

Property and Civil Rights

lived with a man in a relation of concubinage during his life, asserts a claim, after his death, to have been his wife according to the requirements of the common law.

Common lawyer. A lawyer learned in the common law. This term is now generally obsolete.

Common market. An economic union established in 1958 which originally included Belgium, France, Italy, Luxembourg, the Netherlands and West Germany. Its official title is European Economic Community.

Common nuisance. A nuisance is a "common nuisance" or a "public nuisance", the terms being synonymous, where it affects the rights enjoyed by citizens as part of the public, that is, the rights to which every citizen is entitled. *Dahlstrom v. Roosevelt Mills, Inc.*, 27 Conn.Sup. 355, 238 A.2d 431, 432. See also *Nuisance*.

Common pleas court. See *Court of Common Pleas*.

Common property. Property held by two or more persons in common with each other; e.g. as tenants in common. Portion of rented premises over which landlord retains control but which may be used by tenants such as hallways, stairways, etc. See also *Community property*.

Common recovery. In conveyancing, a species of common assurance, or mode of conveying lands by matter of record, formerly in frequent use in England. It was in the nature and form of an action at law, carried regularly through, and ending in a recovery of the lands against the tenant of the freehold; which recovery, being a supposed adjudication of the right, bound all persons, and vested a free and absolute fee-simple in the recoverer. 2 Bl.Comm. 357. Common recoveries were abolished by the statutes 3 & 4 Wm. IV, c. 74.

Common right. Right derivative from common law. *Strother v. Lucas*, 37 U.S. (12 Pet.) 410, 437, 9 L.Ed. 1137. Right peculiar to certain people is not a common right. *Perdue v. Zoning Bd. of Appeals of City of Norwalk*, 118 Conn. 174, 171 A. 26, 28.

Commons. The class of subjects in Great Britain exclusive of the royal family and the nobility. They are represented in parliament by the house of commons.

Part of the demesne land of a manor (or land the property of which was in the lord), which, being uncultivated, was termed the "lord's waste," and served for public roads and for common of pasture to the lord and his tenants. 2 Bl.Comm. 90.

Squares; pleasure grounds and spaces or open places for public use or public recreation owned by towns or cities—in modern usage usually called "parks."

Commons, House of. See *House (House of Commons)*.

Common stock. Class of corporate stock which represents the ownership of the corporation. Equity stock which participates in the profits by way of dividends after preferred stockholders have been paid their dividends. Last to share in property of corporation on dissolution. Normally have voting rights. See *Stock*.

Common tenancy. Type of tenancy in which tenants hold property in common without right of survivorship. May be holding of unequal shares among tenants. Such tenancy is subject to partition. See also *Tenancy*.

Common thief. One who by practice and habit is a thief. An adjudication of a person which may be made after a person has been convicted more than once of larceny. It generally carries an additional sentence beyond that for larceny. Sometimes known as common and notorious thief.

Common trust fund. One composed of funds contributed by estates, trusts and guardianships, maintained and operated by a bank or trust company for exclusive use of its own estates, trusts and guardianships, under permission of law of state in which it is located and according to rules and regulations promulgated by Federal Reserve System. *Mechanicks Nat. Bank of Concord v. D'Amours*, 100 N.H. 461, 129 A.2d 859, 862. Type of trust fund in which funds of many persons are commingled for purposes of economy of administration and counselling and in which a bank or other financial institution is trustee; regulated almost entirely by statute. Several states have adopted the Uniform Common Trust Fund Act.

Common wall. See *Party wall*.

Commonwealth. The public or common weal or welfare. This cannot be regarded as a technical term of public law, though often used in political science. It generally designates, when so employed, a republican frame of government,—one in which the welfare and rights of the entire mass of people are the main consideration, rather than the privileges of a class or the will of a monarch; or it may designate the body of citizens living under such a government.

Sometimes it may denote the corporate entity, or the government, of a jural society (or state) possessing powers of self-government in respect of its immediate concerns, but forming an integral part of a larger government (or nation). In this latter sense, it is the official title of several of the United States (as Pennsylvania, Massachusetts, Virginia, and Kentucky), and would be appropriate to them all. In the former sense, the word was used to designate the English government during the protectorate of Cromwell.

Any of the individual States of the United States and the body of people constituting a state or politically organized community, a body politic, hence, a state, especially one constituted by a number of persons united by compact or tacit agreement under one form of government and system of laws. *Detres v. Lions Bldg. Corp.*, C.A.III., 234 F.2d 596, 600.

See *Government; Nation; State*.

Commonwealth court. In Pennsylvania, the Commonwealth Court has original jurisdiction of all civil actions or proceedings against Commonwealth or its officer (except habeas corpus or postconviction relief not ancillary to its appellate jurisdiction, and eminent domain); all civil actions or proceedings by Commonwealth or any officer, except eminent domain; and under numerous specified regulatory acts. Its original jurisdiction is exclusive, except in civil actions or proceedings brought by Commonwealth or its officers, which is concurrent with common pleas.

→ **Justice, n.** Title given to judges, particularly to judges of U.S. and state supreme courts, and as well to judges of appellate courts. The U.S. Supreme Court, and most state supreme courts are composed of a chief justice and several associate justices.

→ **Proper administration of laws.** In Jurisprudence, the constant and perpetual disposition of legal matters or disputes to render every man his due.

In Feudal law, jurisdiction; judicial cognizance of causes or offenses. *High* justice was the jurisdiction or right of trying crimes of every kind, even the highest. This was a privilege claimed and exercised by the great lords or barons of the middle ages. *Low* justice was jurisdiction of petty offenses.

See also **Miscarriage of justice; Obstructing justice.**

→ **Right.** As a noun, and taken in an abstract sense, means justice, ethical correctness, or consonance with the rules of law or the principles of morals. In this signification it answers to one meaning of the Latin "*jus*," and serves to indicate law in the abstract, considered as the foundation of all rights, or the complex of underlying moral principles which impart the character of justice to all positive law, or give it an ethical content. As a noun, and taken in a concrete sense, a power, privilege, faculty, or de-

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**REVISED STATUTES
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 **VOLUME 9**

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CHAPTER P.29

Property and Civil Rights Act

CHAPITRE P.29

Loi sur la propriété et les droits civils

Rule of deci-
sion

1. In all matters of controversy relative to property and civil rights, resort shall be had to the laws of England as they stood on the 15th day of October, 1792, as the rule for the decision of the same, and all matters relative to testimony and legal proof in the investigation of fact and the forms thereof in the courts of Ontario shall be regulated by the rules of evidence established in England, as they existed on that day, except so far as such laws and rules have been since repealed, altered, varied, modified or affected by any Act of the Imperial Parliament, still having the force of law in Ontario, or by any Act of the late Province of Upper Canada, or of the Province of Canada, or of the Province of Ontario, still having the force of law in Ontario. R.S.O. 1980, c. 395, s. 1.

Règles appli-
cables

1 Sauf si une loi du Parlement impérial encore en vigueur en Ontario ou une loi de l'ancienne province du Haut-Canada, de la province du Canada ou de la province de l'Ontario encore en vigueur en Ontario les a abrogées ou modifiées, les lois et les règles de preuve établies en Angleterre et en vigueur le 15 octobre 1792 constituent respectivement la règle applicable pour résoudre les litiges portant sur la propriété et les droits civils et la règle régissant la preuve légale, notamment les témoignages, dans l'examen des faits, et les formules y afférentes devant les tribunaux de l'Ontario. L.R.O. 1980, chap. 395, art. 1.

2002



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OF
ONTARIO, 1980

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ACTS OF THE LEGISLATURE OF ONTARIO, PUBLISHED
UNDER THE AUTHORITY OF THE STATUTES
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APPENDIX A

Certain Imperial Acts and Parts of Acts relating to Property and Civil Rights that were Consolidated in The Revised Statutes of Ontario, 1897, Volume III, pursuant to Chapter 13 of the Statutes of Ontario, 1902, that are not repealed by the Revised Statutes of Ontario, 1980 and are in force in Ontario subject thereto.

R.S.O. 1897, CHAPTER 322

An Act respecting Certain Rights and Liberties of the People

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

* * * * *

2. No man shall be taken or imprisoned nor prejudged of life or limb, nor be disseized or put out of his freehold, franchises, or liberties, or free customs, nor be outlawed, or exiled, or any otherwise destroyed, unless he be brought in to answer and prejudged of the same by due course of law; nor shall the King pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land; and the King shall sell to no man, nor deny or defer to any man, either justice or right. 25 Edw. I, (Magna Carta), c. 29; 5 Edw. III, c. 9; 25 Edw. III, st. 5, c. 4; and 28 Edw. III, c. 3.

Imprisonment, etc., contrary to law.

Administration of Justice.

3. It is provided, agreed, and granted, that all persons, as well of high as of low estate, shall receive justice in the King's court; and none from henceforth shall take any revenge or distress of his own authority, without award of the King's court, though he have damage or injury, whereby he would have amends of his neighbour, either higher or lower. 52 Hen. III, (St. of Marlbridge), c. 1.

Of wrongful distresses, or defiances of the King's courts.

TABLE OF BRITISH REGNAL YEARS

Sovereign	Accession	Length of reign
William I	Oct. 14, 1066	21
William II	Sept. 26, 1087	13
Henry I	Aug. 5, 1100	36
Stephen	Dec. 26, 1135	19
Henry II	Dec. 19, 1154	35
Richard I	Sept. 23, 1189	10
John	May 27, 1199	18
Henry III	Oct. 28, 1216	57
Edward I	Nov. 20, 1272	35
Edward II	July 8, 1307	20
Edward III	Jan. 25, 1327	51
Richard II	June 22, 1377	23
Henry IV	Sept. 30, 1399	14
Henry V	March 21, 1413	10
Henry VI	Sept. 1, 1422	39
Edward IV	March 4, 1461	23
Edward V	April 9, 1483	—
Richard III	June 26, 1483	3
Henry VII	Aug. 22, 1485	24
Henry VIII	April 22, 1509	38
Edward VI	Jan. 28, 1547	7
Mary	July 6, 1553	6
Elizabeth	Nov. 17, 1558	45
James I	March 24, 1603	23
Charles I	March 27, 1625	24
The Commonwealth	Jan. 30, 1649	11
Charles II	May 29, 1660	37
James II	Feb. 6, 1685	4
William and Mary	Feb. 13, 1689	14
Anne	March 8, 1702	13
George I	Aug. 1, 1714	13
George II	June 11, 1727	34
George III	Oct. 25, 1760	60
George IV	Jan. 29, 1820	11
William IV	June 26, 1830	7
Victoria	June 20, 1837	64
Edward VII	Jan. 22, 1901	9
George V	May 6, 1910	25
Edward VIII	Jan. 20, 1936	1
George VI	Dec. 11, 1936	15
Elizabeth II	Feb. 6, 1952	—

†

ACTS AND ORDINANCES OF THE
INTERREGNUM,

1642—1660.

COLLECTED AND EDITED

BY

C. H. FIRTH and R. S. RAIT

FOR THE STATUTE LAW COMMITTEE.

VOL. I.

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30TH JANUARY, 1649.

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London, or any two of them shall and are hereby Authorized, and required to commit to Prison all such persons, as after due proofs upon oath to be made unto them, or any two of them, of any person that shall make any disturbance at any Election contrary this Ordinance, and to levie the said Fine of two hundred pounds by Distresse, and sale of the Goods of the person so offending contrary to this Ordinance.

Penalty for making disturbance at elections.

An Ordinance concerning the Election of Common-council men and other Officers in the City of London.

[20 December, 1648.]

Whereas there is an Ordinance of the Lords and Commons assembled in Parliament, bearing date the 18 December, 1648. for the choosing of the Common Council-men, and other Officers within the City of London and the liberties thereof for the year ensuing. The said Lords and Commons do further Declare and Ordaine, and bee it hereby Ordained by the said Lords and Commons, that no person whatsoever that subscribed, promoted or abetted; any engagement in the Year 1648. relating to a personall Treaty with the King at London, shall be elected chosen, or put into any of the Offices or places expressed in the aforesaid Ordinance under the penalty contained in the same upon the other excepted persons, and to bee levyed according to the provision of the said Ordinance; and the Lord Maior for the time being is hereby required that this Ordinance with the other bee published at all Elections, and strictly and punctually observed according to the true intent and meaning hereof.

Ord. 18 Dec 1648, recited.
Further persons disqualified

1648/9.

→ An Act of the Commons of England Assembled in Parliament, for Erecting of a High Court of Justice, for the Trying and Judging of Charles Stuart, King of England.

[6 January 1648-9.]

Whereas it is notorious, That Charles Stuart, the now King of England, not content with those many Encroachments which his Predecessors had made upon the People in their Rights and Freedoms, hath had a wicked Design totally to Subvert the Ancient and Fundamental Laws and Liberties of this Nation, and in their place to introduce an Arbitrary and Tyrannical Government, and that besides all other evil ways and means to bring this Design to pass, he hath prosecuted it with Fire and Sword, Levied and maintained a cruel War in the Land, against the Parliament and Kingdom, whereby the Country hath been miser-

ably wasted, the Publick Treasure Exhausted, Trade decayed, thousands of People murdered, and infinite other mischiefs committed; For all which high and treasonable Offences the said Charles Stuart might long since justly have been brought to exemplary and condign Punishment: Whereas also, the Parliament well hoping that the Restraint and Imprisonment of his Person, after it had pleased God to deliver him into their Hands, would have quieted the distempers of the Kingdom, did forbear to proceed Judicially against him; but found by sad Experience, that such their Remissness served only to encourage him and his Complices in the continuance of their evil practices, and in raising of new Commotions, Rebellions and Invasions; for prevention therefore of the like or greater Inconveniencies, and to the end no Chief Officer or Magistrate whatsoever may hereafter presume traiterously and maliciously to imagine or contrive the Enslaving or Destroying of the English Nation, and to expect Impunity for so doing, Be it Ordained and Enacted by the Commons in Parliament, and it is hereby Ordained and Enacted by Authority thereof, That Thomas Lord Fairfax, Oliver Cromwell, Henry Ireton, Esquires, Sir Hardress Waller, Knight, Philip Skippon, Valentine Wauton, Thomas Harrison, Edward Whalley, Thomas Pride, Isaac Ewer, Richard Ingoldsby, Henry Mildmay, Esquires, Sir Thomas Honywood, Thomas Lord Grey of Groby, Philip Lord Lisle, William Lord Mounson, Sir John Danvers, Sir Thomas Maleverer Baronet, Sir John Bourchier, Sir James Harrington, Sir William Allanson, Sir Henry Mildmay, Sir Thomas Wroth, Knights, Sir William Masham, Sir John Barrington, Sir William Brereton, Baronets, Robert Wallop, William Heveningham, Esquires, Isaac Pennington, Thomas Atkins, Rowland Wilson Alderman of the City of London, Sir Peter Wentworth, Knight of the Bath, Henry Martin, William Purefoy, Godfrey Bosvile, John Trenchard, Herbert Morley, John Berkstead, Matthew Tomlinson, John Blackiston, Gilbert Millington, Esquires, Sir William Constable, Baronet, Edmond Ludlow, John Lambert, John Hutchinson, Esquires, Sir Arthur Hesilrige, Sir Michael Livesey, Baronets, Richard Salwey, Humphry Salwey, Robert Tichbourn, Owen Roe, Robert Manwaring, Robert Lilbourn, Adrian Scroop, Richard Deare, John Okey, Robert Overton, John Huson, John Desborough, William Goff, Robert Duckenfield, Cornelius Holland, John * Carey, Esquires, Sir William Armyne, Baronet, John Jones, Esquire, Miles Corbet, Francis Allen, Thomas Lister, Benjamin Weston, Perigrin Pelham, John Gourdon, Esquires, Francis Thorp, Serjeant at Law, John Nutt, Thomas Chaloner, Algernon Sidney, John Anlaby, John Moore, Richard Darley, William Say, Joh. † Alured, John Fagg, James Nelthorp, Esquires, Sir William Roberts, Knight, Francis Lastells, Alexander Rigby, Henry Smith, Edmond Wild, James Challoner, Josias Berners, Dennis Bond, Humphrey Edwards, Gregory Clement, John Fry, Thomas Wogan,

* This ought to be Carew.

† Alured.

