court of King's Bench, pursuant to the late Act of Parliament, for this Purpose provided.

The like for the other Party submitting to such Award.

**Salk. 72. pl.8.** A Submission was to an Award by Bond, and at the End of the Condition of the Bond was this Clause: *And if the Obliger shall consent that this Submission shall be made a Rule of Court, that then,* &c. Upon Motion to make this Submission a Rule of Court, it was opposed, because these Words do not imply his Consent; but if he would forfeit his Bond, he need not let it be made a Rule of Court; yet because this Clause could be inserted for no other Purpose, the Court took these conditional Words to be a sufficient Indication of Consent, and made the Award a Rule of Court.

**Salk. 73. pl. 10. Farrefley8.** A Matter was referred by Consent at *Nisi prius* to the three Foremen of the Jury; and before the Award was made, one of the Parties served the Arbitrators with a Subpoena out of Chancery, which hindered their proceeding to make
make the Award. And the Court held this a Breach of the Rule, and granted an Attachment, Nisi Causa.

Upon a Submissions to the Award of the three Foremen Salt. 73 pl. 11. of the Jury, who made their Award, the Defendant moved to set it aside; because they went on without giving him Time to be heard, or produce a Witness: And Holt Chief Justice said, the Arbitrators being Judges of the Parties own chusing, the Party shall not come and say they have not done him Justice, and put the Court to examine it: Aliter, where they exceed their Authority: however, the Award was examined and confirmed, and the Plaintiff moved for an Attachment for not performing it, and the Court held, that the Non-performance, while the Matter was Sub Judice, was no Contempt: then the Plaintiff moved for his Costs, and that was denied; upon which Powel Justice said, that seeing they could not give the Party any Costs, he should never be for examining into Awards again.

H. bound, himself in a Bond to stand to the Award of Salt. 73 pl. 12. J. S. which Submission was made a Rule of Court. The Party, for whose Benefit the Award was made, moved the Court for an Attachment for Non-performance, which was granted: pending that, he brought an Action of Debt upon the Bond; upon this Serjeant Darnell moved that he might not proceed both ways; and likened it to the Cases, where the Court stays Actions on Attorney’s Bills, while the Matter is under Reference before the Matter. Sed per Curiam, the Motion was denied, and this Difference taken; where the Court relieves the Party by way of Amends in a summary way, as in the Case cited, there it is reasonable; otherwise here, where the Plaintiff has no Satisfaction upon the Attachment, and the Defendant was put to answer Interrogatories.

Attachment lies not for not performing an Award made Salt. 87 pl. 13. upon a Rule of Court without a Personal Demand. Holt Chief Justice remembered the first Attachment of this kind was in Sir John Humble’s Case in Kelyng’s Time, in which, and ever since, a Personal Demand has been thought necessary. In such Cases of Awards, though they be not legally good, an Attachment lies for Non-performance, aliter, if impossible: but the Party is excused as to that Part which is impossible only.
Of Merchants. Book III.

If a Rule be made at Nisi prius to refer a Matter to the three Foremen of the Jury, and that the Plaintiff may either enter up Judgment on the Verdict, or have an Attachment for not obeying the Rule of Court, it being in his Election which way he will execute the Award; and this was affirmed by Mr. Northey, and at the Bar, to be the constant Practice. Tourton and Gould (in the Absence of the Chief Justice) doubted of it, because the Verdict stood still on Record; to which Mr. Northey answered, there could not be a Judgment entered on such Verdict without Leave of the Court: And the Attachment was granted.

III. To engage Persons of Rank and Fortune in Trade, that industrious Nation the Burgundians procured the Association or Incorporation by John Duke of Brabant, of that ancient Company of the Adventurers, Anno 1248. which were then called the Brotherhood of St. Thomas Becket of Canterbury; which being afterwards translated into England, was by Edward the Third confirmed, and by his Successors Henry the Fourth, Henry the Fifth, Edward the Fourth, Henry the Sixth, Richard the Third, and King Henry the Seventh, who gave them the Name of Merchant-Adventurers, and from him successively hath their Charter been confirmed down to, and by his sacred Majesty that now is; and as this Society is of ancient Estimation, so is their Government very commendable.

IV. The Society of the Company trading to the East Indies, differs from others, both as in reference to the Persons and Members, which are at this Day many of the principal Nobility of England, as also for that their Adventurers run all into many Stocks, and is governed and carried on jointly upon Benefit and Loss, they were incorporate, Anno 1599. and since they surrendered their Charter, and accepted a new one, and are incorporated by the Name of Governor and Company trading to the East-Indies; their Adventurers run all into one general Stock, and is governed and carried on upon Benefit and Loss; the same being at this Day, according to the Subscriptions, about four hundred thousand Pounds, which the several Persons subscribers may sell, transfer, and dispose of; but they can no ways take out the same: The Great Stock may be increased, if the Company shall see Occasion to permit it; but they are very cautious of the same, for that the greater the Dividends,
dends, the more Reputation the Stock bears, which above all things is to be maintained; however, directly upon his own Account, no Person can have above Ten thousand Pound Stock there, nor can he have a compleat Title, till he is made a Freeman of that Society; their Returns are very profitable, and of late very rich, and have many Places of great Importance in India, as Masulipatan on the Coast of Coromandel, Bombay, Surat, Fort St. George, Bantam, &c.

V. The Dutch having found Relief in their Distresses from the British Shore, against their powerful Enemy, found also a Pattern to carry on Commerce; they not being wanting in the imitating the Incorporation of a Company, trading to those Places which they possessed in the East Indies; and therefore in the Year 1602. Leave was granted from the States to traffic into those Parts before all others, during the Space of one and twenty Years, the which was granted them, in Consideration of five and twenty thousand Florins, which they promised to pay to the States during the first ten Years. Thus reduced all into one Company, Amsterdam had one Moiety, Middleburg in Zealand a fourth Part, Delft, Rotterdam, Horne, and Enchuyen, had each of them a sixteenth Part, the whole Stock of this Union amounting to upwards of six Millions of Livres, or six hundred thousand Pounds Sterling.