Esquires, Sir Gregory Norton, Baronet, John Bradshaw, Serjeant at Law, Edmond Harvey, John Dove, John Ven, Esquires, John Fowks, Alderman of the City of London, Thomas Scot, Esquire, Thomas Andrews, Alderman of the City of London, William Cawley, Abraham Burrell, Anthony Stapeley, Roger Gratwick, John Downs, Thomas Horton, Thomas Hammond, George Fenwick, Esquires, Robert Nicholas, Serjeant at Law, Robert Reynolds, John Lisle, Nicholas Love, Vincent Potter, Esquires, Sir Gilbert Dickering, Baronet, John Weaver, Roger Hill, John Lenthall, Esquires, Sir Edward Banton, John Corbet, Thomas Blunt, Thomas Boon, Augustine Garland, Augustine Skinner, John Dixwell, George Fleetwood, Simon Meyne, James Temple Peter Temple, Daniel Blgrave, Esquires, Sir Peter Temple, Knight and Baronet, Thomas Wayte, John Brown, John Lowry, Esquires, Shall be, and are hereby Appointed and Required to be Commissioners and Judges, for the Hearing, Trying, and Adjudging of the said Charles Stuart. And the said Commissioners or any Twenty or more of them, shall be and are hereby Authorized and Constituted an High Court of Justice to meet and sit at such convenient time and place as by the said Commissioners or the major part of twenty or more of them under their Hands and Seals, shall be appointed and notified by publick Proclamation in the great Hall or Palace-Yard at Westminster, and to adjourn from time to time, and from place to place, as the said High Court or major part thereof meeting shall hold fit; and to take order for the charging of him the said Charles Stuart with the Crimes and Treasons abovementioned; and for the receiving of his Personal Answer thereunto, and for the examination of Witnesses upon Oath, which the Court hath hereby Authority to administer, or otherwise, and taking any other Evidence concerning the same, and thereupon, or in default of such Answer, to proceed to final Sentence, according to Justice, and the merit of the Cause, and such final Sentence to execute or cause to be executed speedily and impartially. And the said Court is hereby Authorized and required to appoint and direct all such Officers, Attendants and other circumstances as they or the major part of them shall in any sort Judge necessary or useful for the orderly and good managing of the premises. And Thomas Lord Fairfax the General, and all Officers and Soldiers under his command, and all Officers of Justice, and other well affected persons are hereby Authorized and required to be aiding and assisting unto the said Court in the due Execution of the Trust hereby committed Provided, That this Act, and the Authority hereby granted; do continue in force, for the space of one Month from the making hereof, and no longer.



An Act Declaring and Constituting the People of England to be a Commonwealth and Free-State.

[19 May 1649.]

Be it Declared and Enacted by this present Parliament and by the Authority of the same, That the People of England, and of all the Dominions and Territories thereunto belonging, are and shall be, and are hereby Constituted, Made, Established, and Confirmed to be a Commonwealth and Free-State: And shall from henceforth be Governed as a Commonwealth and Free-State, by the Supreme Authority of this Nation, The Representatives of the People in Parliament, and by such as they shall appoint and constitute as Officers and Ministers under them for the good of the People, and that without any King or House of Lords.



An Order of the Commons Assembled in Parliament, For a further supply of Commissioners for the Assessment of Ninety thousand pounds *per mensem*.

[23 May, 1649]

Com' Oxon.

John Carly of Ditchly, Robert Standard, John Palmer of Bampton, Thomas Hinton, Mr. Lancelot Grainger, Mr. Henry Marten of Moor, John Crisp, John Cartwright, John Wilmer, William Goodwin, Nicholas Harman High Sheriff, William Woodward of Strutton-Audely, John Garrad, Thomas Butler, Sir Thomas Peniston.

For the City of Exeter.

Mr. Thomas Ford Merchant, Mr. John Doon, Mr. Henry Prig, Major James Pearce, Major Thomas Sanders Governor of Exon.

For the Town and County of Haverford-West,

Arnold Thomas Esq; Maurice Canon Esq; William William Esq; William Bowen Esq; John Milward Gentleman.

Lincoln,

The Aderman of Grantham for the time being.

For the City and County of Litchfield,

The Commissioners appointed for the county of Stafford.

Rutland.

Benjamin Norton Esq;

Ordered by the Commons assembled in Parliament, That the several and respective persons here before named, be Authorized and appointed to be Commissioners with others already appointed for the Assessment of thirty Ninety thousand pounds *per mensem*, for the several counties, cities and places here before named respectively, and be hereby impowered to Act therein according to the several powers and authorities given to the Commissioners

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T H E



Statutes at Large

From the FIRST Year of

KING JAMES the FIRST

To the TENTH Year of the Reign of

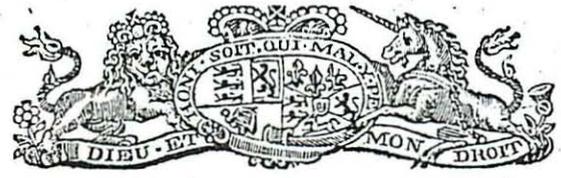
KING WILLIAM the THIRD.

To which is prefixed,

A TABLE of the TITLES of all the Publick and Private Statutes during that Time.

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MDCCLXX.

13

Penalty 5 l.

7 & 8 W. 3. c. 11 & 12 W. 3. c. 15. 2 W. & M. Self. 2. c. 14. 100 l. Penalty for selling sophisticated Wine. 4 & 5 W. & M. c. 25.

other than by and in Measures made of Pewter, and sealed according to the Statute, under the pain and Penalty of five Pounds for every such Offence, to the Informer, to be levied and recovered in any of such Courts, and in such Manner, as aforesaid.

XX. And for the preventing of the Mischiefs which may be occasioned by the sophisticating, corrupting, and adulterating of Wines during such Time as they are by this Act allowed to be sold, be it enacted, That if any Merchant, Vintner, Wine-cooper, or other Person selling Wine by Wholesale or Retail, shall corrupt, sophisticate, or adulterate any Wine, or shall utter or sell any Wine corrupted, sophisticated, or adulterated; such Person shall forfeit the Sum of three hundred Pounds for every such Offence, the one Moiety thereof to their Majesties and their Successors, and the other Moiety thereof to such Person as shall sue for the same by Action of Debt, Bill, Plaint, or Information, wherein no Essoin, Protection, or Wager of Law, or more than one Imparance shall be allowed, and also shall suffer Imprisonment by the Space of three Months, without Bail or Mainprize.

SESSIO SECUNDA.

Anno Regni GULIELMI & MARIE primo.

C A P. I. (35.)

An Act for a Grant to their Majesties of an Aid of two Shillings in the Pound for one Year. EXP.

C A P. II. (36.)

An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown.

WHEREAS the Lords Spiritual and Temporal, and Commons, assembled at Westminster, lawfully, fully, and freely representing all the Estates of the People of this Realm, did upon the thirteenth Day of February in the Year of our Lord one thousand six hundred eighty-eight, present unto their Majesties, then called and known by the Names and Stile of William and Mary, Prince and Princess of Orange, being present in their proper Persons, a certain Declaration in Writing, made by the said Lords and Commons, in the Words following; viz.

WHEREAS the late King James the Second, by the Assistance of divers evil Counsellors, Judges, and Ministers employed by him, did endeavour to subvert and extirpate the Protestant Religion, and the Laws and Liberties of this Kingdom.

The Heavls of Ablication.

Dispensing Power.

Committing Prelates.

Ecclesiastical Commission.

Levying Money.

Standing Army.

Disarming Protestants.

Violating Elections.

Wrong Prosecutions.

Juries.

Excessive Bail.

Fines and Punishments.

Grants of Fines, &c.

- 1. By assuming and exercising a Power of dispensing with and suspending of Laws, and the Execution of Laws, without Consent of Parliament.
 - 2. By committing and prosecuting divers worthy Prelates, for humbly petitioning to be excused from concurring to the said assumed Power.
 - 3. By issuing and causing to be executed a Commission under the Great Seal for erecting a Court called, The Court of Commissioners for Ecclesiastical Causes.
 - 4. By levying Money for and to the Use of the Crown, by Pretence of Prerogative, for other Time, and in other Manner, than the same was granted by Parliament.
 - 5. By raising and keeping a Standing Army within the Kingdom in Time of Peace, without Consent of Parliament, and quartering Soldiers contrary to Law.
 - 6. By causing several good Subjects, being Protestants, to be disarmed, at the same Time when Papists were both armed and employed, contrary to Law.
 - 7. By violating the Freedom of Election of Members to serve in Parliament.
 - 8. By Prosecutions in the Court of King's Bench, for Matters and Causes cognizable only in Parliament; and by divers other arbitrary and illegal Courses.
 - 9. And whereas of late Years, partial, corrupt, and unqualified Persons, have been returned and served on Juries in Trials, and particularly divers Jurors in Trials for High Treason, which were not Freeholders.
 - 10. And excessive Bail hath been required of Persons committed in criminal Cases, to elude the Benefit of the Laws made for the Liberty of the Subjects.
 - 11. And excessive Fines have been imposed; and illegal and cruel Punishments inflicted.
 - 12. And several Grants and Promises made of Fines and Forfeitures, before any Conviction or Judgment against the Persons, upon whom the same were to be levied.
- All which are utterly and directly contrary to the known Laws and Statutes, and Freedom of this Realm.

And whereas the said late King *James* the Second having abdicated the Government, and the Throne being thereby vacant, his Highness the Prince of *Orange* (whom it hath pleased Almighty God to make the glorious Instrument of delivering this Kingdom from Popery and arbitrary Power) did (by the Advice of the Lords Spiritual and Temporal, and divers principal Persons of the Commons) cause Letters to be written to the Lords Spiritual and Temporal, being Protestants; and other Letters to the several Counties, Cities, Universities, Boroughs, and Cinque-ports, for the choosing of such Persons to represent them, as were of right to be sent to Parliament, to meet and sit at *Westminster* upon the two and twentieth Day of *January* in this Year one thousand six hundred eighty and eight, in order to such an Establishment, as that their Religion, Laws, and Liberties might not again be in Danger of being subverted: Upon which Letters, Elections having been accordingly made,

And thereupon the said Lords Spiritual and Temporal, and Commons, pursuant to their respective Letters and Elections, being now assembled in a full and free Representative of this Nation, taking into their most serious Consideration the best Means for attaining the Ends aforesaid; do in the first Place (as their Ancestors in like Case have usually done) for the vindicating and asserting their antient Rights and Liberties, declare;

The Subjects Rights.

1. That the pretended Power of suspending of Laws, or the Execution of Laws, by regal Authority, without Consent of Parliament, is illegal.

No dispensing Power.

2. That the pretended Power of dispensing with Laws, or the Execution of Laws, by regal Authority, as it hath been assumed and exercised of late, is illegal.

Late dispensing illegal.

3. That the Commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and all other Commissions and Courts of like Nature, are illegal and pernicious.

Ecclesiastical Courts illegal.

4. That levying Money for or to the Use of the Crown, by Pretence of Prerogative, without Grant of Parliament for longer Time, or in other Manner than the same is or shall be granted, is illegal.

Levying Money

5. That it is the Right of the Subjects to petition the King, and all Commitments and Prosecutions for such petitioning are illegal.

Right to petition

6. That the raising or keeping a Standing Army within the Kingdom in Time of Peace, unless it be with Consent of Parliament, is against Law.

Standing Army

7. That the Subjects which are Protestants, may have Arms for their Defence suitable to their Conditions, and as allowed by Law.

Subjects Arms

8. That Election of Members of Parliament ought to be free.

Freedom of Election.

9. That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament.

Freedom of Speech.

10. That excessive Bail ought not to be required, nor excessive Fines imposed; nor cruel and unusual Punishments inflicted.

Excessive Bail.

11. That Jurors ought to be duly impanelled and returned, and Jurors which pass upon Men in Trials for High Treason ought to be Freeholders.

Juries.

12. That all Grants and Promises of Fines and Forfeitures of particular Persons before Conviction, are illegal and void.

Grants of Forfeitures.

13. And that for Redress of all Grievances, and for the amending, strengthening, and preserving of the Laws, Parliaments ought to be held frequently.

Frequent Parliaments.

And they do claim, demand, and insist upon all and singular the Premises, as their undoubted Rights and Liberties; and that no Declarations, Judgments, Doings, or Proceedings, to the Prejudice of the People in any of the said Premises, ought in any wise to be drawn hereafter into Consequence or Example.

To which Demand of their Rights they are particularly encouraged by the Declaration of his Highness the Prince of *Orange*, as being the only Means for obtaining a full Redress and Remedy therein.

Having therefore an entire Confidence, That his said Highness the Prince of *Orange* will perfect the Deliverance so far advanced by him, and will still preserve them from the Violation of their Rights, which they have here asserted, and from all other Attempts upon their Religion, Rights, and Liberties.

II. The said Lords Spiritual and Temporal, and Commons, assembled at *Westminster*, do resolve, That *William* and *Mary* Prince and Princess of *Orange* be, and be declared, King and Queen of *England*, *France*, and *Ireland*, and the Dominions thereunto belonging, to hold the Crown and royal Dignity of the said Kingdoms and Dominions to them the said Prince and Princess during their Lives; and the Life of the Survivor of them; and that the sole and full Exercise of the Regal Power be only in; and executed by the said Prince of *Orange*, in the Names of the said Prince and Princess, during their joint Lives; and after their Deceases, the said Crown and Royal Dignity of the said Kingdoms and Dominions to be to the Heirs of the Body of the said Princess, and for Default of such Issue to the Princess *Anne* of *Denmark*; and the Heirs of her Body; and for Default of such Issue to the Heirs of the Body of the said Prince of *Orange*. And the Lords Spiritual and Temporal, and Commons, do pray the said Prince and Princess to accept the same accordingly.

Tender of the Crown.

III. And that the Oaths hereafter mentioned be taken by all Persons of whom the Oaths of Allegiance and Supremacy might be required by Law, instead of them; and that the said Oaths of Allegiance and Supremacy be abrogated.

New Oaths of Allegiance.

15

Allegiance.

I A. B. do sincerely promise and swear, That I will be faithful and bear true Allegiance, to their Majesties King William and Queen Mary.

So help me God.

Supremacy.

I A. B. do swear, That I do from my Heart abhor, detest, and abjure, as impious and heretical, that damnable Doctrine and Position, That Princes excommunicated or deprived by the Pope, or any Authority of the See of Rome, may be deposed or murdered by their Subjects, or any other whatsoever. And I do declare, That no Foreign Prince, Person, Prelate, State or Potentate hath, or ought to have, any Jurisdiction, Power, Superiority, Pre-eminence, or Authority, Ecclesiastical or Spiritual, within this Realm:

So help me God.

Acceptance of the Crown.

IV. Upon which their said Majesties did accept the Crown and Royal Dignity of the Kingdoms of England, France, and Ireland, and the Dominions thereunto belonging, according to the Resolution and Desire of the said Lords and Commons contained in the said Declaration.

The two Houses to sit.

V. And thereupon their Majesties were pleased, That the said Lords Spiritual and Temporal, and Commons, being the two Houses of Parliament, should continue to sit, and with their Majesties royal Concurrence make effectual Provision for the Settlement of the Religion, Laws and Liberties of this Kingdom, so that the same for the future might not be in Danger again of being subverted; to which the said Lords Spiritual and Temporal, and Commons, did agree and proceed to act accordingly.

Subjects Liberties to be allowed.

VI. Now in pursuance of the Premises, the said Lords Spiritual and Temporal, and Commons, in Parliament assembled, for the ratifying, confirming and establishing the said Declaration, and the Articles, Clauses, Matters, and Things therein contained, by the Force of a Law made in due Form by Authority of Parliament, do pray that it may be declared and enacted, That all and singular the Rights and Liberties asserted and claimed in the said Declaration, are the true, ancient, and indubitable Rights and Liberties of the People of this Kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be, and that all and every the Particulars aforesaid shall be firmly and strictly holden and observed, as they are expressed in the said Declaration; and all Officers and Ministers whatsoever shall serve their Majesties and their Successors according to the same in all Times to come.

William and Mary declared King and Queen.

VII. And the said Lords Spiritual and Temporal, and Commons, seriously considering how it hath pleased Almighty God, in his marvellous Providence, and merciful Goodness to this Nation, to provide and preserve their said Majesties royal Persons most happily to reign over us upon the Throne of their Ancestors, for which they render unto him from the Bottom of their Hearts their humblest Thanks and Praises, do truly, firmly, assuredly, and in the Sincerity of their Hearts think, and do hereby recognize, acknowledge and declare, That King James the Second having abdicated the Government, and their Majesties having accepted the Crown and royal Dignity as aforesaid, their said Majesties did become, were, are, and of Right ought to be, by the Laws of this Realm, our Sovereign Leige Lord and Lady, King and Queen of England, France, and Ireland, and the Dominions thereunto belonging, in and to whose princely Persons the royal State, Crown, and Dignity of the said Realms, with all Honours, Stiles, Titles, Regalities, Prerogatives, Powers, Jurisdictions and Authorities to the same belonging and appertaining, are most fully, rightfully, and intirely invested and incorporated, united and annexed.

Limitation of the Crown.

VIII. And for preventing all Questions and Divisions in this Realm, by reason of any pretended Titles to the Crown, and for preserving a Certainty in the Succession thereof, in and upon which the Unity, Peace, Tranquillity, and Safety of this Nation doth, under God, wholly consist and depend, The said Lords Spiritual and Temporal, and Commons, do beseech their Majesties that it may be enacted, established and declared, That the Crown and regal Government of the said Kingdoms and Dominions with all and singular the Premises thereunto belonging and appertaining, shall be and continue to their said Majesties, and the Survivor of them, during their Lives, and the Life of the Survivor of them: And that the intire, perfect, and full Exercise of the regal Power and Government be only in, and executed by his Majesty, in the Names of both their Majesties during their joint Lives; and after their Deceases the said Crown and Premises shall be and remain to the Heirs of the Body of her Majesty; and for Default of such Issue, to her Royal Highness the Princess Anne of Denmark, and the Heirs of her Body; and for Default of such Issue, to the Heirs of the Body of his said Majesty: And thereunto the said Lords Spiritual and Temporal, and Commons, do, in the Name of all the People aforesaid, most humbly and faithfully submit themselves, their Heirs and Posterities for ever; and do faithfully promise, That they will stand to, maintain, and defend their said Majesties, and also the Limitation and Succession of the Crown herein specified and contained, to the utmost of their Powers, with their Lives and Estates, against all Persons whatsoever, that shall attempt any Thing to the contrary.

Papists debarred the Crown.

X. And whereas it hath been found by Experience, that it is inconsistent with the Safety and Welfare of this Protestant Kingdom, to be governed by a Popish Prince, or by any King or Queen marrying a Papist; the said Lords Spiritual and Temporal, and Commons, do further pray that it may be enacted, That all and every Person and Persons that is, are, or shall be reconciled to, or shall hold Communion with, the See or Church of Rome, or shall profess the Popish Religion, or shall marry a Papist, shall be excluded

excluded, and be for ever incapable to inherit, possess, or enjoy the Crown and Government of this Realm, and Ireland, and the Dominions thereunto belonging, or any Part of the same, or to have, use or exercise any regal Power, Authority, or Jurisdiction within the same; and in all and every such Case or Cases the People of these Realms shall be, and are hereby absolved of their Allegiance; and the said Crown and Government shall from time to time descend to, and be enjoyed by such Person or Persons, being Protestants as should have inherited and enjoyed the same, in case the said Person or Persons so reconciled, holding Communion, or professing, or marrying as aforesaid, were naturally dead.

X. And that every King and Queen of this Realm, who at any Time hereafter shall come to and succeed in the Imperial Crown of this Kingdom, shall on the first Day of the Meeting of the first Parliament, next after his or her coming to the Crown, sitting in his or her Throne in the House of Peers, in the Presence of the Lords and Commons therein assembled, or at his or her Coronation, before such Person or Persons who shall administer the Coronation Oath to him or her, at the Time of his or her taking the said Oath (which shall first happen) make, subscribe, and audibly repeat the Declaration mentioned in the Statute made in the thirtieth Year of the Reign of King Charles the Second, intituled, *An Act for the more effectual preserving the King's Person and Government, by disabling Papists from sitting in either House of Parliament.* But if it shall happen, that such King or Queen, upon his or her Succession to the Crown of this Realm, shall be under the Age of twelve Years, then every such King or Queen shall make, subscribe, and audibly repeat the said Declaration at his or her Coronation, or the first Day of the Meeting of the first Parliament as aforesaid, which shall first happen after such King or Queen shall have attained the said Age of twelve Years.

All Kings, &c. to take the Declaration of 30 Car. 2. stat. 2. c. 1.

If under twelve Years old to be done after Attainment thereof.

XI. All which their Majesties are contented and pleased shall be declared, enacted, and established by Authority of this present Parliament, and shall stand, remain, and be the Law of this Realm for ever; and the same are by their said Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the Authority of the same, declared, enacted, and established accordingly.

King's Assent.

XII. And be it further declared and enacted by the Authority aforesaid, That from and after this present Session of Parliament, no Dispensation by *Non obstante* of or to any Statute, or any Part thereof, shall be allowed, but that the same shall be held void and of no Effect, except a Dispensation be allowed of in such Statute, and except in such Cases as shall be specially provided for by one or more Bill or Bills to be passed during this present Session of Parliament.

Non obstante's made void.

XIII. Provided that no Charter, or Grant, or Pardon, granted before the three and twentieth Day of October in the Year of our Lord one thousand six hundred eighty-nine; shall be any ways impeached or invalidated by this Act, but that the same shall be and remain of the same Force and Effect in Law, and no other, than as if this Act had never been made.

Pardons excepted before October.

Further Provisions concerning Succession of the Crown, 12 W. 3. c. 2. 13 W. 3. c. 6.

C A P. III. (37.)

An Act for preventing all Doubts and Questions concerning the collecting the publick Revenue. EXP.

C A P. IV. (38.)

An Act for punishing Officers or Soldiers who shall mutiny or desert their Majesty's Service, and for punishing false Musters. EXP.

C A P. V. (39.)

An Act for a Grant to their Majesties of an additional Aid of twelve Pence in the Pound for one Year. EXP.

C A P. VI. (40.)

An Act for the charging and collecting the Duties upon Coffee, Tea, and Chocolate, at the Custom House.

WHEREAS it hath been found by Experience, that the collecting of the Duty arising to your Majesties by virtue of several Acts of Parliament, by way of Excise, upon the Liquors of Coffee, Chocolate, and Tea, is not only very troublesome and unequal upon the Retailers of those Liquors, but requireth such Attendance of Officers, as makes the neat Receipt very inconsiderable: For Remedy thereof,

Burns, V. 1. 351.

It is enacted by the King's and Queen's most Excellent Majesties, with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the nine and twentieth Day of September one thousand six hundred and ninety, so much of every Act of Parliament as concerns and requires the collecting the respective Duties by any of those Acts, by way of Excise, upon any of the Liquors aforesaid, shall cease and determine; and

Acts for collecting Excise upon Coffee, &c. repealed. The rest of this Act is repealed.

Parliament dissolved as formerly.

VII. Provided always, and be it declared, That this present Parliament may be dissolved after the usual Manner, as if the same had been summoned and called by Writ.

C A P. II.

An Act for empowering his Majesty to apprehend and detain such Persons as he shall find just Cause to suspect are conspiring against the Government. E X P.

C A P. III.

An Act for the granting a present Aid to their Majesties. E X P.

C A P. IV.

An Act for reviving of Actions and Proses lately depending in the Courts at Westminster, and discontinued by the not holding of Hilary Term, and for supplying other Defects relating to Proceedings at Law.

EXP.

WHEREAS the Term of St. Hilary, in the Year of our Lord one thousand six hundred eighty-eight, could not be holden and kept, for which, if due Provision be not made, great Delay of Justice, and consequently great Expences to the Suitors in the several Courts usually held at Westminster will ensue: Therefore for the continuing and reviving all manner of Actions or Pleas lately depending, and all manner of Proses that were returnable or depending in any of the said Courts, and which were discontinued and put without Day by the not holding the said Term, &c.

Proclamation

upon Fines shall be accounted made. Judgments by Confession to be entered in Easter Term. All Offences and Actions, during the Interregnum suable. The Year of our Lord to be inserted instead of the King's Reign. Indictments, &c. contra pacem Regni. Bonds, &c. made to King James, in Force. All Proses, &c. of Michaelmas Term, good. Bail Bonds taken by a Judge before the 11th of December, and Commitments upon them, good. The Time betwixt the 10th of December and 12th of March not reckoned in Quare impedit or Statute of Limitations. 2 Vent. 185, 197. 3 Lev. 283.

C A P. V.

EXP.

An Act for punishing Officers and Soldiers who shall mutiny or desert their Majesty's Service to continue till November 1689, and no longer.

C A P. VI.

An Act for establishing the Coronation Oath.

WHEREAS by the Law and antient Usage of this Realm, the Kings and Queens thereof have taken a solemn Oath upon the Evangelists at their respective Coronations, to maintain the Statutes, Laws, and Customs of the said Realm, and all the People and Inhabitants thereof, in their Spiritual and Civil Rights and Properties: But forasmuch as the Oath itself on such Occasion administered, hath heretofore been framed in doubtful Words and Expressions, with relation to antient Laws and Constitutions at this Time unknown: To the End therefore that one uniform Oath may be in all Times to come taken by the Kings and Queens of this Realm, and to them respectively administered at the Times of their and every of their Coronation: May it please your Majesties that it may be enacted,

An Oath to be taken by the King and Queen.

II. And be it enacted by the King's and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That the Oath herein mentioned, and hereafter expressed, shall and may be administered to their most Excellent Majesties King William and Queen Mary (whom God long preserve) at the Time of their Coronation, in the Presence of all Persons that shall be then and there present at the solemnizing thereof, by the Archbishop of Canterbury, or the Archbishop of York, or either of them, or any other Bishop of this Realm, whom the King's Majesty shall thereunto appoint, and who shall be hereby thereunto respectively authorized; which Oath followeth, and shall be administered in this manner, that is to say,

The Archbishop or Bishop shall say,

Coronation Oath.

“ III. Will you solemnly promise and swear to govern the People of this Kingdom of England, and the Dominions thereto belonging, according to the Statutes in Parliament agreed on, and the Laws and Customs of the same?”

The King and Queen shall say,

“ I solemnly promise so to do.”

Archbishop or Bishop.

“ Will you to your Power cause Law and Justice in Mercy to be executed in all your Judgments?”

King and Queen.

“ I will.”

Archbishop

Archbishop or Bishop.

“Will you to the utmost of your Power maintain the Laws of God, the true Profession of the Gospel and the Protestant Reformed Religion established by Law? And will you preserve unto the Bishops and Clergy of this Realm, and to the Churches committed to their Charge, all such Rights and Privileges as by Law do or shall appertain unto them, or any of them?”

King and Queen.

“All this I promise to do.”

After this, the King and Queen laying his and her Hand upon the Holy Gospels, shall say,
King and Queen.

“The Things which I have here before promised, I will perform and keep. So help me God.”

Then the King and Queen shall kiss the Book.

IV. And be it further enacted, That the said Oath shall be in like manner administered to every King or Queen, who shall succeed to the Imperial Crown of this Realm, at their respective Coronations, by one of the Archbishops or Bishops of this Realm of *England*, for the Time being, to be thereunto appointed by such King or Queen respectively, and in the Presence of all Persons that shall be attending, assisting, or otherwise present at such their respective Coronations; any Law, Statute, or Usage to the contrary notwithstanding.

C A P. VII.

An Act for empowering his Majesty to apprehend and detain such Persons as he shall find just Cause to suspect are conspiring against the Government. EXP.

C A P. VIII.

An Act for the abrogating of the Oaths of Supremacy and Allegiance, and appointing other Oaths.

WHEREAS by a Statute made in the first Year of the Reign of our late Sovereign Lady Queen Elizabeth, intituled, *An Act to restore to the Crown the ancient Jurisdiction over the Estate Ecclesiastical and Spiritual, and abolishing all foreign Powers repugnant to the same*, the Persons therein mentioned were obliged to take an Oath therein mentioned, commonly called the *Oath of Supremacy*: And whereas by another Statute made in the third Year of the Reign of our late Sovereign Lord King James the First, intituled, *An Act for the better discovering and repressing Popish Recusants*, another Oath, commonly called the *Oath of Allegiance or Obedience*, was required to be taken by the Persons therein mentioned:

II. Be it enacted by the King's and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That from henceforth no Person whatsoever shall be obliged to take the said Oaths, or either of them, by force or virtue of the said Statutes, or either of them, or any other Statute whatsoever, but that the said Statutes, and every other Statute, for so much only as concerns the said Oaths, and the said Oaths themselves, shall be and are hereby repealed, utterly abrogated, and made void.

III. And be it enacted by the Authority aforesaid, That the Oaths appointed by this present Act to be taken, and the Declaration likewise appointed by this present Act to be made, repeated, and subscribed, shall, from and after the first Day of *May* in the Year one thousand six hundred eighty-nine, be taken, made, repeated, and subscribed by every such Person and Persons as were appointed and required by any Act or Acts whatsoever, to take the said abrogated Oaths of Supremacy and Allegiance, or either of them, before such Person or Persons, as hereafter in this Act is expressed; that is to say, all and every Archbishop and Bishop that now is, and all and every Person, of or above the Degree of a Baron of Parliament, in their Majesties High Court of Chancery, or in their Majesties Court of King's Bench, in public and open Court, between the Hours of nine of the Clock and twelve in the Forenoon, before the End of *Trinity* Term next, or at the General Quarter-Sessions to be holden for that County or Place where he or they shall be, inhabit, or reside, in open Court, between the said Hours of nine and twelve of the Clock in the Forenoon, before the first Day of *August* next; all which shall be put on Record in the respective Courts.

IV. And all and every other such Person and Persons shall take the said Oaths, and make, repeat, and subscribe the said Declaration by this present Act required to be taken, made, and subscribed, before such Person or Persons respectively, as by any Act or Acts were authorized or empowered to tender the said Oath of Allegiance now abrogated and made void; which said Person or Persons so respectively authorized to minister or tender the said Oaths and Declaration, are hereby required to minister and tender the same accordingly.

Vol. III.

H h h

V. And

T H E

Statutes at Large



From the Tenth Year of

KING *WILLIAM* the THIRD,

To the End of the Reign of

Q U E E N A N N E.

To which is prefixed,

A TABLE of the TITLES of all the Publick and Private Statutes during that Time.

VOLUME the FOURTH.

A NEW EDITION.



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MDCCLXIX.

That after the said Limitation shall take Effect as aforesaid, no Person born out of the Kingdoms of England, Scotland, or Ireland, or the Dominions thereunto belonging (although he be naturalized or made a Denizen, except such as are born of English Parents) shall be capable to be of the Privy Council, or a Member of either House of Parliament, or to enjoy any Office or Place of Trust, either Civil or Military, or to have any Grant of Lands, Tenements or Hereditaments from the Crown, to himself or to any other or others in Trust for him.

This Clause extends not to Persons naturalized at or before the Accession of King Geo. 1. to the Crown.

That no Person who has an Office or Place of Profit under the King, or receives a Pension from the Crown, shall be capable of serving as a Member of the House of Commons.

Repealed by 4 Ann. c. 3. §. 25. 6 Ann. c. 7. 1 Geo. 1. c. 36.

That after the said Limitation shall take Effect as aforesaid, Judges Commissions be made *Quamdiu se bene gesserint*, and their Salaries ascertained and established; but upon the Address of both Houses of Parliament it may be lawful to remove them.

That no Pardon under the Great Seal of England be pleadable to an Impeachment by the Commons in Parliament.

IV. And whereas the Laws of England are the Birth-right of the People thereof, and all the Kings and Queens, who shall ascend the Throne of this Realm, ought to administer the Government of the same according to the said Laws, and all their Officers and Ministers ought to serve them respectively according to the same: The said Lords Spiritual and Temporal, and Commons, do therefore further humbly pray, That all the Laws and Statutes of this Realm for securing the established Religion, and the Rights and Liberties of the People thereof, and all other Laws and Statutes of the same now in Force, may be ratified and confirmed, and the same are by his Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons; and by Authority of the same, ratified and confirmed accordingly.

All Laws for securing the established Religion; &c. confirmed. See farther 13 W. 3. c. 6.

C A P. III.

An Act for preventing any Inconveniencies that may happen by Privilege of Parliament.

FOR the preventing all Delays the King or his Subjects may receive in any of his Courts of Law or Equity, and for their Ease in the Recovery of their Rights and Titles to any Lands, Tenements or Hereditaments, and their Debts or other Dues, for which they have Cause of Suit or Action; Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the four and twentieth Day of June one thousand seven hundred and one, any Person and Persons shall and may commence and prosecute any Action or Suit in any of his Majesty's Courts of Record at Westminster, or High Court of Chancery, or Court of Exchequer, or the Duchy Court of Lancaster, or in the Court of Admiralty, and in all Causes Matrimonial and Testamentary in the Court of the Arches, the Prerogative Courts of Canterbury and York, and the Delegates, and all Courts of Appeal, against any Peer of this Realm, or Lord of Parliament, or against any of the Knights, Citizens and Burgesses of the House of Commons for the Time being, or against their or any of their Menial or other Servants, or any other Person intitled to the Privilege of Parliament, at any Time from and immediately after the Dissolution or Prorogation of any Parliament, until a new Parliament shall meet, or the same be re-assembled, and from and immediately after any Adjournment of both Houses of Parliament for above the Space of fourteen Days, until both Houses shall meet or re-assemble; and that the said respective Courts shall and may, after such Dissolution, Prorogation, or Adjournment as aforesaid, proceed to give Judgment, and to make final Orders, Decrees and Sentences, and award Execution thereupon; any Privilege of Parliament to the contrary notwithstanding.

Amended by 11 Geo. 2. c. 24.

Action may be commenced against Peer or Member of Parliament, &c. in the Interval of Parliament, &c.

and after Prorogation, &c. Court may give Judgment.

II. Provided nevertheless, That this Act shall not extend to subject the Person of any of the Knights, Citizens and Burgesses of the House of Commons, or any other Person intitled to the Privilege of Parliament, to be arrested during the Time of Privilege: Nevertheless, if any Person or Persons, having Cause of Action or Complaint against any Peer of this Realm, or Lord of Parliament, such Person or Persons, after any Dissolution, Prorogation or Adjournment as aforesaid, or before any Session of Parliament, or Meeting of both Houses as aforesaid, shall and may have such Process out of his Majesty's Courts of King's Bench, Common Pleas, and Exchequer, against such Peer or Lord of Parliament, as he or they might have had against him out of the Time of Privilege; and if any Person or Persons, having Cause of Action against any of the said Knights, Citizens or Burgesses, or any other Person intitled to Privilege of Parliament, after any Dissolution, Prorogation, or such Adjournment as aforesaid, or before any Sessions of Parliament, or Meeting of both Houses as aforesaid, such Person or Persons shall and may prosecute such Knight, Citizen or Burgess, or other Person intitled to the Privilege of Parliament, in his Majesty's Courts of King's Bench, Common Pleas, or Exchequer, by Summons and Distress infinite, or by Original Bill, and Summons, Attachment, and Distress Infinite thereupon to be issued out of any of the said Courts of Record, which the said respective Courts are hereby empowered to issue against them, or any of them, until he or they shall enter a Common Appearance, or file Common Bail to the Plaintiff's Action, according to the Course of each respective Court; and any Person or Persons, having Cause of Suit or Complaint, may, in the Times aforesaid, exhibit any Bill or Complaint against any Peer of this Realm, or Lord of Parliament, or against any of the said Knights, Citizens or Burgesses, or other Person intitled to the Privilege of Parliament, in the High Court of Chancery, Court of Exchequer, or Duchy Court of Lancaster, and may proceed thereupon by Letter or Subpœna as is usual, and upon leaving a Copy of the Bill with the Defendant, or at his House or Lodging, or last Place of

Person may have Process against Peer, &c. after Dissolution of Parliament,

and may exhibit Bill against any Peer or Member &c.

constitutional or not, it is valid and cannot be questioned in a court of law."