For the Direction of this Trade, and the Interests of the Associates, they have established in either of those Towns, a certain Number of Administrators, at Amsterdam twenty, at Middleburg twelve, in either of the rest seven; and if any one dies, the Chamber of the Place names three, of which either the States-General, or the Magistrate of the Town chuse one.

Those Chambers chuse seventeen among the Administrators, that is to say, Amsterdam eight, Middleburg four, Delft and Rotterdam two, Horne and Enchuyen two; and the seventeen are chosen alternatively, sometimes at Middleburg, sometimes at North-Holland; the which are called together to resolve jointly of how many Ships, and of what Equipage and Furniture they shall make the Fleet, which they mean to send, and to what Fort or Coast they should go. This Assembly is held six Years together at Amsterdam, and afterwards two Years at Middleburg, and then again at Amsterdam; by the Conditions of the Accord the Ships
Ships must return to the same Port from which they parted; and the Spices which are left at Middleburgh, and other Chambers, are distributed amongst them by the Weight of Amsterdam, and the Chamber which hath sold her Spices, may buy from other Chambers.

By this Order* they have hitherto continued this Commerce with Reputation, not as simple Merchants only, but as if they were Sovereigns, they have made in the Names of the States, Alliances with many of the Princes of those Parts; as with the Kings of Siam, Quadoen, Patam Jobor, the Heir of Malaca, Borneo, Achip, Sumatra, Baretan, Jocotia, and other Kings of Java; they have made themselves absolute Masters of the Island of Amboyna, but by what Means?—Where they have a President who governs in their Name; at Banda they have Fort for a Retreat, where they must deliver the Spices at a certain Price; in Ternate they have another a Mile distant from that of the Portuguez; at Magnien they have three; at Motire one; at Gilolo they have taken that which the Portuguez had built; and indeed whatsoever either can, or may confit with their Interest in those Parts, they have ingrossed, and by that means almost the Trade of the whole Spices of the East.

VI. So likewise the most Christian King hath within few Years established such another trading to those Eastern Parts.

And in England we have several others, as that of trading to Turkey, that of Africa to Guinea, and several others, dividing the several Trades, according to the Coasts and Places where they are appointed, forbidding them to intrench or incroach on each other; so likewise to all other his Majesty's Subjects on severe Penalties.

VII. Now it is not the dividing of the Trade into Companies that can answer the Expectation, but it is the dividing the Trade into Companies, where the Places may bear it; as that to the Indies, Turkey, Hamborough, and some others: But to some others, as the Canaries, France, or any of those Places on this Side the Line, it has been conceived the Trade will not answer it, but the same would be better distributed, either into the Trade of voluntary Associations, or single Traders; others perhaps would result into Monopolies, if incorporated; however, the Standard Rule is,
is, to know whether the Trade of the Place will bear a Company, or not.

The Hudson's Bay Company made a By-Law, that if any of their Members should be indebted to the Company, his Stock in the Company should be in the first Place liable to such Debt, and that they might seize and detain it: this was held good in Chancery.

It is Foreign Trade that is the main Sheet Anchor of us Ilanders, without which the Genius of all our useful Studies, and the which renders Men famous and renowned, would make them useless and insignificant to the Publick. When Man has fathomed the Bottom of all Knowledge, what is it, if not reduced to Practice, other than empty Notion? If the Inhabitants of this Island were learned in all the Languages between the rising and setting of the Sun, did know and understand the Situation of all Places, Ports, and Countries, and the Nature of all Merchandize and Commodities, were acquainted with the Order and Motion of all the Stars, knew how to take the Latitude and Longitude, and were perfectly read in the Art of Navigation, to what Purpose would all be, if there were no Foreign Trade? We should have no Ships to navigate to those Countries, nor occasion to make use of those Languages, nor to make use of those Commodities; what would this Island be without Foreign Trade, but a Place of Confinement to the Inhabitants, who (without it) could be but a kind of Hermits, as being separated from the rest of the World; it's Foreign Trade, that renders us rich, honourable and great, that gives us a Name and Esteem in the World, that makes us Masters of the Treasures of other Nations and Countries, and begets and maintains our Ships and Seamen, the Walls, and Bulwarks of our Country; and were it not for Foreign Trade, what would become of the Revenue for Cuf tons, and what would the Rents of our Lands be? The Custom would totally fail, and our Gentlemen's Rents of Thouands per Annum, would dwindle into Hundreds.

VIII. Merchants in England were always favourably provided for by the Common Law of this Kingdom. By the ancient Laws of King Alfred it was provided, quia quodque mercatus et mercaturum ne haud eris Angler et Anger, et que quodque denuerat in terra outer quarante jourz: Mercatorum navigia, vel inimicorum qui-

Mirour, cap. 1.

Sel. 3.

Intr. leges

Etbel. cap. 3.
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Magna

Charta,

sect. 30.

dem quaeunque ex alto (nullis juxta aetatem pestis) in portum
aliquem invendetur tranquilla pace fruantur, quinetiam si
vis aetis fluibus, ad domicilium alicuius illi veste,
ac pacis beneficio donatum novis appulerit inimica, atque istuc naute
configerint, ssi & res illorum omnes augusta pace potius in
IX. Again, by the Grand Charter of our Liberties, they
are provided for in these Words: Omnes Mercatores nisi
publice antea prohibiti fuerint, baving saktum & secum
consulatum, eire de Anglia, & venire in Anglia, & mo
rari, & ire per Anglia, tam per terram, quam per aquam,
ad amendum vel vendendum sine omnibus malis toleratis per
antiquas & relictas consuetudines, prater quam in tempore guerre.
Et si sint de terra contra nos guerrina & tales inveniantur
in terra nostra in principio guerre, atacbiantur sine damno
corporum suorum, vel rerum, donec siatur a nobis, vel a
Capitali Judicierio nostro, quemodo Mercatores terrae nostra
traebantur, qui nihilo inveniantur in terra illa contra nos guerre;
& si nostrui salvi sunt ibi, alii salvi sint in terra nostra.

1. By which it is declared, that all Merchant-Strangers
might be publickly prohibited to trade into this Realm, be
they in Amity, or otherwise.

2. All Merchant-Strangers in Amity, except such as be
so publickly prohibited, shall have safe and sure Conduc in
seven things.

Addit Canon,
Mercatores,
quod non tan
sumus, ne bis qui
serum variam
in hijs co mo
rav agitant,
intellegentum
esset, ut de
futidis perpet
uis; nam et
orum viva ab armis aliena: Est ac sub hoc nomine continentur semul alii officis & arti
fices guerre quemque pacem amat, non bello. Grotius de Jure belli, lib. 3, cap. 11. § 12.

1. To depart out of
2. To come into
3. To tarry in
4. By Water and Land to go in, and
   through
5. To buy and sell.
6. Without any manner of evil Tolls.
7. By old and rightful Customs.

X. But concerning such Merchant-Strangers, whose
Prince is in War with the Crown of England, if they are
found within the Realm, at the Beginning of the War,
they shall be attached, with a Privilege and Limitation,
i.e. without Harm of Body or Goods; with this Limitation,
until it be known to the King, or his Chief
Justice,
Justice, how Merchants of England are used and intreated. That is, the Keeper of the Realm in his Absence. But for Merchant-Strangers that come into the Realm after War begun, they may be dealt withal as open Enemies, it being the Policy of England ever to entertain Merchant-Strangers fairly. In the 18th Year of Ed. I. in the Parliament Roll, it is contain-
ed thus: Cives London petunt quod alienigeni Mercatores fol. 58. expellantur a Civitate, quia dicantur ad depauperationem Civium, &c.—Resp. — Rex intendit quod Mercatores ex- 18 Ed. 2. m. 10. transeunt idonei & utiles magnatibus, &c. & non babet num. 55. Concilium eos expellendi.

However, though great Immunities were granted them, yet they always found Surties that they should not carry out the Merchandise which they brought in.

XI. And at this Day, if they bring in any Merchandise into the Realm, and sell the same for Monies, they are to bestow the same upon other Merchandizes of England, without carrying of any Gold or Silver in Coin, Plate or Masts out, on Forfeiture; the principal Reason of this was as well to preserve and keep the Gold and Silver within the Realm, as for the Increase of the Manufactures; and the same at this Day extends as well to Denizens, so made by Letters Patents, as Strangers; however, he may use the name in Payment to the King's Liege People, without incurring the Penalty of the Statute of 4 H. 4. but yet in 4. Strictness of Law, ought not to receive any Gold in Payment.

XII. All Merchant-Strangers that shall be made Denizens, either by the King's Letters Patents, or by Act of Parliament, must pay for their Merchandize like Custom and Subsidy, as they ought, or should pay before they were made Denizens.

XIII. Every one that buys and sells is not from thence to be denominated a Merchant, but only he who trafficks in the way of Commerce, by Importation or Exportation; or otherwise in the way of Emption, Vendition, Barter, Permutation, or Exchange, and which makes it his living to buy and sell, and that by a continued Affiduity, or frequent Negotiation in the Mystery of Merchandizing: But c. ejiciens 88. those that buy Goods to reduce them by their own Art or ait. Industry into other Forms than formerly they were of, are H h 4 properly
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31. E. 3. 7. Co. on Littlehit. fol. 182. per Legem mercatorum jure accruescendi inter Mercatores pro beneficio commercii locum non habet. (a) Sed quare, for it hath been since held, that the Executor and Survivor cannot join, for the Remedy survives, though the Duty doth not; and therefore on Recovery he must be accountable to the Executor for that. Martin v. Crump. Salk. 414.

In Copartnerships between Merchants, it is not necessary to provide against Survivorship.

If two joint Merchants occupy their Stock, Goods and Merchandize in common to their common Profit, one of them naming himself a Merchant, shall have an Account against the other, naming him a Merchant, and shall charge him as Receptor denarium ipsum B. ex quacunque causa & contraet, ad communem utilitatem ipsum A. & B. provenient, sicut per Legem Mercatorum rationabiliter monstrare poterit, 10 H. 7. 16. a.

So where there are two joint Merchants, and one of them dies, the other shall have Account against their Factor, without the joining of the Executor of the Deceased.

If there be several Owners of a Ship, and they fall out, the Ship notwithstanding this Variance may make one Voyage upon their Common Charge and Adventure, before such time as they shall be so much as heard to dissolve the Partnership; but if after that they cannot agree, he who defiles to be free, is to offer to the rest his Part, at a Price as he will either give or take; which if he will not do, and yet refuses to sett the Ship forth with the rest of the Own-
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ers or Partners, then may rig the Ship at their own Charge, and upon the Adventure of the Refuser, so far as his Part cloth extend, without any Account to be made unto him of any Part of the Profit at her Return. But they are bound to bring her home safe, or to answer him the Value of his Part: But if the Persons Partners, who have the greatest Share or Part of the Ship, refuse to continue the Partnership, with one who hath but one Part, or a small Share in the Ship, who cannot sell or part with his Part at a Price set, without great Loss, nor is of Ability to buy their Parts, then are they all bound to put the Ship to an Appraisement; and so dispose of her by Sale, or setting her forth on the Voyage according to such Appraisement. And if for want of Buyers, the poor Partner can neither avoid the Oppression of the richer, nor yet the Rich satisfy the poor Man, who also may be obstinate and willful, then may the Judge of the Admiralty sentence or decree the same, as he may do in Omnibus aliis bona fidei Aditionibus. Lex Mercat. 120, 121.

In an Action upon the Case against A. the Plaintiff declares upon the Custom between Merchants, &c. that if two Merchants are found in Arrear upon an Account, and they promise to pay it at certain Days, that any or either of them may be charged for the whole singly; and then shewed the Account, that A. and B. were found in Arrear so much, &c. and promised to pay it at certain Days, but did not, and the Plaintiff brought his Action against A. only, and resolved that it lay. 2 Rolls Abr. 702, 703.

If two Merchants have a joint Trade, and one of them accept a Bill of Exchange, if he do not pay it, an Action lies against the other, per Twysen, Stiles 370. but rather against both.