ORPEN v. ATTY.-GEN. FOR ONT., (1924) 56 O.L.R. 327, [1925] 2 D.L.R. 366, varied 56 O.L.R. 530, [1925] 3 D.L.R. 301 (C.A.).

Per Riddell, J.: "I do not think that any effect can be given to the argument that the plaintiff and those in like case have no representatives on the council, that they had no opportunity to vote for councillors, and that taxation without representation is unconstitutional. That this maxim is profoundly true may certainly be admitted—but we must carefully distinguish the meaning of the word 'unconstitutional' in British and American usage. In our usage, that is unconstitutional which is opposed to the principles, more or less vaguely and generally stated, upon which we think the people should be governed; in the American sense, it is that which transgresses the written document called the 'Constitution'. With us, anything unconstitutional is wrong, though it may be legal; with them, it is illegal, though it may be right. Accordingly, to say that a measure is unconstitutional does not with us indicate anything as to its illegality."

BELL v. BURLINGTON, (1915) 34 O.L.R. 619, 25 D.L.R. 269, reversing in part 34 O.L.R. 410 (C.A.).

II. THE EXECUTIVE GOVERNMENT.

1. Crown.

A. Duty to Obey Law.

Duty of Crown To Obey Law—Duty of Executive in Case of Doubt—Payment by Crown to Person Enjoined by Court From Receiving Payment.

It is the duty of the Crown and of every branch of the executive to abide by and to obey the law. If there is any difficulty in ascertaining the law the Courts are open to the Crown to sue, and it is the duty of the executive in cases of doubt to ascertain the law in order to obey it, not to disregard it. The non-existence of any right to bring the Crown into Court, such as exists in England by Petition of Right, and in many of the colonies by the appointment of an officer to sue and be sued on behalf of the Crown, does not give the Crown immunity from all law, or authorize the interference

by the Crown with private rights at its own mere will. There is a well-established practice in England in certain cases where no Petition of Right will lie, under which the Crown can be sued by the Attorney-General, and a declaratory order obtained, as in *Dyson v. Atty.-Gen.*, [1911] 1 K.B. 410, 80 L.J.K.B. 531, 15 Mews 1161, and in *Atty.-Gen. v. Burghes*, [1912] 1 Ch. 173 [varying [1911] 2 Ch. 139, 80 L.J. Ch. 506, 15 Mews 1634]. A contract for the sale of the bonds and stock of a railway company, which was constructing but had not completed its railway, was based upon a subsidy contract, confirmed by statute, between the provincial government and a railway company in whom the undertaking of the first mentioned company had been vested. In a partnership action between the two promoters of the latter company, a receiver was appointed, and an interim injunction was granted restraining H., one of the partners, from receiving any of the subsidies. The government, with full notice of the order, proceeded to distribute the subsidy without any regard to the order. The action involved the proper construction of the provisions of the contract relating to the deduction from the consideration moneys of money which, under the subsidy contract, the government was to retain in the event of default by the railway company in paying for "labour and supplies". *Held*, the course which the government should have followed was either to apply to the Court to determine the question of construction of the contract, and pay accordingly, or to pay the whole amount over to the receiver and to obtain from the Court an order on the receiver to pay the sums properly payable for labour and supplies. *Deare v. Atty.-Gen.*, 1 Y. & C. 197, 160 E.R. 80 [see 2 Dow. & Cl. 377, 6 E.R. 768, 1 Mews 84], applied. *Held* also, though the injunction was invalid against the Crown, it was, so long as it remained undischarged, binding on H. and the others to whom it was directed, and H.'s disregard of it, even though he received payment from the Crown, made him guilty of contempt of Court.

EASTERN TRUST CO. v. MCKENZIE, MANN & CO., [1915] A.C. 750, 84 L.J.P.C. 152, 113 L.T. 346, 31 W.L.R. 248, 22 D.L.R. 410, reversing Supreme Court of Canada (unreported) which reversed 47 N.S.R. 310, 13 D.L.R. 868, (*sub nom. IRVINE v. HERVEY*). See 50 N.S.R. 26.

See Contempt of Court, Crown, Injunctions, Railways.

tion. of the maxim *delegatus non potest delegare*. But the Order-in-Council did not directly give a power to make regulations. All it did was to empower the Director to fix wages, and to make it a punishable offence for owners not to pay the wages so fixed. Such an Order-in-Council should not be extended beyond its plain meaning. Per Stuart, J.: "My view is, that in a matter of so grave a nature as the delegation of a law-making power by a body to whom the law-making power has already been delegated [the Court] should at least, even assuming the power of sub-delegation to exist, not act on any vague implication arising out of the language used but should take the words as they are used in the plain ordinary sense and give them simply the meaning that they will thus bear and no more."

STARR V. BANNER COAL CO.; CHICK V. ALBERTA COAL MINING CO., [1919] 3 W.W.R. 259 (Alta.).

Authorized Regulations Adopting Those Drawn up by Province—Effect—Whether Abdication of Authority.

Where Parliament empowers the Governor in Council to make regulations on a certain subject, the fact that the Governor in Council in so doing adopts and re-enacts regulations drawn up by another authority, e.g., a province, is not an abdication of authority. *St. Catharines Milling etc. Co. v. R.*, 13 S.C.R. 577, distinguished.

SERO V. GAULT, (1921) 50 O.L.R. 27, 64 D.L.R. 327.

Adoption of Provincial Laws by Reference — Jurors — The Criminal Code, 1892 (Dom.), C. 29, S. 662.

The Dominion Parliament when legislating on a subject over which it has jurisdiction may by reference adopt provincial laws. S. 662 of The Criminal Code providing that "Every person qualified and summoned as a grand or petit juror, according to the laws in force for the time being in any Province of Canada, shall be duly qualified to serve as such juror in criminal cases in that Province", is valid.

R. v. WALTON, (1906) 12 O.L.R. 1, 11 C.C.C. 204 (C.A.).

Nature of Dominion's Powers—Extent of Power to Delegate.

Per Riddell, J.: "... if the Dominion have regulative power over any class of

subjects, it may exercise such power through any agency selected by itself—the power of the Dominion is not delegated, and the maxim '*Delegatus non potest delegare*' has no application".

MANITOBA FREE PRESS CO. v. FORT FRANCES PULP & PAPER CO., 52 O.L.R. 118, [1923] 3 D.L.R. 199, affirmed [1923] A.C. 695, 93 L.J.P.C. 101, 130 L.T. 101, [1923] 3 D.L.R. 629.

Power of Dominion Parliament to Subject Canadians to Foreign Legislation.

A company was formed by the amalgamation of two existing companies. The original companies were respectively American and Canadian, and concurrent legislation was enacted by the State of New York and the Province of Canada. An action was brought which involved the question of the company's statutory right to collect tolls. In the course of his judgment, Proudfoot, V.C., pointed out that the only legislation which could affect Canadians was the Canadian legislation: "Certainly Canada has not introduced the provisions of any Act of Congress, nor consented to any Act of Congress passed subsequent to the union applying to the united company. Were the Canadian Parliament to endeavour to do so—to say that Canadian subjects, and Canadian Corporations were to be subject to legislation, that might be passed by Congress, it would, I apprehend be unconstitutional, it would be authorizing a foreign power to legislate for its subjects; an abdication of sovereignty inconsistent with its relation to the Empire, of which it forms a part."

INTERNATIONAL BRIDGE CO. v. CAN. SOUTHERN RY., (1880) 28 Gr. 114, affirmed 7 O.A.R. 226, which was affirmed 8 App. Cas. 723, C.R. [S] A.C. 551.

See Franchises, Highways.

◆ C. Privileges of Houses.

Privileges—House of Commons.

Per Davies, J.: "The powers, privileges and immunities of the House of Commons in Canada are practically the same as those of the House of Commons in Great Britain, although the distribution of the different powers of maintaining order and decorum may be relegated to different officials from those in England".

PAYSON V. HUBERT, (1904) 34 S.C.R. 400, 24 C.L.T. 168, reversing 26 N.S.R. 211.

CONSTITUTIONAL LAW.

plication to strike out the amended statement of claim.

ATTY.-GEN. FOR ONT. v. ATTY.-GEN. FOR CAN., (1929) 37 O.W.N. 30. Leave to appeal refused 37 O.W.N. 149.

➔ Abuse of Legislative Power—Appeal to Courts.

The supreme legislative power in relation to any subject-matter is always capable of abuse, but it is not to be assumed that it will be improperly used. If it is improperly used the only remedy is an appeal to those by whom the Legislature is elected and not to the Courts.

ATTY.-GEN. FOR CAN. v. ATTY.-GEN. FOR ONT., QUEBEC AND NOVA SCOTIA, [1898] A.C. 700, 67 L.J.P.C. 90, 78 L.T. 697, C.R. [12] A.C. 48, on appeal from 26 S.C.R. 414 (sub nom. RE PROVINCIAL FISHERIES).

Stated Case on Constitutional Questions—The Liquor License Act, R.S.O. 1887, C. 194. S. 108.

An Ontario Act, enacted that after the determination by a justice of any complaint which he was empowered to determine in a summary way, under the authority of a statute of province, either party if dissatisfied with his determination as being erroneous as regards the constitutional validity of the statute in point of law might apply to the justice to state a case for the judgment of the Court of Appeal. In the opinion of the Court, the justice was entitled to state a case only when the constitutional validity of the statute under which he had acted was questioned. He was not entitled to state a case when the constitutional validity of some other Act, such as an evidence Act, was attacked, nor was he entitled to state a case when the constitutional validity of a small collateral part of the statute under which he acted was attacked. In this case the justice, having made a conviction under the Ontario Liquor License Act, 1887, stated a case as to whether s. 108 was valid. S. 108 dealt with rules of evidence in liquor cases. *Held*, the justice had no right to state the case. S. 108 was merely collateral to the main provisions of the Act.

R. v. EDWARDS; R. v. LYNCH, (1892) 19 O.A.R. 799.

Stated Case Raising Constitutional Question—Attitude of Court.

The Court will not, except for special reasons, deal with constitutional or other

broad questions on stated cases when the issue before the Court can be decided upon a narrower ground, such as the non-applicability of the enactment in question.

R. v. MALLAN, [1934] 3 W.W.R. 515, 62 C.C.C. 330, [1935] 1 D.J.R. 249 (Man. C.A.).

Stated Case on Constitutional Question—Difference Between "Validity" and "Applicability" — An Act Respecting Appeals to the Court of Appeal, etc., R.S.O. 1897, C. 91, S. 5.

Under s. 5 of the Act of 1897, the justice was entitled to state a case for the opinion of the Court of Appeal only when there was a question as to the constitutional validity of the particular statute under which the justice had acted. In this case the only question of law was whether the Ontario Municipal Act, 1897, applied to a certain railway. *Held*, a stated case on that question could not be entertained since no question as to the constitutional validity of the statute was raised. *Monkhouse v. G.T.R.*, 8 O.A.R. 637, 3 Cart. 289, referred to as a case which pointed out and acted upon the distinction between the question whether an Act is constitutionally invalid and the question whether it is, in point of law, applicable to a given set of circumstances, or to certain persons or corporations.

R. v. TORONTO Ry., (1899) 26 O.A.R. 491.

The Succession Duties Act, 1932 (Alta.), C. 16—Power of Court to Determine Validity under S. 35.

S. 35 of the Alberta Succession Duties Act, 1932, provided: An action may be brought or a summary application made to the Court to determine any question or liability under this Act, although the time for the payment of the duty has not arrived subject to the discretion of the Court as to costs. A Judge shall have jurisdiction in an action or on summary application, to determine what property is liable to duty under this Act and the amount of such duty, and the time or times when same is payable, and may himself or through any referee exercise any of the powers conferred upon any officer or person under this Act: Provided that the property liable for duty and the amount of such duty shall not have been previously determined. *Held*, the Court had no jurisdiction on proceedings taken under that sec-

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Preliminary Note

The liberty of the subject is an implication drawn from the principle that the subject may say or do what he pleases provided he does not transgress the substantive law or infringe the legal rights of others.

Apart from the general provisions contained in Magna Carta (1297), the Petition of Right (1627), the Bill of Rights (1688) and the Act of Settlement (1700) regulating the relations between the Crown and people, the liberties of the subject are not expressly defined in any law or code. Two possible exceptions to this statement may be admitted, however, since the United Nations Declaration of Human Rights 1948 (Cmnd 7662) and the European Convention on Human Rights 1950 (Cmnd 8969) must be regarded as of influence in the development of English law. The former does not itself impose any legal obligations upon member states of the United Nations, nor prescribe any legal rights for individuals; the latter enables a person who alleges that he has suffered a violation of a human right enunciated in the Convention to have recourse to the European Commission of Human Rights for redress, after the exhaustion of domestic remedies.

It is beyond the scope of this title to cover all the statutory provisions which may be considered relevant to the protection of civil liberties and the reader is referred to 8 Halsbury's Laws (4th edn) paras 827 et seq for further consideration of the rights and duties of the individual. Three particular topics, however, are considered in this title, namely habeas corpus, discrimination and access to personal information.

Habeas Corpus

The writ of habeas corpus ad subjudiciendum, commonly known as the writ of habeas corpus, is a prerogative process the purpose of which is to protect the liberty of the subject. It is issued by the High Court and the judges of that court to procure the production of a person in order that the circumstances of his detention may be inquired into. In modern practice applications for writs of habeas corpus have been concerned primarily with the committal or detention of prisoners; the detention of persons in pursuance of the Extradition Act 1989, Vol 17, title Extradition and Fugitive Offenders; the detention of immigrants pursuant to the Immigration Act 1971, Vol 31, title Nationality and Immigration; the detention of persons who are allegedly suffering from mental disorders; and the legal right to the custody of minors.

The procedure, which is regulated by RSC Ord 54, commences normally with an ex parte application supported by an affidavit to a judge in court. The writ may be ordered to issue forthwith or one or other of the orders mentioned in r 2 of Ord 54 may be made; if the writ is issued the judge gives directions as to the court or judge before whom, and the date on which, the writ is returnable. The person to whom it is directed must produce the body of the person alleged to be unlawfully detained, and make a formal return to the writ stating all the causes of the detention. The return having been made, motion is made for discharging or remanding the person detained or for amending or quashing the return. Provisions relating to procedure on applications for habeas corpus were enacted by the Administration of Justice Act 1960, s 14, and s 15 of that Act post governs appeals in such proceedings.

The effectiveness of the writ was increased, in relation to criminal matters other than treason, by the Habeas Corpus Act 1679, which specifically met the various devices by which the common law right to the writ had until then been circumvented. In particular, that Act made the writ accessible during the vacation and imposed penalties for the refusal of the writ, and, in general, regulated the granting and issue of the writ and the procedure on its return.

The Habeas Corpus Act 1816, extends the principles of the 1679 Act to matters other than criminal (s 1), and empowers a judge to inquire into the truth of the return (ss 3, 4). Its provisions are extended to a writ issued under the 1679 Act (s 6). The Habeas Corpus Act 1862 limits the overseas jurisdiction of the High Court.

Several other writs of habeas corpus are known to the common law, but all save the writs of habeas corpus ad testificandum and habeas corpus ad respondendum are in

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MDCCLXX.

Persons, their Crown and Dignity, by Reason or Colour of any such Sentence or Declaration, or otherwise, and will do my best endeavour to disclose and make known unto his Majesty, his Heirs and Successors, all Treasons and traitorous Conspiracies which I shall know or hear of to be against him or any of them.

(3) And I do further swear, That I do from my Heart abhor, detest and abjure, as impious and heretical, this damnable Doctrine and Position, That Princes which be excommunicated or deprived by the Pope may be deposed or murdered by their Subjects, or any other whatsoever.

(4) And I do believe, and in my Conscience am resolved, That neither the Pope nor any other Person whatsoever, hath Power to absolve me of this Oath or any Part thereof, which I acknowledge by good and full Authority to be lawfully ministred unto me, and do renounce all Pardons and Dispensations to the contrary.

(5) And all these things I do plainly and sincerely acknowledge and swear, according to these express Words by me spoken, and according to the plain and common Sense and Understanding of the same Words, without any Equivocation or mental Evasion, or secret Reservation whatsoever: And I do make this Recognition and Acknowledgement heartily, willingly and truly, upon the true Faith of a Christian.

“ So help me God.

(6) Unto which Oath so taken, the said Person shall subscribe his or her Name or Mark.

XVI. And be it further enacted by the Authority aforesaid, That no Indictment or Indictments had or found, or hereafter to be had or found, against any Person or Persons, for not repairing to some Church or Chapel, or usual Place of Common Prayer, but absenting him or herself by the Space of one Month, contrary to the Laws and Statutes in that Behalf provided, or for not receiving the said Sacrament contrary to this present Law, nor any Proclamation, Outlawry or other Proceeding thereupon, shall at any Time hereafter be avoided, discharged or reversed, by reason of any Default in Form, or Lack of Form or other Defect whatsoever (other than by direct Traverse to the Point of not coming to Church or not receiving the said Sacrament, whereof such Person or Persons hath been or shall be indicted) but the same Indictment shall stand in force and be proceeded upon; any such Default of Form, or other Defect whatsoever notwithstanding.