XV. And as the Law establisheth Security for their Estates, so it gives them other Immunities in their Commerce; for if one Merchant draws a Bill of Exchange upon another, be it In-Land or Out-Land, (if it be by way of Exchange) the Acceptance of the Bill by the Party shall bind him to that Party, to whose Use the Money in the Bill is to be paid, and he may bring his Action in his own Name, per Legem mercatoriam.

And so it is, if a third Person, that is a Stranger to the Bill, shall accept the same for the Honour of the Drawer, it shall be void. Vide tit. Ex-
it shall bind him as effectually, as if he, upon whom the Bill was drawn, had accepted it; and this by the Custom of Merchants.

And Courts of Law will take notice of general Customs among them, without being pleaded; as that there is no Right of Survivorship, &c. but not of Special Customs.

Merchandize is so universal and extensive, that it is in a manner impossible, that the Municipal Laws of any one Realm should be sufficient for the ordering of Affairs and Traffick relating to Merchants. The Law concerning Merchants is called the Law Merchant from its universal Concern, whereof all Nations do take special Knowledge, and the Common and Statute Laws of England take notice of the Law Merchant, and leave the Causes of Merchants in many Infinites to their own peculiar Law. As in the 13 Ed. 4. 9. 10. A Merchant Stranger made Suit before the King's Privy Council, for certain Bails of Silk feloniously taken from him, wherein it was moved, that this Matter should be determined at Common Law; but the Lord Chancellor answered, that this Suit is brought by a Merchant, who is not bound to sue according to the Law of the Land, nor to tarry the Tryal of twelve Men. And it was there likewise resolved by all the Justices, that if the Merchandizes of such a Merchant Stranger be stolen and waved by a Felon, the King himself shall not have them as Waifs; otherwise of the Goods of a Common Person. Vid. 27 Ed. 3. cap. 20.

In War, Merchants in an Enemy's Country are privileged from any Violence to be offered them, Grot. de jure belli & pacis, lib. 2. cap. 11. sect. 12.

There are likewise (for the Accommodation of Commerce and Traffick) in all Countries, privileged Ships and Boats serving the Country or the Prince; which have great Prerogatives of being free of Imposts and Customs, and not subject to Arrests. And all Ships are subject to this Service upon Command, and if they refuse, the Ships are forfeited, by the Law Maritime, Lex Mercat. 110, 111.

If a Merchant commit any Offence, for which he is to be amerced, this Amercement shall be Salva Merchandiza sua. For that Trade and Traffick is the Livelihood of a Merchant, and the Life of the Commonwealth, wherein the King and every Subject hath an Interest. Magna Charta, cap. 14. 2 Inf. 28.
By the Statute of the 5 H. 4. cap. 7. Merchants Alien shall be used in this Realm as Denizens be in others.

To call a Merchant Alien Bankrupt is actionable. Trollo p. 198. 1 Bulst. 134.

A Man delivered Kerfies to be sold in Spain, the Factor sells to one who becomes a Bankrupt, and it is a Law in Spain, that if the Factor enter it before a Register, and had a Testimonial, that he shall be discharged. And the Court said we will judge here, that he shall be discharged. 2 Rolls Rep. 497. Capis and Tucker.

Debt upon a Bill by a Merchant to pay Foreign Coin amounting to so much, to be paid upon the Feast of the Purification called Candlemas-day. Upon non est factum pleaded, Verdict for the Plaintiff. Moved in Arrest of Judgment, that the Declaration was not good, because Payment at Candlemas is not known in our Law; yet the Judgment was affirmed, for that amongst Merchants such Payment is known to be on the 20th of February, and the Judges ought to take notice of it, being used among Merchants, for the Maintenance of Traffick, Tel. 135. 1 Brow. 103. Pernison and Pounsey's Case.

XVI. All other Subjects are restrained to depart the Realm, to live out of the Realm, and out of the King's Obedience, if the King so thinks fit; but Merchants are not, for they may depart, and the same is no Contempt, they being excepted out of the Statute of 5 R. 2. cap. 2. And by the Common Law they might pass the Seas without Licence, though not to merchandize.

XVII. It was once conceived, that those Laws, which were prohibitory against Foreign Goods, did not bind a Merchant-Stranger; but it was ruled otherwise: For in the Leagues that are now established between Nation and Nation, the Laws of either Kingdom are excepted; and therefore as the English in France, or in any other Nation in 19 H. 7. Amity, are subject to the Laws of that Country where they reside; so must they of France, or any other Country be subject to the Laws of England, when Resident here; and therefore if a Frenchman imports any Points, Laces, Belts, Hats, and the like, they are forfeited.

XVIII. The marking of Goods is of a great Consequence, as in relation to the settling the Property of the Merchandize in the right Owner; and in Courts of Justice, both the Civil
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Civil Law and the Common Law hath a great Respect to the same, therefore the Use has been, that every particular Merchant hath his particular Mark appropriated to him; by which means, if the Person is of any Value considerable, as in relation to Commerce, his Mark is presently known.

Every Merchant is to set down his Mark upon his Book of Accompt, wherewith his Commodities are marked; so Companies and Societies have their particular Mark: No Merchant ought to use another Mark, without Leave first had of the Party whose Mark the same is; for as Flags are the Ensigns that give Consequence of the Nation whose Ships they are, so Marks are to ascertain the Owners of their Property, without Confusion or Damage: And though to set the Mark of another Man alters not the Property, yet it may work such a Detriment as may be very mischievous; and therefore by the Common Law of England, if J. S. shall maliciously set the Mark of J. D. upon his Goods, to the Intent J. D. shall or may be brought into any Trouble, or put to any Damage or Charge, an Action of the Case will lie against J. S.

The Property of Goods is in the Person to whom the Bill of Lading is consigned, and he may assign it over. But if the Bill be special, as to deliver to A. to the Use of B. the Property is in B.
C H A P. VIII.

Of Factors.

I. Factors, their Qualifications generally considered, in reference to their Employment.

II. Of Commissions, and the Words in the same, that qualify them in their Employment.

III. Of Commissions to Factors that limit their Actions.

IV. Of a Factor that deals for several Merchants, of the Obligations that oblige, and not oblige, each other.

V. Of their Power, considered in reference to the dispensing with the Debters of their Principals.

VI. Where the false Entry, or Unfaithfulness of the Factor subjects him to answer Damage to his Principal; and of the like committed by the Principal, where to answer to the Factor.

VII. Of Goods remitted to Factors, and lost in their Possession, who bears the Misfortune.

VIII. Bills of Exchange drawn on the Factor by the Principal, and accepted, but before Day of Payment the Principal becomes Bankrupt, whether the same must be paid.

IX. Of Freighting of Ships by a Factor, where he is obliged to see the same discharged.

X. Of the general Rules to be used touching the Construction of their Actions.

I. A FACTOR is a Servant, created by a Merchant's Letters, and taketh a kind of Provision called Factorage, such Persons are bound to answer the Loss, which happens by over-passing or exceeding their Commission; but a simple Servant, or an Apprentice, can only incur his Master's Displeasure. The Spaniard hath a Proverb, Quien paga Commission, pierde Provision: He that exceeds his Commission, shall lose his Factorage. But Time and Experience hath taught them to know better things; for now it is, Subolca la paga, His Purse must pay for it. The Gain of Factorage is certain, however the Success of the Voyage proves; and it is the Prudence of Merchants to chuse honest and industrious Persons, for otherwise the Factor may grow rich, and the Merchant poor, the first being sure of his Reward, the latter uncertain of his Gain.

II. In Commissions they now generally insert these Words: Dispose, do, and deal therein, as if it were your own; by which the Actions of the Factor are to be excused, though it turns to his Principal's Loss, because it shall be presumed
presumed he did it for the best, and according to his Dis-
ccretion.

He is barely a Trustee for his Principal; therefore if his
Principal, having Goods in his Hands, owes him Money
by simple Contract, and then dies indebted by Specialty
more than his Assets are worth, the Factor cannot retain
the Goods.

III. But bare Commission to a Factor, to sell and dis-
pose, will not enable him to trust, or give further Day of
Payment; for in the due Execution of his Authority, he
ought on a Sale to receive quid pro quo, and as he delivers
one to receive the other; for otherwise by that means, as
they may trust six Months, they may trust sixteen Years:
Nor by the Virtue of that Clause, of doing as if it were
their own, may they trust out to an unreasonable Time, as
ten or twenty Years instead of one, two or three Months,
which is the customary Time for the like Commodities:
And so it was adjudged, where one had remitted Jewels to
his Factor in Barbary, who disposed of the same to MUL-
leftuck the Emperor, for a Sum certain to be paid at a time,
which being elapsed, the Factor not obtaining it, was
forced to make the same good to his Principal.

IV. Again, one and the same Factor may act for several
Merchants, who must run the joint Risk of his Actions,
though they are mere Strangers to one another; as if five
Merchants shall remit to one Factor five distinct Bales of
Goods, and the Factor makes one joint Sale of them to one
Man, who is to pay one Moiety down, and the other at
six Months End; if the Vendee breaks before the second
Payment, each Man must bear an equal Share of the Los,
and be contented to accept of their Dividend of the Money
advanced.

But if such a Factor draws a Bill of Exchange upon all
those five Merchants, and one of them accepts the same,
the others shall not be obliged to make good the Payment.
Tamen quare de hoc.

V. And as the Authority and Trust reposed in Factors is
very great, so ought they to be provident in their Actions
for the Benefit of their Principals; and therefore if Factors
shall give time to a Man for Payment of Monies contracted
on Sale of their Principals Goods, and after the Time is
elapsed, they shall sell Goods of their own to such Persons
for
for ready Cash (leaving their Principals unreceived) and then such Man break, and become insolvent, the Factor in Equity and Honesty ought to make good the Losses, for they ought not to dispense with the Non-Payment of their Principals Monies, after they become due, and procure Payment of their own to another Man's Loss; but by the Laws of England they cannot be compelled.

VI. Yet if Goods are remitted to a Factor, and upon Arrival he shall make a false Entry at the Custom-house, or land them without the Customer, whereby they shall incur a Seizure or Forfeiture, whatsoever the Principal is endangered, he must inevitably make good, nor will such general Clause help him as above: But if a Factor makes his good Entry, according to the Envoice, or his Letter of Advice, and it falls out the same are mistaken, if the Goods shall be lost, yet the Factor is discharged.

And as Fidelity, Diligence and Honesty are expected from the Factor, so the Law requires the like from the Principal, judging the Act of one to be the Act of the other; and therefore if a Merchant shall remit counterfeit Jewels to his Factor, who sells and disposes them for valuable Considerations, as if they were right, if the Factor receives any Loss or Prejudice thereby, by Imprisonment, or other Punishment, the Master shall not only make good the Damage to the Factor, but also render Satisfaction to the Party damnedified: And so it was adjudged, where one How was possession of three counterfeit Jewels, and having Factors in Barbary, and knowing one Southern, a Merchant, was Resident on the Place, consigns those Jewels to his Factor, who receiving them, intreated Southern to sell those Jewels for him, telling him that they were good Jewels; whereupon Southern, not knowing they were counterfeit, sold them to the King of Barbary for eight hundred Pounds (they being worth really but one hundred Pounds) and delivered the Money to the Factor, who remitted the same to How; the King of Barbary not long after finding himself cozened, committed Southern to Prison till he repaid the eight hundred Pounds. Whereupon Southern coming for England, brought his Action against How, and had Judgment to recover his Damage; for the Principal shall answer for his Factor in all Cases where he is privy to the Act or Wrong: And so it is in Contracts, if a Factor shall buy.
buy Goods on the Account of the Principal (especially if he has used so to do) the Contract of the Factor will oblige the Principal to a Performance of the Bargain.

VII. When Factors have obtained a Provenue or Profit for their Principal, they must be careful how they dispose of the same, for without Commision or Order they must be responsible. Goods remitted to Factors, ought in Honesty to be carefully preserved, for the Trust is great that is reposed; and therefore a Factor robbed, in an Account brought against him by his Principal, the same shall discharge him *. And so it is, if a Factor buys Goods for his Principal, which afterwards happens to be damned, the Principal must bear the Misfortune: But if a Factor shall dispose of the Goods of his Principal, and take Money that is false, he shall there make good the Loss; yet if he receives Monies, and afterwards the same is by Edict or Proclamation lessened in Value, the Merchant, and not the Factor, must there bear the Loss.