No Indictment of a Recusant shall be reversed for Default of Form. Palmer 41. 12 Co. 132.

XVII. Provided always, That if any Person or Persons so indicted or to be indicted, shall at any Time hereafter submit and conform him or herself, and become obedient to the Laws of the Church of England, and repair to the Parish Church of his or her most Abiding, and if there be no such, then to the Church next adjoining to his or her such Dwelling; and there hear Divine Service according to the true Meaning of the Statute in that Behalf made and provided, and there publicly receive the said Sacrament according to the Laws of this Realm of England now established; That then every such Person and Persons so indicted shall and may from thenceforth be admitted and allowed to avoid, discharge, reverse and undo the said Indictment and Indictments, and all Proceedings thereupon, in such Manner and Form; as if this present Act had not been had nor made; any Thing herein contained to the contrary in any wise notwithstanding.

He that conformeth himself may traverse an Indictment.

XVIII. And forasmuch as it is found by late Experience, That such as go voluntarily out of this Realm of England to serve Foreign Princes, States or Potentates, are for the most part perverted in their Religion and Loyalty by Jesuits and Fugitives, with whom they do there converse; (2) Be it therefore enacted by the Authority aforesaid, That every Subject of this Realm that, after the tenth Day of June next coming, shall go or pass out of this Realm to serve any Foreign Prince, State or Potentate, or shall after the said tenth Day of June pass over the Seas, and there shall voluntarily serve any such Foreign Prince, State or Potentate, not having before his or their going or passing as aforesaid, taken the Oath aforesaid, before the Officer hereafter appointed, shall be a Felon.

He shall take the Oath who goeth out of the Realm to serve Foreign Prince. Inst. 80.

XIX. And that if any Gentleman or Person of higher Degree, or any Person or Persons which hath born or shall bear any Office or Place of Captain, Lieutenant or any other Place, Charge or Office in Camp, Army or Company of Soldiers, or Conductor of Soldiers, shall after go or pass voluntarily out of this Realm, to serve any such Foreign Prince, State or Potentate, or shall voluntarily serve any such Prince, State or Potentate, before that he and they shall become bound by Obligation, with two such Sureties as shall be allowed of by the Officers which are hereafter by this Act limited to take the same Bond, unto our Sovereign Lord the King's Majesty, his Heirs and Successors, in the Sum of twenty Pounds of current English Money at the least, with Condition to the Effect following, shall be a Felon.

A Gentleman, Captain, or Lieutenant serving a foreign Prince, shall be bound to the King, &c.

The Tenor of which Condition hereafter followeth, viz.

XX. THAT if the within bounden, &c. shall not at any Time then after be reconciled to the Pope or Sec of Rome, nor shall enter into or consent unto any Practice, Plot or Conspiracy whatsoever against the King's Majesty, his Heirs and Successors, or any his and their Estate and Estates, Realms or Dominions; but shall within convenient Time after Knowledge thereof had, reveal and disclose to the King's Majesty, his Heirs and Successors, or some of the Lords of his or their Honourable Privy Council, all such Practices, Plots and Conspiracies; that then the said Obligation to be void.

XXI. And that for the due Execution of this Branch of this present Law, it shall and may be lawful to and for the Customer and Comptroller of every Port, Haven or Creek, or one of them, and their or either of their Deputy or Deputies, and none other, to receive and accept all and every such Bond and

Who shall take the Obligation and administer the Oath.

Obligation to and for the Uses aforesaid, and to minister and give the Oath aforesaid, according to the true Intent of this Statute, (taking for such Bond Six-pence and no more, and for the said Oath no Fee at all:) (2) Which said Customers and Comptroller shall register and certify all and every such Bond and Oath so taken; into the Court of Exchequer at *Westminster* once every Year, upon pain of five Pounds for every Bond so certified, and twenty Shillings for every Oath not so certified. (3) Provided always, That this last mentioned Branch shall not extend to any Person or Persons which are already gone or shall go beyond the Seas to serve any Foreign Prince, State or Potentate, before the tenth Day of *June* next coming, for his said going or passing before the said tenth Day of *June*.

Forfeiture for not registering and certifying.

Putting in practice to absolve or withdraw any from Obedience, or to reconcile them to the Pope.
23 Eliz. c. 1.

XXII. And further be it enacted by the Authority aforesaid, That if any Person or Persons at any Time after the said tenth Day of *June* shall either upon the Seas or beyond the Seas, or in any other Place within the Dominions of the King's Majesty, his Heirs and Successors, put in practice to absolve, persuade or withdraw any of the Subjects of the King's Majesty, or of his Heirs and Successors of this Realm of *England*, from their natural Obedience to his Majesty, his Heirs or Successors, (2) or to reconcile them to the Pope or See of *Rome*, or to move them or any of them to promise Obedience to any pretended Authority of the See of *Rome*, or to any other Prince, State or Potentate; that then every such Person, their Procurers, Counsellors, Aiders and Maintainers, knowing the same, shall be to all Intents adjudged Traytors, and being thereof lawfully convicted shall have Judgment, suffer and forfeit, as in Cases of High Treason.

Being withdrawn or reconciled.

A reconciled Person taking the Oath.

1 Eliz. c. 1. which is repealed by 1 W. & M. c. 8. sect. 2.

XXIII. And if any Person as aforesaid, at any Time after the said tenth Day of *June* shall be either upon the Seas or beyond the Seas, or in any other Place within the Dominions of the King's Majesty, his Heirs or Successors, willingly absolved or withdrawn as aforesaid, or willingly reconciled, or shall promise Obedience to any such pretended Authority, Prince, State or Potentate as aforesaid: That every such Person or Persons, their Procurers and Counsellors, Aiders and Maintainers, knowing the same, shall be to all Intents adjudged Traytors; and being thereof lawfully convicted shall have Judgment, suffer and forfeit, as in Cases of High Treason.

XXIV. Provided nevertheless, That the last mentioned Clause of this Branch, or any Thing therein contained, shall not extend or be taken to extend to any Person or Persons whatsoever, which shall hereafter be reconciled to the Pope or See of *Rome* as aforesaid, (for and touching the Point of so being reconciled only) that shall return into this Realm, and thereupon within six Days next after such Return, before the Bishop of the Diocese, or two Justices of the Peace jointly and severally of the County where he shall arrive, submit himself to his Majesty and his Laws, and take the Oath set forth by Act in the first Year of the Reign of the late Queen *Elizabeth*, (commonly called the Oath of Supremacy) as also the Oath before set down in this present Act; (2) which said Oaths the said Bishop and Justices respectively shall have Power and Authority by this present Act to minister to such Persons as aforesaid: (3) And the said Oaths so taken, the said Bishop and Justices before whom such Oaths shall be so taken respectively, shall certify at the next General or Quarter-Sessions of the Peace to be holden within the said Shire, Limit, Division or Liberty wherein such Person as aforesaid shall submit himself and take the said Oaths as aforesaid, upon pain of every one neglecting to certify the same as aforesaid, the Sum of forty Pounds.

Where the Trial shall be.

Peers.

XXV. And be it further enacted, That all and every Person and Persons that shall offend contrary to this present Branch of this Statute, shall be indicted, tried and proceeded against by and before the Justices of Assize and Goal-delivery of that County for the Time being, or before the Justices of the Court of King's Bench, and be there proceeded against according to the Laws and Statutes of this Realm against Traytors, as if the said Offence had been committed in the same County where such Person or Persons shall be so taken; any Law, Custom or Statute to the contrary in any wise notwithstanding.

XXVI. Provided always, That if any Peer of this Realm, shall happen to be indicted of any Offense made Treason by this Act, he shall have his Trial by his Peers as in other like Cases of Treason is accustomed.

1 Eliz. c. 2.

The Forfeiture for not repairing to Church weekly.

XXVII. And be it further enacted, That if any Subject of this Realm at any Time after one Month next after the End of this present Session of Parliament, shall not resort or repair every *Sunday* to some Church, Chapel or some other usual Place appointed for Common Prayer, and there hear Divine Service according to the Statute made in that Behalf, in the first Year of the Reign of the late Queen *Elizabeth*, That then it shall and may be lawful to and for any one Justice of Peace of that Limit, Division or Liberty, wherein the said Party shall dwell, upon Proof unto him made of such Default by Confession of the Party or Oath of Witnesses, to call the said Party before him; (2) and if he or she shall not make a sufficient Excuse and due Proof thereof, to the Satisfaction of the said Justice of Peace, that it shall be lawful for the said Justice of Peace to give Warrant to the Churchwarden of the said Parish wherein the said Party shall dwell, under his Hand and Seal, to levy Twelve-pence for every such Default, by Distress and Sale of the Goods of every such Offender, rendering to the said Offender the Overplus of the Money raised of the said Goods so to be sold: (3) And that in Default of such Distress, it shall and may be lawful for the said Justice of Peace to commit every such Offender to some Prison within the said Shire, Division, Limit or Liberty, wherein such Offender shall be inhabiting, until Payment be made of the said Sum or Sums so to be forfeited; (4) which Forfeiture shall be employed to and for the Use of the Poor of that Parish wherein the Offender shall be resident or abiding at the Time of such Offense committed.

Within what Time the Offender shall be impeached.

XXVIII. Provided, That no Man be impeached upon this Clause, except he be called in question for his said Default within one Month next after the said Default made.

XXIX. And that no Man being punished according to this Branch, shall for the same Offence be punished by the Forfeiture of twelve Pence, upon the Law made in the first Year of the late Queen Elizabeth.

XXX. And because in one Act of Parliament begun and holden at Westminster in the five and thirtieth Year of the late Queen Elizabeth, intituled, *An Act to retain the Queen's Majesty's Subjects in their due Obedience*. There are two Branches contained, the first beginning thus: (And for that every Person having a House or Family, is in Duty bounden to have especial Regard of the good Government and Ordering of the same) and so forth to the next Clause beginning thus, (Provided nevertheless, That this Act shall not in any wise extend to punish or impeach any Persons for relieving, &c. ending with these Words, Any Thing in this Act contained to the contrary notwithstanding) which said two Branches or Clauses are found defective:

XXXI. Be it therefore enacted, That the said two Branches or Clauses of the said Act, and no more shall be by Authority of this present Parliament utterly repealed and made void.

XXXII. And in lieu thereof be it enacted, That every Person and Persons, which after one Month next after the End of this present Session of Parliament shall willingly maintain, retain, relieve, keep or harbour in his or their House, any Servant, Sojourner or Stranger, who shall not go to, or repair to some Church or Chapel, or usual Place of Common Prayer, to hear Divine Service, but shall forbear the same by the Space of one Month together, not having a reasonable Excuse, contrary to the Laws and Statutes of this Realm, shall forfeit ten Pounds for every Month that he, she or they shall so relieve, maintain, retain, keep or harbour any such Servant, Sojourner or Stranger in his or their House, so forbearing as aforesaid.

XXXIII. And that every Person which shall within the Time aforesaid, retain or keep in his, her or their Service, Fee or Livery, any Person or Persons, which shall not go to, or repair to some Church, Chapel or usual Place of Common Prayer to hear Divine Service, but shall forbear the same by the Space of one Month together, shall forfeit for every Month, he, she or they shall so retain, keep or continue in his, her or their Service, Fee or Livery, any such Person or Persons so forbearing as aforesaid, knowing the same, ten Pounds; the same Penalties to be recovered and employed in Manner and Form hereafter following.

XXXIV. Provided nevertheless, That this Act shall not in any wise extend to punish or impeach any Person or Persons for maintaining, retaining, relieving, keeping or harbouring his, her or their Father or Mother, wanting, without Fraud or Covin, other Habitation, or sufficient Maintenance, or the Ward of any such Person, or any Person that shall be committed by Authority to the Custody of any by whom they shall be so relieved, maintained or kept; any Thing in this Act contained to the contrary notwithstanding.

XXXV. And be it further enacted by Authority of this present Parliament, That upon any lawful Writ, Warrant or Process awarded to any Sheriff or other Officer, for the Taking or Apprehending of any Popish Recusant standing excommunicated for such Recusancy, it shall be lawful for such Sheriff or other Officer authorized in that Behalf, if Need be, to break open any House wherein such Person excommunicate shall be, or to raise the Power of the County, for the Apprehending of such Person; and the better Execution of such Warrant, Writ or Process.

XXXVI. And be it further enacted, That all and every Offence to be committed or done against this present Act, shall and may be enquired of, heard and determined before the Justices of the King's Bench, Justices of Assize and Gaol-delivery in their several Assizes and Gaol-deliveries; (2) And all Offences other than Treason shall be enquired, heard and determined before the Justices of Peace in their General or Quarter-Sessions to be holden within the Shire, Division, Limit or Liberty wherein such Offence shall happen.

XXXVII. Provided always, and be it enacted by the Authority aforesaid, That any Attainder of Felony made Felony by this Act as is aforesaid, shall not in any wise extend to take away the Dower of the Wife of any such Person attained, or be any Bar for the Recovery of the same, nor shall make or work any Corruption of Blood, or Disinheritance of any the Heir or Heirs of any such Person or Persons so attainted; this Act, or any thing therein contained to the contrary in any wise notwithstanding.

XXXVIII. And be it further enacted, That if any Action or Actions shall at any Time hereafter be commenced or brought against any Person or Persons doing, committing, or commanding any Act or Thing; for or concerning the Execution of this present Statute, or any Article or Clause therein contained; That then every Defendant in such Action or Actions, may plead the General Issue, and be received to maintain the same by any Evidence that shall prove his Doings and Proceedings warrantable by this Law.

XXXIX. Provided always, That neither this Act, nor any Thing therein contained, shall extend to take away or abridge the Authority or Jurisdiction of the Ecclesiastical Censures, for any Cause or Matter, but that the Commissioners of his Majesty, his Heirs and Successors, in Causes Ecclesiastical, the Time being, and the Archbishops, Bishops, and other Ecclesiastical Judges, may do and proceed, as before the making of this Act they lawfully did or might have done; any Thing in this Act to the contrary in any wise notwithstanding.

XL. Provided always and be it enacted, That no Person shall be charged or chargeable with any Penalty or Forfeiture by force of this Act, which shall happen for his Wife's Offence in not receiving the said Sacrament during her Marriage, nor that any Woman shall be charged or chargeable with any Penalty or Forfeiture by force of this Act, for any such Offence of not Receiving, which shall happen during her Marriage.

In what Cases
Chief Officers of
Cities or Corpo-
rate Towns may
sell other Mens
Wines.
24 H. 8. c. 6.
For farther Pro-
visions concerning
Wines, see
7 Ed. 6. c. 5.
5 El. c. 5.
32 Car. 2. c. 25.
18 Car. 2. c. 5.
sect. 6.
1 Jac. 2. c. 3.
1 Ann. stat. 1.
c. 12. 5 Ann.
c. 27. 6 Geo.
1. c. 12. 8 Geo.
1. c. 18. sect. 19.
32 Geo. 1. c. 28.
sect. 20. 1 Geo. 2. stat. 2. c. 17. 10 Geo. 2. c. 19. 17 Geo. 2. c. 40. 18 Geo. 2. c. 9. 26 Geo. 2. c. 12. 30 Geo. 2. c. 19. and
32 Geo. 2. c. 19.

III. And be it further enacted by the Authority aforesaid, That if any Person or Persons that now have or hereafter shall have, any Manner of Wines to sell in Gross within any City, Borough, Town Corporate or any other Haven, Corporate Town or Towns within this Realm, or within any the King's Dominions or Territories of the same, and do at any Time hereafter refuse to sell any Kind of the same Wines, according to the Price as now or at any Time hereafter shall be limited and appointed by the said Lord Chancellor, Lord Treasurer, Lord President, Lord Privy Seal, and other the said Chief Justices, or by any five or three of them; that then it shall be lawful to the Mayor of the City of London, Recorder of the same City, and two of the ancient Aldermen of the same City, being no Vintners for the Time being, and the Mayor, Bailiffs, Aldermen and other the head Officers, or to any two of them, whereof the Mayor or chief Alderman or Bailiff to be one, within all and every other City, Borough and Port Town within this Realm, wherein any Wines now be or hereafter shall be to sell, to enter into the Houses, Cellars and Places of all and every such Owner and Owners of the same Wines, in any of the said Cities, Boroughs and Port Towns, and the same Wines lawfully to sell to the Use of the Owners of the same Wines, to any Person and Persons willing to buy the same, according to such Prices and Rate as by the said Lord Chancellor, Lord Treasurer, Lord President, Lord Privy Seal, and the said two Chief Justices, or by any five, four, or three of them, is or hereafter shall be set, limited and assigned, according to the Tenor of the said Act made in the said eight and twentieth Year of the King's Majesty's Reign.

C A P. XXIV.

EXP. 4 Inst. 44.

A Confirmation of a Subsidy granted to the King by the Clergy of the Province of Canterbury, of six Shillings in the Pound, to be paid in two Years.

C A P. XXV.

EXP.

A Subsidy by the Temporality.



Anno primo EDWARDI VI.

STATUTES made in the Parliament begun at Westminster the fourth Day of November in the first Year of the Reign of our most dread Sovereign Lord Edward the Sixth, by the Grace of God King of England, France and Ireland, Defender of the Faith, and of the Church of England, and also of Ireland, in Earth the Supream Head: And from thence continued to the twenty-fourth Day of December then next ensuing; that is to say, in the first Session of the same Parliament, as followeth.



C A P. I.

33

An Act against such as shall unreverently speak against the Sacrament of the Altar, and of the Receiving thereof under both Kinds.

The Penalty for
unreverent
speaking against
the Sacrament
of the Body and
Blood of Christ,
or against the
receiving there-
of in both
Kinds
The King
mi deth to have
Unity in Reli-
gion by Cle-
nency.

THE King's most excellent Majesty minding the Governance and Order of his most loving Subjects to be in most perfect Unity and Concord in all Things, and in especial in the true Faith and Religion of God, and wishing the same to be brought to pass with all Clemency and Mercy on his Highness Part towards them, as his most Princely Serenity and Majesty hath already declared by evident Proof, to the Intent that his most loving Subjects provoked by Clemency and Goodness of their Prince and King, shall study rather for Love than for Fear to do their Duties, first to Almighty God, and then to his Highness and the Common Wealth, nourishing Concord and Love amongst themselves; (2) Yet considereth and perceiveth that in a Multitude all be not on that Sort, that Reason and the Knowledge of their Duties can move them from Offence, but many which had need have some Bridle of Fear, and that the same be Men most contentious and arrogant for the most Part, or else most blind and ignorant: (3) By the

the Means of which Sort of Men, many Things well and godly instituted; and to the Edification of many, be perverted and abused, and turned to their own and others great Loss and Hindrance, and some-
me to extreme Destruction: The which doth appear in nothing more or sooner, than in Matters of Religion, and in the great and high Mysteries thereof, as in the most comfortable Sacrament of the Body and Blood of our Saviour Jesus Christ, commonly called the Sacrament of the Altar, and in Scripture, the Supper and Table of the Lord, the Communion and Partaking of the Body and Blood of Christ: (4) Which Sacrament was instituted of no less Author than of our Saviour, both God and Man, when at his last Supper amongst his Apostles, he did take the Bread into his Holy Hands; and did say, *Take you and eat, this is my Body, which is given and broken for you.* And taking up the Chalice or Cup, did give Thanks; and say, *This is my Blood of the New Testament, which is shed for you, and for many, for the Remission of Sins,* that whensoever we should do the same, we should do it in the Remembrance of him, and to declare and set forth his Death and most glorious Passion, until his Coming. Of the which Bread, whosoever eateth, or of the which Cup, whosoever drinketh unworthily, eateth and drinketh Condemnation and Judgment to himself, making no Difference of the Lord's Body. (5) The Institution of which Sacrament being ordained by Christ, as is before said, and the said Words spoken of it here before rehearsed, being of eternal, infallible and undoubted Truth: Yet the said Sacrament (all this notwithstanding) hath been of late marvellously abused by such manner of Men before rehearsed, who of Wickedness, or else of Ignorance and want of Learning, for certain Abuses heretofore committed of some; in misusing thereof, have condemned in their Hearts and Speech the whole Thing, and contemptuously depraved, despised or reviled the same most Holy and Blessed Sacrament, and not only disputed and reasoned unreverently and ungodly of that most high Mystery, but also in their Sermons, Preachings, Readings, Lectures, Communications, Arguments, Talks, Rhimes, Songs, Plays or Jestes, name or call it by such vile and unseemly Words, as Christian Ears do abhor to hear rehearsed: (6) For Reformation whereof, he it enacted by the King's Highness, with the Assent of the Lords Spiritual and Temporal, and of the Commons, in this present Parliament assembled, and by the Authority of the same, That whatsoever Person or Persons, from and after the first Day of May next coming, shall deprave, despise or contemn the said most Blessed Sacrament, in Contempt thereof; by any contemptuous Words, or by any Words of depraving, despising or reviling; Or what Person or Persons shall advisedly in any other wise contemn, despise or revile the said most Blessed Sacrament, contrary to the Effects and Declaration above-said: That then he or they shall suffer Imprisonment of his or their Bodies, and make Fine and Ranom at the King's Will and Pleasure. (7) And for full and effectual Execution of the Premises before devised, ordained and enacted by this Act, be it furthermore enacted by the Authority of this present Parliament, That immediately after the first Day of May next coming, the Justices of Peace, or three of them at the least, whereof one of them to be of the Quorum, in every Shire of this Realm, and Wales, and all other Places within the King's Dominions, shall have full Power and Authority by Vertue of this Act, as well to take Information and Accusation by the Oaths and Depositions of two able, honest and lawful Persons at the least, (8) and after such Accusation or Information so had, to enquire by the Oaths of xii. Men, in every of their four Quarter-Sessions yearly to be holden, of all and singular such Accusations or Informations to be had or made of any of the Offences above-said; to be committed or done after the said first Day of May, within the Limits of their Commission: (9) And that upon every such Accusation and Information, the Offender and Offenders shall be enquired of, and indicted before the said Justices of Peace, or three of them at the least, as is aforesaid; of the said Contempts and Offences, by the Verdict of twelve honest and indifferent Men, if the Matter of the said Accusation and Information shall seem to the said Jury good and true.

The blessed Sacrament instituted by Christ himself, and by what Words of his.

The Causes of the Abuse of the blessed Sacrament.

The Penalty for speaking unreverently of the most blessed Sacrament.

Justices of Peace may enquire of Offenders.

Examination of the Accusers.

12 Co. 103. What Process shall be awarded against the Persons indicted.

Justices of Peace may determine the Offences.

Bailment of Persons indicted.

II. And it is also further enacted by the Authority aforesaid, That the said Justices of Peace, or three of them at the least, as is aforesaid, before whom any such Presentment, Information and Accusation shall be made or taken as is aforesaid, shall examine the Accusers, what other Witnesses were by and present at the Time of the doing and committing of the Offence, whereof the Information, Accusation and Presentment shall be made; and how many others than the Accusers have Knowledge thereof; (2) and shall have full Power and Authority by their Discretions to bind by Recognizance to be taken before them, as well the said Accusers, as all such other Persons whom the said Accusers shall declare to have Knowledge of the Offences by them presented and informed, every of them in five Pounds to the King, to appear before the said Justices of Peace, before whom the Offender or Offenders shall be tried at the Day of Trial and Deliverance of such Offenders.

III. And it is further enacted by the Authority aforesaid, That the said Justices of Peace or three of them at the least, as is aforesaid, by Vertue of this Act, shall have full Power and Authority to make Process against every Person and Persons so indicted, by two Capias and an Exigent, and by Capias Utlagatum, as well within the Limits of their Commission, as into all other Shires and Places of this Realm, Wales and other the King's Dominions; as well within Liberties as without, and the same Process to be good and effectual in the Law to all Intents, Construtions and Purposes; (2) and upon the Appearance of any of the Offenders, shall have full Power and Authority by Vertue of this Act and the Commission of Peace, to determine the Contempts and Offences aforesaid, according to the Laws of this Realm and the Effects of this Act: (3) And that the said Justices of Peace, or three of them at the least, as is aforesaid, shall have full Power and Authority to let any such Person or Persons so indicted, upon sufficient Sureties, by their Discretions, to Bail for their Appearance to be tried, according to the Tenor, Form and Effect of this Act.

2 Cor. 11. 20. 1 Cor. 10. 21. 1 Cor. 10. 16. 1 Cor. 10. 16, 17. 1 Cor. 11. 24. Mat. 26. 27. Mar. 14. 23. Mar. 14. 24. Luke 23. 19. Mat. 26. 26. Mar. 14. 24. Luke 22. 19. Mat. 26. 28. 1 Cor. 11. 26.

IV. Provided always, and be it enacted, That the said Justices of Peace, or three of them at the least, at their Quarter-Sessions, where any Offender or Offenders shall be, or stand indicted of any of the Contempts or Offences abovesaid, shall direct and award one Writ in the King's Name to the Bishop of the Diocese where the said Offence or Offences be supposed to be committed or done, willing and requiring the said Bishop to be in his own Person or by his Chancellor, or other his sufficient Deputy learned, at the Quarter-Sessions in the said County to be holden, when and where the said Offender shall be arraigned and tried, appointing to them in the said Writ the Day and Place of the said Arraignment; (2) which Writ shall be of this Form: *Rex, &c. Episcopo L. salutem. Precipimus tibi: quod tu, Cancellarius tuus, vel alius deputat. tuus sufficienter eruditus, sitis cum Juslic. nostris ad pacem in com. nostro B. conservand. assignat. apud D. tali die, ad sessionem nostram, ad tunc et ibm. tenend. ad dand. consilium et advisament. eidem Juslicariis nostris ad pacem, super arranament. et deliberationem offendens, contra form. Statuti concernens sacrosanct. Sacramentum Altaris.*

A Writ directed by the Justices to the Bishop.

No Indictment but within three Months after the Offence.

Examined. The Defendant may try his Innocency by Witnesses.

V. Provided always, and be it enacted by the Authority aforesaid, That no Person or Persons shall be indicted of any of the Contempts, or Offences abovesaid, but only of such Contempts or Offences as shall be done or perpetrated within three Months next after the said Offence or Offences so committed or done.

VI. And be it further enacted by the Authority aforesaid, That in all Trials, for any such Offenders before the said Justices, as is aforesaid, the Person or Persons being complained on and arraigned, shall be admitted to purge or try his or their Innocency, by as many or more Witnesses in Number, and of such good Honesty and Credence, as the Witnesses be which deposed against him or them, or any of them.

VII. And forasmuch as it is more agreeable, both to the first Institution of the said Sacrament of the most precious Body and Blood of our Saviour Jesus Christ, and also more conformable to the common Use and Practice both of the Apostles and of the Primitive Church by the Space of 500 Years and more after Christ's Ascension, that the said Blessed Sacrament should be ministred to all Christian People under both the Kinds of Bread and Wine, than under the Form of Bread only: (2) And also it is more agreeable to the first Institution of Christ, and to the Usage of the Apostles, and the Primitive Church, that the People being present should receive the same with the Priest, than that the Priest should receive it alone: (3) Therefore be it enacted by our said Sovereign Lord the King, with the Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That the said most Blessed Sacrament be hereafter commonly delivered and ministred unto the People within the Church of England and Ireland, and other the King's Dominions, under both the Kinds, that is to say, of Bread and Wine, except Necessity otherwise require: (4) And also that the Priest which shall minister the same, shall, at the least one Day before, exhort all Persons which shall be present likewise to resort and prepare themselves to receive the same. (5) And when the Day prefixed cometh, after a godly Exhortation by the Minister made, (wherein shall be further expressed the Benefit and Comfort promised to them which worthily receive the said Holy Sacrament, and Danger and Indignation of God threatned to them which shall presume to receive the same unworthily, to the End that every Man may try and examine his own Conscience before he shall receive the same) (6) the said Minister shall not without a lawful Cause deny the same to any Person that will devoutly and humbly desire it; any Law, Statute, Ordinance or Custom contrary thereunto in any wise notwithstanding: Not condemning hereby the Usage of any Church out of the King's Majesty's Dominions. 5 & 6 Edw. 6. c. 1. Repealed by 1 Ma. Sess. 2. c. 2. and Revived by 1 Eliz. c. 1. §. 14. Farther Provisions relating hereto, see 1 Ed. 6. c. 12. 2 & 3 Ed. 6. c. 1. 1 Mar. Sess. 2. c. 3. 1 El. c. 2. 13 El. c. 12. 23 El. c. 1. 13 & 14 Car. 2. c. 4. 15 Car. 2. c. 6. 1 W. & M. Stat. 1. c. 18. 5 Ann. c. 5. and 23 Geo. 2. c. 28.

The blessed Sacrament shall be delivered unto the People under both Kinds of Bread and Wine.

The Usage of other Churches not condemned.

C A P. II.

An Act for the Election of Bishops.

25 H. 8. c. 20.
31 H. 8. c. 9.
8 Eliz. c. 1.
2 M. Stat. 2. c. 2.
1 Jac. 1. c. 25.
§. 43.
Elections of Bishops belong only to the King.
None but the King shall collate to a Bishoprick.

Forasmuch as the Elections of Archbishops and Bishops by the Deans and Chapters, within the King's Majesty's Realms of England and Ireland, at this present Time, be as well to the long Delay, as to the great Costs and Charges of such Persons, as the King's Majesty giveth any Archbishoprick or Bishoprick unto: (2) And whereas the said Elections be in very Deed no Elections, but only by a Writ of *Conge de' eslire*, have Colours, Shadows or Pretences of Elections, serving nevertheless to no Purpose, and seeming also derogatory and prejudicial to the King's Prerogative Royal, to whom only appertaineth the Collation and Gift of all Archbishopricks and Bishopricks, and Suffragan Bishops within his Highness said Realms of England and Ireland, Wales, and other his Dominions and Marches, &c.

A Bishop, collated by the King shall pay the usual Fees. All Processes Ecclesiastical shall be in the King's Name, but the Teste in the Bishop's Name. Every Bishop's, &c. Seal of Office shall have the King's Arms engraven upon it. Usual Fees shall be taken. The Archbishop of Canterbury may use his own Seal. In what Cases other Bishops may use their own Seals. 32 H. 8. c. 45. Certificates into a Court of Record shall be in the King's Name, Teste the Bishop. Repealed by 1 Eliz. c. 1. which revives 25 H. 8. c. 20.

C A P. III.

An Act for the punishing of Vagabonds, and for the Reliefe of the poore and impotent Persons.

See Appendix.

C A P. IV.

9 H. 3. Stat. 1.
c. 31. 1 Ed. 3.
Stat. 2. c. 33.
O B S.

An Act for Tenures holden in Capite. Lands coming to the King's Hand, by Attainder, Dissolution or Surrender, &c. shall not be holden in Capite. Tenure of the King as of his Person, or ancient Possessions. Conclusion of Tenure by Matter of Record.

35

C A P. X.

A Confirmation of a Subsidy of eight Shillings in the Pound, granted by the Clergy to the King and Queen
to be paid in four Years. EXP.

C A P. XI.

An Act of a Subsidy and one Fifteen, granted by the Temporality. EXP.

Anno primo Reginae ELIZABETHÆ.

At the Parliament begun at *Westminster* the xxv. Day of *January* in the first Year of
the Reign of our Sovereign Lady *Elizabeth*, by the Grace of God, of *England*,
France and *Ireland*; Queen, Defender of the Faith, &c. And then and there
holden, kept and continued until the Dissolution of the same, being the eighth
Day of *May* then next ensuing, were enacted as followeth.

C A P. I.

An Act to restore to the Crown the ancient Jurisdiction over the Estate Ecclesiastical and Spi-
ritual, and abolishing all foreign Powers repugnant to the same.

MOST humbly beseech your most excellent Majesty, your faithful and obedient Subjects the Lords
Spiritual and Temporal, and the Commons, in this your present Parliament assembled, That
where in Time of the Reign of your most dear Father, of worthy Memory, King *Henry* the
Eighth, divers good Laws and Statutes were made and established, as well for the utter Extinguishment
and putting away of all usurped and foreign Powers and Authorities out of this your Realm, and other
your Highness Dominions and Countries, as also for the restoring and uniting to the Imperial Crown of
this Realm, the ancient Jurisdictions, Authorities, Superiorities and Preheminences to the same of Right
belonging or appertaining, by Reason whereof we your most humble and obedient Subjects, from the xxv.
Year of the Reign of your said dear Father, were continually kept in good Order, and were disburdened
of divers great and intolerable Charges and Exactions before that Time unlawfully taken and exacted by
such foreign Power and Authority as before that was usurped, until such Time as all the said good Laws
and Statutes by one Act of Parliament made in the first and second Years of the Reigns of the late King
Philip and Queen *Mary*, your Highness Sister, intituled, An Act repealing all Statutes, Articles and Pro-
visions made against the See Apostolick of *Rome* since the twentieth Year of King *Henry* the Eighth, and
also for the Establishment of all Spiritual and Ecclesiastical Possessions and Hereditaments conveyed to the
Laity, were all clearly repealed and made void, as by the same Act of Repeal more at large doth and
may appear; by Reason of which Act of Repeal, your said humble Subjects were estoons brought under
an usurped foreign Power and Authority, and do yet remain in that Bondage, to the intolerable Charges
of your loving Subjects, if some Redress (by the Authority of this your High Court of Parliament, with
the Assent of your Highness) be not had and provided:

II. May it therefore please your Highness, for the repressing of the said usurped foreign Power, and the
restoring of the Rights, Jurisdictions and Preheminences appertaining to the Imperial Crown of this your
Realm, that it may be enacted by Authority of this present Parliament, That the said Act made in the said
first and second Years of the Reigns of the said late King *Philip* and Queen *Mary*, and all and every Branches,
Clauses and Articles therein contained (other than such Branches, Clauses and Sentences, as hereafter shall
be excepted) may from the last Day of this Session of Parliament, by Authority of this present Parliament,
be repealed, and shall from thenceforth be utterly void and of none Effect;

III. And that also for the reviving of divers of the said good Laws and Statutes made in the Time of your
said dear Father, it may also please your Highness, That one Act and Statute made in the xxiiij. Year of
the Reign of the said late King *Henry* the Eighth, intituled, An Act, That no Person shall be cited out of
the Diocess wherein he or she dwelleth, except in certain Cases;

IV. And one other Act made in the xxiv. Year of the Reign of the said late King, intituled, An Act,
That Appeals in such Cases as hath been used to be pursued to the See of *Rome*, shall not be from henceforth
had ne used, but within this Realm;

V. And one other Act made the xxv. Year of the said late King, concerning Restraint of Payment of An-
nates and First-fruits of Archbishopricks and Bishopricks to the See of *Rome*;

VI. And one other Act in the said xxv. Year, intituled, An Act concerning the Submission of the Clergy
to the King's Majesty;

VII. And also one Act made in the said xxv. Year, intituled, An Act Restraining the Payment of Annates
or First-fruits to the Bishop of *Rome*, and of the Electing and Consecrating of Archbishops and Bishops
within this Realm;

VIII. And

VIII. And one other Act made in the said xxv. Year, intituled, An Act concerning the Exoneration of the King's Subjects from Exactions and Impositions heretofore paid to the See of Rome, and for having Licences and Dispensations within this Realm, without suing further for the same;

H. 8. c. 21.

IX. And one other Act made in the xxvi. Year of the said late King, intituled, An Act for Nomination and Consecration of Suffragans within this Realm;

6 H. 8. c. 14.

X. And also one other Act made in the xxviii. Year of the Reign of the said late King, intituled, An Act for the Release of such as have obtained pretended Licences and Dispensations from the See of Rome; (2) and all and every Branches, Words and Sentences in the said several Acts and Statutes contained, by the Authority of this present Parliament, from and at all Times after the last Day of this Session of Parliament shall be revived, and shall stand and be in full Force and Strength, to all Intents, Constructions and Purposes: (3) And that the Branches, Sentences and Words of the said several Acts, and every of them, from thenceforth shall and may be judged, deemed and taken to extend to your Highness, your Heirs and Successors, as fully and largely as ever the same Acts, or any of them, did extend to the said late King Henry the Eighth, your Highness Father.