Again, in Letters of Credit, the Factor must be sure to see, whether the Commision is for a Time certain, or to such a Value, or not exceeding such a Sum, or general, in which he must have a careful Eye.

Where the Factor defrauds a State of the Customs, which is there a capital Crime in the Factor, and a Forfeiture of the Freight, he shall have the Benefit of the saving.

But if the Customs were due to our King, he is bound to discover them on a Bill brought.

VIII. A Merchant remits Goods to his Factor, and about a Month after draws a Bill on him, the Factor having Effects in his Hands, accepts the Bill, then the Principal breaks, against whom a Commision of Bankrupt is awarded, and the Goods in the Factor's Hands are seized; it has been conceived, the Factor must answer the Bill notwithstanding, and come in a Creditor for so much as he was enforced by reason of his Acceptance to pay.

IX. If a Factor enters into a Charter-party with a Master for Freightment, the Contract obliges him; but if he lades aboard generally the Goods, the Principals and the Lading are made liable, and not the Factor for the Freightment.

The Principal orders his Factor, that as soon as he hath loaded (he having Monies in his Hand) to make an Assurance on the Ship and Goods, if the Ship happens to miscarry
chap. VIII. De Factors.

carry by the Custom of Merchants, he shall answer the
fame, if he hath neglected his CommisJon; so it is, if he
having made an Assurance, and Los$ hath occurred, he
ought not to make a Composition without Orders from his
Principal.

X. Generally the Actions of Factors do depend on Buy-
ing, Selling, Freighting, and all other the Heads that have
been treated in the second Book, by which their Employ-
ment is universal in Matters Maritime and of Commerce;
and the Questions which would arise touching the same, if
treated on, would be in infinitum: However, there are to
be the Standard Rules which should govern their Actions,
viz. Honesty, Faithfulness, Diligence, and observing of
CommisJon, or Instructions, which being considered, and
weighed by those that shall be Judges of their Actions, a
right understanding and determining of the Matters arising
between them and their Principals, would soon be attained.

But those sorts of Factors that have wanted those things,
feldom or never render any other Account, but long and
tedious Chancery-Suits, by which they not only have en-
damaged their very Trade, but seek to marry their Prin-
cipals to a double Affliction, by obliging them to sue either
a beggar, or that which is worse, a naughty Man.

On the other hand, Factors that behave themselves wor-
thily and prudently in the Service of their Principals ought,
after their tedious Service, to be numbered amongst those that
justly challenge that worthy Denomination of Merchant: And
such was he who never made Breach of CommisJon
in the Service of his Principal, but once; that was, when
Wines were committed to him to dispose of, but the Price
(by reason of a Glut) fell, Advice being given to the Prin-
cipal of the same, who immediately in Passion writes to his
Factor to take a Hammer and knock out the Heads; but
the Factor considering (that Leave must be given to Losers
to speak) knew better things, and kept the Goods, and
sold them for their full Value; and when Accompts were
to be made, instead of bringing to the Accompt of Wines,
their Heads knocked out per Order, worthily brought per
contra, sold at their intrinsic Value. Such faithful Minis-
ters, I say, justly deserve that of our Saviour, Well done,
&c. and to be no more called Factors, but Merchants.
CHAP. IX.

Of the Laws of Nature and of Nations.

I. Of the Variety and Contrariness of human Actions, and from whence they spring.

II. Of the Difficulties that happen in the obstructing our Inquisition in finding that which is lawful.

III. Human Laws from whence they flow, and wherefore the Laws of Nature are above ours.

IV. No Man naturally more a Judge than another of Nature's Laws.

V. Nature's Laws are instituted for inward Goodness and Virtue, but State-Laws for Quiet and Repose.

VI. Of Punishment required by Kings against those that violate the Laws of Nature or Nations, though the same touch not them, nor their Subjects, and of punishing an Equal.

VII. Of punishing an Equal, where that Right fails, and the Reasons of the same.

VIII. Subjects ought not to seek Justice in the Territory of another Prince, but in their own, unless the Defendant becomes Fugitive.

IX. Of Kingdoms equal in Power cannot be commanded, but entertained may be, to execute the Judgment of another by the Law of Nations.

X. That such Power of executing the Judgments or Decrees of any Foreign Nation, extends not to those of Life or Honour.

XI. Of executing the Judgments given in a Kingdom absolute, in another that is annexed by Conquest; and of the Difference of that, and one by Union.

XII. Where that Right fails in Plantations, and the Reasons of the same.

I. Plain Reason shews us, that Natural and Mathematical Causes have more Certitude than Civil; for Nature is always uniform and alike in its Operations. Hence Fire always burns, and never wets; a Stone in the Air naturally tends downwards, and never stays in the middle. In Mathematical Causes, ordinarily the Forms are such, as have no middle interposed, as between even and odd there is no medium participation; between a right Line and a crooked, there is no middle fort of Line; thus two and two always make four.

II. But civil and human Actions proceeding from a mutable and various Principal (the Will) cannot always be alike or uniform: And besides the Will within, human Actions without, are subject to different Circumstances, and to infinite Encounters; by reason of which their excessive Number, they cannot be foreseen while Men are making Laws:
Laws: Hence we may understand, wherefore it is said, *Omnis definitio in jure est periculosa*; and that *sumnum jus* at some time may be found *summa Injuria*; as to render a Man his Sword, when he is actually mad, &c. And as Circumstance hath Power to change the Matter, so in the Form of the Action, it leaves in the middle a Latitude, sometimes inclining to one Extreme, sometimes to another.

For Example, betwixt that which by Precept we are commanded ever to do, and that which we are commanded never to do, is placed that which is lawful for us now and then to do, or not to do, in Matters of our own Right, so far as they seem expedient, or not expedient for us: Thus *Joseph* is called a just Man, because he thought of divorcing himself from *Mary*, though upon Circumstances he would not, &c. But that which perplexes us all here is, that this *licium* leans sometimes more to the one hand, sometimes more to the other, sometimes more to that which is absolutely bad; from whence grow Scruples and Doubtings: whether in such Twilight we really participate more of Light than of Darkness; that is, more of good than of bad.

III. Human Laws grow most out of these middle things, *ex mediis licitis*; and upon right Examination we find, that a Man hath nothing else to dispose, for we (poor subordi-nate Vessels) cannot so much as deliberate *de absolutè debitis*, and *absolutè illicitis*, for they were in force before Man, Prince or People were in being, and God himself cannot now alter them, they flowing intrinsically, either from his Sanctity, Wisdom and Justice, as he is a Creator and Governor; or else they flow from Nature, whose Rule (according to God’s making it by that which is in himself) is right Reason and Honesty. This Uprightness of Nature, together with that Obligation we have to be subject to it, was not a Moment after us, and therefore we could not determine any thing about it; for which Cause we have not a legislative Power to alter or diminish any of Nature’s Laws.

IV. St. Paul tells us of those who, without any After-knowledge of God’s revealed Will or Laws to Man, were condemnable by those of Nature alone in the punishing the Breakers thereof. No Man is naturally more a Magistrate Than
Of the Laws of Nature, Book III.

than another, otherwise what meant Cain, when after his Murder he cried, *Whosoever shall find me, will kill me?*

V. And though human Laws remember us of those things, yet it is not as if they gave their original and primary Force of obliging; yea, Reason of State is not as much about inward Piety and Virtue, as it is about publick Quiet and Repose, or those Actions which regard another Man's receiving right or wrong: And hence it is, that great Prodigality is not so severely punished as a little Robbery; and that *malus homo potest esse bonus Civis,* the Reason is, because though he may do himself Wrong in his own Rights, yet he may always do other Men right in theirs; neither is there any clear Reason, wherefore those lesser Sins and Impieties should be punished by any but God, who is wisest to know them, justest to weigh the Merit of them, and powerfulest to punish them.

This is the State of God's, and of Nature's Laws, to which we are all equally obliged; but our floating and circumstantiated Laws are only to give a Rule for an equal and mutual Community in things, which God and Nature gave us to dispose of as we would ourselves.

VI. Hence it is, that Kings, and such as have equal Power with Kings, have a right to require Punishment, not only for Injuries committed against themselves or their Subjects, but for them also that do not peculiarly touch themselves; as where Perkins commit Actions in Violation of the Law of Nature or of Nations, for the Liberty by Punishments to provide for human Society (as hath been already mentioned) was in the Hand of every Man; but after Commonwealths and Courts of Justice were ordained, it resided in the Hands of the highest Powers, not properly as they are over others, *but as they are under none:* For Subjection to others has taken away that Right; yea, so much more honest it is to vindicate other Men's Injuries than our own, by how much more it is to be feared, that a Man in his own, by too deep a Retentment, may either exceed a Measure, or at least infect his Mind; however, this Right of punishing an Equal remains still in those Places where the People remain as in great Families, and not in Cities, or under some Government; and therefore those that have now Possessions of any Parts of the New World, or American Isles, till they have either voluntarily submit-
ted to a Government, or put them and their Discovery into the Hands or Protection of some Prince that may exercise Power, there remains the old and natural Right of punishing for Offences: So likewise where Persons shall be assaulted by Pyrates on the Seas, if they be overcome, they may be immediately executed by the Law of Nature; for otherwise there would be a Failure of Power to punish such: Fide Chap. Pi.

Besides, the old natural Liberty remains in all Places where are no Judgments; so where they are taken and brought to a Port, and the Judge openly refuseth the Tryal of them, or that the Tryal of them cannot be had, without an apparent Detriment and Loss to the Captors, Justice may be done upon them by the Law of Nature.

VII. Two Pyrates resolving to assault and rob the next Vessel they meet with, (not knowing each others Condition or Design) encounter, and the one happens to be overcome by the other; the Question is now, whether the above-mentioned Right so far remains, as that the stronger may execute him whom he hath overcome: Right Reason dictates, that the Evil-doer may be punished, not who should punish him; but that Nature sufficiently sheweth, that it is most convenient to be done by him that is superior; yet doth it not demonstrate this to be necessary, except superior be taken in that Sense, that the Evil-doer be thought to have made himself thereby inferior to any other, and to have it as it were degraded himself from the Order of Men into the Number of Beasts subject to no Man, and such are Pyrates, who have no other Denomination but Night-wolves, or Beasts of Prey. By Nature it is ordained, that the better command the worse: And Aristotle saith, The worse are provided for the Use of the better, as well in Naturals as in Artificialia. It follows hence, that at least a guilty Person ought not to be punished by another equally guilty, to which Purpose is that Saying of Christ, Whosoever of you is without Sin (that is such Sin) let him throw the first Stone. Pertinent is that saying, The Sentence can have no Authority, where he that judgeth is to be condemned: From whence it follows, that the right of punishing in such cases, at such time ceases.

VIII. On the other hand, Subjects that have just Cause of Action, and inhabit under their own Sovereign, ought not to wave his Justice, and fly into the Territory of ano-
Of the Laws of Nature, Book III.

ther, but ought to seek it in their own, unless the Defendant becomes Fugitive. One Richard Hieron being a Merchant of London, and Liege-man of the King, and born in England, commenced a Suit against J. Walden Major of the Staple of Calais, and other Merchants of the Staple, and caused them to be arrested in Flanders in the Court of the Duke of Burgundy, held in Bruges, for certain Injuries supposed by them to be made within the Jurisdiction of the King of England at Calais, and after the Defendants did appeal to the Parliament at Paris, and were there dismissed by a Judicial Sentence, for that they had no Cognizance or Ground to inquire or examine Matters committed within the Jurisdiction of the King of England, and by his Subjects there inhabiting in a Foreign Court; the Record does make mention, that this was an Act so derogating from the Law, and of so high a Contempt, that it was enacted, *Quæ hæc est Proclamation fera, luy commandant a succurrar son dictation, & que s'il ni appes que les dits Defendants jous del Ream d'Angleterre per alcun matter determinable under the Jurisdiction and Obedience of the King of England, qu'on il ad Jurisdiction.* The Judgment given—*bonque il fera, qu'il shall be put out of the Protection of the King of England, and forfeit all his Lands, Tenements, Goods and Chattles, and that no Pardon shall be to him available.*