21 H. 8. c. 16.

The Sentences and Branches in the aforesaid Statutes shall extend to the Queen.

XI. And that it may also please your Highness, that it may be enacted by the Authority of this present Parliament: That so much of one Act or Statute made in the xxxij. Year of the Reign of your said dear Father King Henry the Eighth, intituled, An Act concerning Pre-contracts of Marriages, and touching Degrees of Consanguinity, as in the Time of the late King Edward the Sixth, your Highness most dear Brother, by one other Act or Statute, was not repealed;

32 H. 8. c. 38.

2 & 3 Ed. 6. c. 23.

XII. And also one Act made in the xxxvij. Year of the Reign of the said late King Henry the Eighth intituled, An Act that Doctors of the Civil Law, being married, may exercise Ecclesiastical Jurisdiction (2) and all and every Branches and Articles in the said two Acts last mentioned, and not repealed in the Time of the said late King Edward the Sixth, may from henceforth likewise stand and be revived, and remain in their full Force and Strength, to all Intents and Purposes; any Thing contained in the said Act of Repeal before mentioned, or any other Matter or Cause to the contrary notwithstanding.

37 H. 8. c. 17.

What Statutes repealed by the Statute of 1 & 2 Ph. & M. c. 8. shall continue repealed.

XIII. And that it may also please your Highness, that it may further be enacted by the Authority aforesaid, That all other Laws and Statutes, and the Branches and Clauses of any Act or Statute, repealed and made void by the said Act of Repeal, made in the Time of the said late King Philip and Queen Mary, and not in this present Act specially mentioned and revived, shall stand, remain, and be repealed and void, in such like Manner and Form as they were before the making of this Act; any Thing herein contained to the contrary notwithstanding.

A Reviver of the Statute 1 Ed. 6. c. 1.

XIV. And that it may also please your Highness, that it may be enacted by the Authority aforesaid, That one Act and Statute made in the first Year of the Reign of the late King Edward the Sixth, your Majesty's most dear Brother, intituled, An Act against such Persons as shall unreverently speak against the Sacrament of the Body and Blood of Christ, commonly called the Sacrament of the Altar, and for the receiving thereof under both Kinds, and all and every Branches, Clauses and Sentences therein contained, shall and may likewise from the last Day of this Session of Parliament be revived, and from thenceforth shall and may stand remain and be in full Force, Strength and Effect, to all Intents, Constructions and Purposes, in such like Manner and Form as the same was at any Time in the first Year of the Reign of the said late King Edward the Sixth; any Law, Statute, or other Matter to the contrary in any wise notwithstanding.

A Repeal of the Statute of 1 & 2 Ph. & M. c. 6. 5 R. 2. Stat. 2. c. 5. 2 H. 4. c. 15. 2 H. 5. c. 7.

XV. And that also it may please your Highness, that it may be further established and enacted by the Authority aforesaid, That one Act and Statute made in the first and second Years of the said late King Philip and Queen Mary, intituled, An Act for the Reviving of three Statutes made for the Punishment of Heresies; and also the said three Statutes mentioned in the said Act, and by the same Act revived, (2) and all and every Branches, Articles, Clauses and Sentences contained in the said several Acts and Statutes, and every of them, shall be from the last Day of this Session of Parliament deemed and remain utterly repealed, void and of none Effect, to all Intents and Purposes; any Thing in the said several Acts, or any of them contained, or any other Matter or Cause to the contrary notwithstanding.

The abolishing of foreign Authority.

XVI. And to the Intent that all usurped and foreign Power and Authority Spiritual and Temporal, may for ever be clearly extinguished, and never to be used or obeyed within this Realm, or any other your Majesty's Dominions or Countries; (2) May it please your Highness that it may be further enacted by the Authority aforesaid, That no foreign Prince, Person, Prelate, State or Potentate Spiritual or Temporal shall at any Time after the last Day of this Session of Parliament use, enjoy or exercise any Manner of Power, Jurisdiction, Superiority, Authority, Preheminence or Privilege Spiritual or Ecclesiastical, within this Realm, or within any other your Majesty's Dominions or Countries that now be, or hereafter shall be, but from thenceforth the same shall be clearly abolished out of this Realm, and all other your Highness's Dominions for ever; any Statute, Ordinance, Custom, Constitutions, or any other Matter or Cause whatsoever to the contrary in any wise notwithstanding.

Cok. pl. fol. 465. 487. Ecclesiastical Jurisdiction annexed to the Crown. 1 Leonard 176.

XVII. And that also it may likewise please your Highness, that it may be established and enacted by the Authority aforesaid, That such Jurisdictions, Privileges, Superiorities and Preheminences Spiritual or Ecclesiastical, as by any Spiritual or Ecclesiastical Power or Authority hath heretofore been, or may lawfully be exercised or used for the Visitation of the Ecclesiastical State and Persons, and for Reformation, Order and Correction of the same, and of all Manner of Errors, Heresies, Schisms, Abuses, Offences, Contempts and Enormities, shall for ever by Authority of this present Parliament be united and annexed to the Imperial Crown of this Realm.

XVIII. And that your Highness, your Heirs and Successors, Kings or Queens of this Realm, shall have full Power and Authority by Virtue of this Act, by Letters Patents under the Great Seal of England, to a

sign, name and authorize, when and as often as your Highness, your Heirs or Successors shall think meet and convenient, and for such and so long Time as shall please your Highness, your Heirs or Successors, such Person or Persons being natural-born Subjects to your Highness, your Heirs or Successors, as your Majesty, your Heirs or Successors shall think meet, to exercise, use, occupy and execute under your Highness, your Heirs and Successors; all Manner of Jurisdictions, Privileges and Preheminences, in any wise touching or concerning any Spiritual or Ecclesiastical Jurisdiction, within these your Realms of England and Ireland, or any other your Highness Dominions and Countries: (2) And to visit, reform, redress, order, correct and amend all such Errors, Heresies, Schisms, Abuses, Offences, Contempts and Enormities whatsoever, which by any Manner of Spiritual or Ecclesiastical Power, Authority or Jurisdiction, can or may lawfully be reformed, ordered, redressed, corrected, restrained or amended; to the Pleasure of Almighty God, the Increase of Virtue, and the Conservation of the Peace and Unity of this Realm; (3) and that such Person or Persons so to be named, assigned, authorized and appointed by your Highness, your Heirs or Successors after the said Letters Patents to him or them made and delivered, as is aforesaid, shall have full Power and Authority by Virtue of this Act, and of the said Letters Patents under your Highness, your Heirs and Successors, to exercise, use and execute all the Premises, according to the Tenour and Effect of the said Letters Patents; any Matter or Cause to the contrary in any wise notwithstanding.

The Queen may assign Commissioners to exercise Ecclesiastical Jurisdiction. Repealed 26 Car. 2. c. 31. §. 3. Moor 755. p. 1043. Cro. Car. 223.

XIX. And for the better Observation and Maintenance of this Act, may it please your Highness that it may be further enacted by the Authority aforesaid; That all and every Archbishop, Bishop, and all and every other Ecclesiastical Person, and other Ecclesiastical Officer and Minister, of what Estate, Dignity, Preheminance or Degree soever he or they be or shall be, (2) and all and every Temporal Judge, Justice, Mayor and other Lay or Temporal Officer and Minister, and every other Person having your Highness Fee or Wages, (3) within this Realm, or any your Highness Dominions, shall make, take and receive a corporal Oath upon the Evangelist, before such Person or Persons as shall please your Highness, your Heirs or Successors, under the Great Seal of England to assign and name, to accept and to take the same according to the Tenour and Effect hereafter following; that is to say,

Who are compellable to take the Oath. Ecclesiastical Persons and Officers, Judges, Justice, May Temporal Officer. He that hath the Queen's Fee.

“ I A. B. do utterly testify and declare in my Conscience, That the Queen's Highness is the only Supreme Governor of this Realm, and of all other her Highness Dominions and Countries, as well in all Spiritual or Ecclesiastical Things or Causes, as Temporal; and that no foreign Prince, Person, Prelate, State or Potentate, hath or ought to have any Jurisdiction, Power, Superiority, Preheminance, or Authority Ecclesiastical or Spiritual, within this Realm; and therefore I do utterly renounce and forsake all foreign Jurisdictions, Powers, Superiorities and Authorities, and do promise, that from henceforth I shall bear Faith and true Allegiance to the Queen's Highness, her Heirs and lawful Successors, and to my Power shall assist and defend all Jurisdictions, Preheminences, Privileges and Authorities granted or belonging to the Queen's Highness, her Heirs and Successors, or united and annexed to the Imperial Crown of this Realm: So help me God, and by the Contents of this Book.”

The Oath of the Queen's Supremacy. Repealed by 1 W. & M. Sess. 2. c. 8. §. 1 Bull. 399.

XX. And that it may also be enacted, That if any such Archbishop, Bishop or any other Ecclesiastical Officer or Minister, or any of the said Temporal Judges, Justiciaries, or other Lay Officer or Minister, shall peremptorily or obstinately refuse to take or receive the said Oath; that then he so refusing shall forfeit and lose only during his Life all and every Ecclesiastical and Spiritual Promotion, Benefice and Office, and every Temporal and Lay Promotion and Office, which he hath solely at the Time of such Refusal made; and that the whole Title, Interest, and Incumbency, in every such Promotion, Benefice, and other Office, as against such Person only so refusing, during his Life shall clearly cease and be void, as though the Party so refusing were dead.

The Penalty refusing the Oath.

XXI. And that also all and every such Person and Persons so refusing to take the said Oath, shall immediately after such Refusal, be from thenceforth, during his Life, disabled to retain or exercise any Office or other Promotion which he at the Time of such Refusal hath jointly, or in common, with any other Person or Persons.

XXII. And that all and every Person and Persons, that at any Time hereafter shall be preferred, promoted or collated to any Archbishoprick or Bishoprick, or to any other Spiritual or Ecclesiastical Benefice, Promotion, Dignity, Office or Ministry; or that shall be by your Highness, your Heirs or Successors, preferred or promoted to any Temporal or Lay Office, Ministry or Service within this Realm, or in any your Highness Dominions, before he or they shall take upon him or them to receive, use, exercise, supply or occupy any such Archbishoprick, Bishoprick, Promotion, Dignity, Office, Ministry or Service, shall likewise make, take, and receive the said corporal Oath before mentioned, upon the Evangelist, before such Persons as have or shall have Authority to admit any such Person to any such Office, Ministry or Service, or else before such Person or Persons as by your Highness, your Heirs or Successors, by Commission under the Great Seal of England shall be named, assigned or appointed to minister the said Oath.

XXIII. And that it may likewise be further enacted by the Authority aforesaid, That if any such Person or Persons, as at any Time hereafter shall be promoted, preferred or collated to any such Promotion Spiritual or Ecclesiastical, Benefice, Office or Ministry, or that by your Highness, your Heirs or Successors, shall be promoted or preferred to any Temporal or Lay Office, Ministry or Service, shall and do peremptorily and obstinately refuse to take the same Oath so to him to be offered: that then he or they so refusing shall presently be judged disabled in the Law to receive, take or have the same Promotion Spiritual or Ecclesiastical, or the same Temporal Office, Ministry or Service within this Realm, or any other your Highness Dominions, to all Intents, Constructions and Purposes.

XXIV. And that it may be further enacted by the Authority aforesaid, That all and every Person and Persons Temporal, suing Livery or *Ousere le maine* out of the Hands of your Highness, your Heirs or Successors,

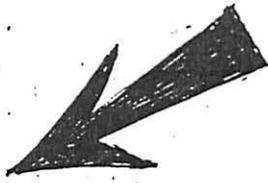
T H E

STATUTES at Large, &c.

M A G N A C H A R T A.

The GREAT CHARTER,

Made in the Ninth Year of King Henry the Third, and confirmed by King Edward the First in the Five and twentieth Year of His Reign.



Ex. Rot. in Turr. Lond. m. 39, 40.
EDWARDUS Dei gratia Rex Angl' Dominus Hibernie & Dux Acquit' Omnibus ad quos presentes littere pervenerint salutem. Inspeximus Magnam Cortam domini H. quondam regis Angl' patris nostri de Libertatibus Angl' in hec verba. HENRICUS Dei gratia Rex Ang' Dominus Hibern' Dux Norman' Acquit' & Comes Andegav' Archiepis' Epis' Abbatibus Prioribus Comitibus Baronibus Vicecomitibus Prepositis Ministris & omnibus ballivis & fidelibus suis presentem cartam inspectur salutem. Sciatis quod nos intuitu Dei & pro salute anime nostre & animarum antecessorum & successorum nostrorum ad exaltationem sancte ecclesie & emendationem regni nostri spontanea & bona voluntate nostra dedimus & concessimus Archiepiscopis Epis' Abbatibus Prioribus Comitibus Baronibus & omnibus de regno nostro has libertates subscriptas tenendas in regno nostro Angl' in perpetuum.

EDWARD by the grace of God King of England, Lord of Ireland, and Duke of Guyan, to all * Archbishops, Bishops, &c. We have seen the Great Charter of the Lord Henry, sometimes King of England, our father, of the Liberties of England, in these words: "HENRY by the grace of God, King of England, Lord of Ireland, Duke of Normandy and Guyan, and Earl of Anjou, to all Archbishops, Bishops, Abbots, Priors, Earls, Barons, Sheriffs, Provofts, Officers, and to all Bailiffs and other our faithful Subjects; which shall see this present Charter, Greeting. Know ye that we, unto the Honour of Almighty God, and for the salvation of the souls of our progenitors and successors + Kings of England, to the advancement of holy Church, and amendment of our Realm, of our meer and free will, have given and granted to all Archbishops, Bishops, Abbots, Priors, Earls, Barons, and to all free men of this our realm, these liberties following, to be kept in our kingdom of England for ever."

* Orig. To whom these Presents shall come, Greeting.

Co. Lit. 81.
 Statutes of Confirmation.
 52 H. 3. c. 5.
 25 Ed. 1. stat. 1. c. 1, 2, 3, & 4.
 28 Ed. 1. stat. 3. c. 1.
 1 Ed. 3. stat. 2. c. 1.
 + Not in Orig.
 2 Ed. 3. c. 1.
 4 Ed. 3. c. 1.
 5 Ed. 3. c. 1, 9.
 10 Ed. 3. stat. 1. c. 1.
 14 Ed. 3. stat. 1. c. 1.
 42 Ed. 3. c. 1.
 8 Rich. 2. c. 1.
 8 Rich. 2. c. 1.

15 Ed. 3. stat. 1. c. 1. 28 Ed. 1. c. 1. 31 Ed. 3. stat. 1. c. 1. 36 Ed. 3. stat. 1. c. 1. 37 Ed. 3. c. 1. 38 Ed. 3. stat. 1. c. 1. 42 Ed. 3. c. 1.
 45 Ed. 3. c. 1. 50 Ed. 3. c. 2. 1 Rich. 2. c. 1. 2 Rich. 2. stat. 2. c. 1. 5 Rich. 2. stat. 2. c. 1. 6 Rich. 2. stat. 1. c. 1. 7 Rich. 2. c. 2. 8 Rich. 2. c. 1. 12 Rich. 2. c. 1. 1 Hen. 4. c. 1. 2 Hen. 4. c. 1. 4 Hen. 4. c. 1. 7 Hen. 4. c. 1. 9 Hen. 4. c. 1. 13 Hen. 4. c. 1. 4 Hen. 5. c. 1.

→ C A P. I.
 → A Confirmation of Liberties.

IN primis concessimus Deo & hac presenti carta nostra confirmavimus pro nobis & heredibus nostris in perpetuum quod ecclesia Anglicana libera sit & habeat omnia jura sua integra & libertates suas illas. Concessimus etiam & dedimus omnibus

FIRST, We have granted to God, and by this our present Charter have confirmed, for us and our Heirs for ever, That the Church of England shall be free, and shall have all her whole rights and liberties inviolable. (2) We have granted also, and

* Defunt & dedimus in Recordo Dunelmensi.

C A P. XXIV.