IX. Yet Kingdoms which are equal in Power, and having no Dependence on each other, cannot be commanded nor corrected of another; but if there be a Question, to execute the Decree or Judgment of one in the Territory of the other, there may issue forth a Commission of Entreay under the Seal of that Court where the Judgment was given, or at least under the Great Seal of the Prince, directed to the Judges in that Place where the Defendant is resident, and the Judge to whom the said Commission is directed may award Execution, according to the Laws of Nations: And so it was adjudged, where one having recovered a Debt before the Governor of Friesland, the Defendant upon that fled for England, the Governor, at the Request of the Plaintiff, issued forth his Commission of Reuest, directed *Omnibus Magistratibus infra Regnum Angliae, rogans, to make Execution of the said Judgment, upon which the Judge of the Admiralty in England issued forth an Execution of that Sentence,*
HAP. IX. and of Nations.

ntence, and the Defendant was taken, upon which he v. Lord Raymmond's Rep. ought his Habeas Corpus, and adjudged the Sentence well executed by the Laws of Nations, and according to the Law of this Realm.

So likewise, if a Dutchman takes up Goods at the Port of London, and gives a Note under his Hand for the Payment of the same, and then flies into Holland, the Vendor may apply himself to the Lord-Mayor of London; and upon roof of the Delivery, and the Sale of the Goods, the Lord-Mayor making a Certificate of the same, and sending under the City-Seal, directed, as above, they of Holland ill and do execute the same upon the Party.

Herein this last Case differs from the first; for by the former, if there should fall a Question about the Interpretation of the Judgment or Sentence, the same cannot be one, for they are not to examine the same; and the Reason is, left the Stranger be induced at another time to do the like, and so dissolve the Judgments whereof they should enmand the Execution, the which would be done more through Jealousy of the State, than for any Injustice in them: Besides, the Judgments or Sentences, which are Matters of Record, and of the greatest Security in a Kingdom, the Presumption that they were justly given, shall always be understood.

X. But in the latter, the same may be examined, that is, the Merchant may be heard as to his legal Defence, either to the lessening or discharging the Debt or Damage, but against the Testimony certified, no Objection can be made, but the same is admitted, as legally proved.

But if there be a Question of Honour or Life, there they may not execute the Judgments of Foreign Judges, especially if they have not known the Merit of the Causes, or seen the Informations, or heard the Witnesses; but more especially in England, for there can in no respect whatsoever the Life of a Man (let his Offence be never so heinous) be brought to Punishment without a legal Tryal, * and that by the producing of Witnesses vivao voce to his Face; yet Princes for the Respect they bear each other, and for the good of Justice, though they cannot at the bare Request of the Judges of another Prince, put them to Death; yet they may for exemplary Punishments (which ought to be made upon the Places where the Fact was committed) yield the

natural
Of the Laws of Nature, Book III.

natural Subject to his natural Prince, unless the Prince, to whom the Fugitive is fled, finds that he is unjustly pursued; for in such Cases he is not bound to yield them; yea, he is forbidden by the Law of God to restore a Bond-man, which is fled into another Man's House to avoid the Fury of his Master.

XI. And as the same is in Cazes Foreign, so likewise in those Estates that are under the Crown of England; and therefore if a Man recovers against * J. S. in the King's Bench in England, and then the Defendant flies over into Ireland, the Judgment may be certified over into the Chancery in Ireland, and they may by Mitimus send it into the King's-Bench there, and they may award Execution, or otherwise the Party may bring his Action of Debt on the same; so the like has been done for Decrees given in the Chancery in England, which have been exemplified under the Great Seal, directed to the King's Lieutenant, for the putting the same in Execution there; but in no Case a Judgment given in England may be certified over under any other Seal but that of the Great one.

But in Scotland it is otherwise; for that is a Kingdom absolute, and not like Ireland, which is a Crown annexed by Conquest, but the other is by Union; and though they be united under one Prince ad eadem, yet their Laws are distinct, so as if they had never been united; and therefore the Execution of the Judgments in each other, must be done upon Request, as above, and that according to the Laws of Nations.

XII. But Colonies or Plantations, which are reduced into the Condition of great Families, have not this Right of Requesting, for they are governed by the Laws * prescribed by the Sovereign of the same, who may set Jurisdictions, and make them Places privileged, not to have the Persons attached or arrested in any other Places, but within their own Bounds, so likewise upon their first forming or Institution, may so declare, that for any Debt or Contract made or done in any. Place but in that of the same Plantation, they shall not be impleaded; and therefore in Virginia at this Day, if a Man contracts a Debt in England, and flies to the same, he cannot be there impleaded: But if a Man takes up Goods, and carries the same over thither, there he may be sued in the Place; so likewise if it can be proved he carried over the
The Money borrowed, and this amongst others of the Laws and Constitutions of those Plantations, is preserved invi-
ably, the same being as it were a Pledge and general Safety,
which is given to those Inhabitants that shall resort thither,
and there plant themselves for the Good of the Place; and
although those that thither fly, by reason of great and unre-
parable Losses, have contracted Debts far beyond their
Ability to satisfy, a Failure of which, in Strictness of Law,
may (if the Creditor pleases) oblige their Bodies to Impris-
onment; yet doth it not thence follow, that the same ought
be exacted; for though the Body of Man may gratify
the Revenge of the Creditor, yet it never can pay the Debt;
wherefore if those Ends by themselves in a moral Estima-
tion be not necessary, or if other Ends on the opposite Part
occur, not less profitable or necessary, or if the Ends pro-
posed by Imprisonment may be attained any other way, it
will then follow, that if there be nothing of Obligation on
the Debtor's Part, to render himself a Prisoner to the Cred-
itor, that then if the same can or may be avoided by flight,
the same in Conscience may be done; according to that of
Cicero, It was not fit perhaps to dismiss him being brought to Ad Quaestum
Judgment, but that he should be inquired after, and brought Traat. 1. 21.
of Judgment, was not necessary.

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