In what Case a *Præcipe in Capite* is not grantable.

Ex Rot. in Turr. Lond.

B Reve quod vocatur *Præcipe* decetero non fiat alicui de aliquo libero tenemento unde liber homo perdat Curiam suam.

THE Writ that is called *Præcipe in capite* shall be from henceforth granted to no person of any freehold, whereby any freeman may lose his Court.

38 Ed. 2. c. 15.
13 Co. f. 42.
F. N. B. fol. 5.
12, 39. h.
2. Inst. 39.

C A P. XXV.

There shall be but one Measure throughout the Realm.

UNA Mensura vini sit per totum regnum nostrum & una mensura cervisie & una mensura bladi per scilicet quarter London & una latitudo pannorum tinctorum Russetorum & haubergettorum scilicet due ulne infra Listas. De ponderibus vero sit sicut de mensuris.

ONE measure of Wine shall be through our Realm, and one measure of Ale, and one measure of Corn, that is to say, the Quarter of London; and one breadth of dyed Cloth, Russets, and Habergeests, that is to say, two Yards within the lists. (2) and it shall be of Weights as it is of Measures.

2 Inst. 40.
Confirmed and amended by
14 Ed. 3. stat. 1. c. 12.
Amended by
27 Ed. 3. stat. 2. c. 12.
See farther 51 Ric. 2. c. 3.

c. 10. which inflicts Penalty on Offenders. Confirmed and farther amended by 8 H. 6. c. 5. 11 H. 7. c. 4. 16 Car. 1. c. 19. and 22 Car. 2. c. 8. U. 3. stat. 1. 31 Ed. 1. de Ponderibus & Mensuris. 31 Ed. 3. stat. 1. c. 2. 34 Ed. 3. c. 5, & 6. 13 Ric. 2. stat. 1. c. 9. 15 Ric. 2. c. 4. 16 Ric. 2. c. 3. and 12 H. 7. c. 5. with Regard to Weights and Measures.

C A P. XXVI.

Inquisition of Life and Member.

N Ichil decetero detur pro brevi inquisitionis ab eo qui inquisitionem petit de vita vel de membris set gratis concedatur & non negetur.

Nothing from henceforth shall be given for a Writ of Inquisition, nor taken of him that prayeth Inquisition of Life, or of Member, but it shall be granted freely, and not denied.

2 Inst. 47.
Amended by
3 Ed. 1. c. 11.
Altered by
6 Ed. 1. stat. 1. c. 9.
Writ de Odio

13 Ed. 1. stat. 1. c. 29. Mirror 314. Regist. 133, 134. And see 28 Ed. 3. c. 9. which takes away this Writ of Inquisition, otherwise called the Writ de Odio et Atia.

C A P. XXVII.

Tenure of the King in Socage, and of another by Knights Service. Petit Serjeantry.

Si aliqui teneant de nobis per feodi firmam vel per focagium vel burgagium & de alio teneant terram per servicium militar' nos non habebimus custodiam heredis nec terre sue que est de feodo alterius occasione illius feodi firme vel focagii vel burgagii nec habebimus custodiam illius feodi firme vel focagii vel Burgagii nisi ipsa feodi firma debeat servicium militare. Nos non habebimus custodiam heredis vel alicujus terre quam tenet de aliquo alio per servicium militare occasione alicujus parve serjantie quam tenet de nobis per servicium reddendi nobis cultellos vel hujusmodi.

IF any do hold of us by Fee-ferm, or by Socage, or Burgage, and he holdeth Lands of another by Knights Service, we will not have the Custody of his heir, nor of his Land, which is holden of the Fee of another, by reason of that Fee-ferm, Socage, or Burgage. (2) Neither will we have the custody of such Fee-ferm, or Socage, or Burgage, except Knights Service be due unto us out of the same Fee-ferm. (3) We will not have the custody of the Heir, or of any Land, by occasion of any Petit Serjeanty, that any man holdeth of us by Service to pay a Knife, an Arrow, or the like.

Bro. Tenures.
69.
Fitz. Gard. 145.
2 Inst. 43.
Which be holden of another by Knight's Service. Obj. This Tenure being abolished by 12 Car. 2. c. 24.

C A P. XXVIII.

Wager of Law shall not be without Witnesses.

Nullus Ballivus decetero ponat aliquem ad legem manifestam nec ad juramentum simplicis loquela sua sine testibus fidelibus ad hoc inductis.

NO Bailiff from henceforth shall put any man to his open Law, nor to an Oath, upon his own bare saying, without faithful Witnesses brought in for the same.

Fitz. Ley, 78.
Bro. Ley, 37.
2 Inst. 44.

C A P. XXIX.

None shall be condemned without Trial. Justice shall not be sold or deferred.

Nullus liber homo capiatur vel imprisonetur aut discisiatur de libero tenemento suo vel libertatibus vel liberis consuetudinibus suis aut utla-

NO Freeman shall be taken, or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other-

5 Co. 64.
10 Co. 74.
11 Co. 99.
2 Inst. 45.

* Deest 'libero,' ib. b 'Ut,' ib. c 'D' 'de,' ib. d 'Aliquis teneat,' ib. e 'Per burgagium,' ib. f 'Alicujus,' ib. g 'D. 'aliquo,' ib. h 'Serjantie,' ib. i 'Vcl,' ib. k 'De cetero capiatur aut,' ib.

wife

40

Regist. 186.
 Mirror 114.
 1 Anderf. 158.
 2 Bulstr. 328.
 3 Bulstr. 47.
 Wood's Inlt.
 613, 614. Enforced by 2 Ed. 3. c. 8. Confirmed by 5 Ed. 1. c. 9. 14 Ed. 1. stat. 1. c. 24. Confirmed and amended by 25 Ed. 3. Stat. 5. c. 4. 28 Ed. 3. c. 3.
 37 Ed. 3. c. 18. 41 Ed. 3. c. 3. 21 R. 2. c. 10. See 4 H. 7. c. 12. giving Directions to Justices of the Peace, and 16 Car. 1. c. 10. for taking away the Star-Chamber.

wise destroyed: nor will we not pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. (2) We will sell to no man, we will not deny or deter to any man either Justice or Right.

Ex Rot. in Turr. Lond.
 getur aut exulet aut aliquo modo destruat nec super eum ibimus nec super eum mittemus nisi per legale iudicium parium suorum vel per legem terre. Nulli vendemus nulli negabimus aut differemus rectum vel iusticiam.

The Words above, marked in Italicks, do by no means express the Sense of the Original. The two Verbs, Ibimus and Mittemus evidently stand in Contradistinction to each other, and are indeed much sasier expounded than translated; therefore, we cannot do better than recur to Lord Coke's Exposition, which is as follows:—'No Man shall be condemned at the King's Suit, either before the King in his Bench, where the Pleas are Coram Rege, (and so are the Words nec super eum ibimus, to be understood) nor before any other Commissioner or Judge whatever (and so are the Words Nec super eum mittemus, to be understood.)'

C A P. XXX.

Merchant Strangers coming into this Realm shall be well used.

2 Inlt. 57.
 12 Co. 33.
 2 Roll. 115.
 1 Bulstr. 134.

ALL Merchants (if they were not openly prohibited before) shall have their safe and sure Conduct to depart out of England, to come into England, to tarry in, and go through England, as well by Land as by Water, to buy and sell without any manner of evil Tolts, by the old and rightful Customs, except in Time of War. (2) And if they be of a land making War against us, and be found in our Realm at the beginning of the Wars, they shall be attached without harm of body or goods, until it be known unto us, or our Chief Justice, how our Merchants be intreated there in the land making War against us; (3) and if our Merchants be well intreated there, theirs shall be likewise with us.

OMnes mercatores nisi publice antea prohibiti fuerint habeant saluum & securum conductum exire de Angli' & venire in Angli' & morari & ire per Angli' tam per terram quam per aquam ad emend' & vendend' sine omnibus tollis malis per antiquas & rectas consuetudines preterquam in tempore guerre & si sint de terra contra nos guerina & tales inveniuntur in terra nostra in principio guerre attachientur sine dampno corporum vel rerum donec sciatur a nobis vel a capitali Justice nostro quomodo Mercatores terre nostre tractentur qui tunc inveniuntur in terra illa contra nos guerina & si nostri salvi sint ibi alii salvi sint in terra nostra.

* Add sub.
 Confirmed and amended by 9 Ed. 3. Stat. 1. c. 1. 14 Ed. 3. Stat. 2. c. 2. 25 Ed. 4. Stat. 4. c. 2. 2 R. 2. Stat. 1. c. 1. 11 R. 2. c. 7. To these may be added, 1 Ed. 1. c. 9. which confirms this chap. 16 Ricb. 2. c. 1. which putt Merchant Strangers under some Restrictions. 5 H. 4. c. 7. 4 H. 5. c. 5. And 12 H. 7. c. 6. concerning Merchant Adventurers.

C A P. XXXI.

Tenure of a Barony coming into the King's Hands by Eschete.

Bro. Livery, 58.
 * Add Lancastr.
 Bro. Tenures, 57, 61, 94, 99.
 26 H. 8. pl. 3.
 2 Inlt. 14.

IF any man hold of any Eschete, as of the honour of Wallingford, Nottingham, Boloin, or of any other Eschetes which be in our hands, and are Baronies, and die, his Heir shall give none other Relief, nor do none other Service to us, than he should to the Baron, if it were in the Baron's hand. (2) And we in the same wise shall hold it as the Baron held it; neither shall we have, by occasion of any Barony or Eschete, any Eschete or keeping of any of our men, unless he that held the Barony or Eschete otherwise held of us in chief.

SI quis tenuerit de aliqua escaeta sicut de honore Wallingford' Bolonie Nottingh' Lancastr' vel aliis escaetis que sunt in manu nostra & sint Baronie & obierit heres ejus non det aliud relevium nec faciat nobis aliud servicium quam faceret Baroni si illa esset in manu Baronis & nos eodem modo eam tenebimus quo Baro eam tenuit Nec nos occasione talis Baronie vel escaete habebimus aliquam escaetam vel custodiam aliquorum nostrorum hominum nisi de nobis alibi tenuerit in capite ille qui tenuit baroniam vel escaetam.

+ Add sub.
 Regist. 184.
 Enforced by 1 Ed. 3. Stat. 2. c. 13. and 1 Ed. 6. c. 4. Rendered obs. by 12 Car. 2. c. 24. which takes away Tenures in capite.

C A P. XXXII.

Lands shall not be aliened to the Prejudice of the Lord's Service.

Co. Lit. 43. a.
 2 Inlt. 65.
 Altered by 18 Ed. 1. Stat. 1. c. 2.
 Obs. by 12 Car. 2. c. 24.

NO Freeman from henceforth shall give or sell any more of his Land, but so that of the residue of the Lands the Lord of the Fee may have the Service due to him, which belongeth to the Fee.

NULLus liber homo det decetero amplius alicui vel vendat de terra sua quam ut de residuo terre sue sufficienter possit fieri domino feodi servicium ei debitum quod pertinet ad feodum illud.

C A P. XXXIII.

Patrons of Abbies shall have the Custody of them in the time of Vacation.

Confirmed by 25 Ed. 3. Stat. 3. c. 1.

ALL Patrons of Abbies, which have the King's Charters of England of Advowson, or have old Tenure or Possession in the same, shall have the Custody of them when they fall void, as it hath been accustomed, and as it is afore declared.

OMnes patroni Abbathiarum qui habent cartas regum Anglie de advocatione vel antiquam tenuram vel possessionem habeant earum custodiam cum vacaverint sicut habere debent & sicut superioris declaratum est.

2 Inlt. 63.
 Obj. by 31 H. 8. c. 13. for the Dissolution of Monasteries and Abbeyes.

a 'Alio modo,' ib. b D. 'conductum,' ib. c 'Si tales,' ib. d 'Bolon. Lancastr. vel aliis que sunt,' ib. e 'Supra,' ib.

The Statute of the Writ of Consultation, made 24 EDW. I. and Anno Dom. 1296.

In what Case a Consultation is grantable.

Cotton MS. Claudius, D. 2. CUM Judices ecclesiastici ad prosequend' in causis coram ipsis agitatis per prohibic' Domini Regis sepius superfedent in casibus ubi remedium conuenerentibus ad Cur' Domini per breve de Cancellar' sua fieri non possit propter quod querentes illi in utraque Cur' tam Regia quam ecclesiastica jure suo & remedio sunt elongati ad grave dampnum ipsorum prout Dominus Rex ex gravi querela quorundam intellexit. Dominus Rex vult & precepit quod cum Judices ecclesiastici per prohibitionem Regiam sibi porrectam superfedent in casibus predictis quod Cancellar' vel Capitalis Justic' ipsius Domini Regis qui pro tempore fuerit viso libello illius cause ad instantiam querentis si viderint quod per breve de Cancellar' querenti remedium in suo casu fieri non possit set quod ad Cur' ecclesiasticam pertineat causam illam determinare scribant Justicibus eorum quibus causa illa prius fuit agitata quod in causa illa procedant non obstante prohibitione Regia sibi prius inde directa, &c. Dat. anno xviii.

WHEREAS Ecclesiastical Judges have often surceased to proceed in Causes moved before them, by Force of the King's Writ of Prohibition, in Cases whereas * Remedy could not be given to Complainants in the King's Court, by any Writ out of the Chancery, because that † such Plaintiffs were deferred of their Right and Remedy in both Courts, as well Temporal as Spiritual, to their great Damage, like as the King hath been advertised by the grievous Complaint of his Subjects: (2) Our Lord the King willeth and commandeth, That where Ecclesiastical Judges do surcease in the aforesaid Cases, by the King's Prohibition directed unto them, that the Chancellor, or the Chief Justice of our Lord the King for the Time being, upon Sight of the Libel of the same Matter, at the Instance of the Plaintiff (if they can see that the Cause cannot be redressed by any Writ out of the Chancery, but that the Spiritual Court ought to determine the Matters) shall write to the Ecclesiastical Judges, before whom the Cause was first moved, that they proceed therein, notwithstanding the King's Prohibition directed to them before †.

12 H. 7. f. 22. 2 H. 4. f. 9. By 50 Ed. 3. c. 4. no Prohibition allowed after Consultation duly granted. * Read whereyn. † Read whereyn. Regist. 44. Rait. 487. † Add given in the 1816 Year.

Statutes made at LONDON the Tenth Day of October, Anno 25 EDW. I. * and Anno Dom. 1297.

* Add Stat. 5.

C A P. I.

A Confirmation of the Great Charter, and the Charter of the Forest.

Ex Rot. in Turr. Lond. m. 38. EDWARD par le grace de Dieu roy d'Engleterre seigneur d'Irlande e Duc d'Aquitaine a toutz ceus qui cestes presentes lettres verront ou orront l'aluz. Sachiez nous al honneur de Dieu e de seinte eglise e au profit de tut nostre Roiaume aver grante pur nous e pur nos heirs qe la Grand Chartre des Franchises e la Chartre de la Forest les queles furent faites par commun assent de tut le Roiaume en tens le rey HENRY nostre pere seient tenuz en toutz leur pointz sanz nul blemissement. E voloms qe meismes celes chartres de suth nostre seal seient envoiez a nos Justices ausibien de la forest come as autres e a toutz les viscontes des contez e a toutz nos autres ministres e a totes nos citees parmi la terre ensemblement ove nos briefs en les queux ferra contenu qil facent les avantdites chartres pupplier e qil facent dire au poeple qe nous les avoms grauntees de tenir les en toutz leur pointz E a nos Justices viscontes maires e autres ministres qi la ley de la terre de south nous e par nous ount a guier meismes les chartres en toutz leur

EDWARD, by the Grace of God, King of England, Lord of Ireland, and Duke of Guian; to all those that these present Letters shall hear or see, Greeting." Know ye that we, to the Honour of God, and of Holy Church, and to the Profit of our Realm, have granted for us and our Heirs, that the Charter of Liberties, and the Charter of the Forest, which were made by common Assent of all the Realm, in the Time of King HENRY our Father, shall be kept in every Point without Breach. (2) And we will that the same Charters shall be sent under our Seal, as well to our Justices of the Forest, as to others, and to all Sheriffs of Shires, and to all our other Officers, and to all our Cities throughout the Realm, together with our Writs, in the which it shall be contained, that they cause the foresaid Charters to be published, and to declare to the People that we have confirmed them in all Points; (3) and that our Justices, Sheriffs, Mayors, and other Ministers, which under us have the Laws of our Land to guide, shall allow the said Charters pleaded before

Further confirmed by 28 Ed. 1. Stat. 3. c. 1.

* This is taken from the Secunda pars veterum Statutorum, Carturarum.

and is in all the English Editions; It is called Confirmatio

The Great Charter the Common Law.
* Add according to the Assise of the Forest.

them in Judgment in all their Points, that is to wit, the great Charter as the Common Law, and the Charter of the Forest*, for the Wealth of our Realm.

Ex Rot. in Turr. Lond.
pointz en plez devant eus e en Jugementz les facent alower cest a savoir la Grand Chartre des Franchises come ley commune e la Chartre de la Forest selon la assise de la forest al amendement de nostre poeple.

C A P. II.

Judgments given against the said Charters shall be void.

2 Inst. 526.

AND we will, that if any Judgement be given from henceforth contrary to the Points of the Charters aforesaid by the Justices, or by any other our Ministers that hold Plea before them against the Points of the Charters, it shall be undone, and holden for nought.

Voloms qe si nuls jugementz soient donez, desoremes encontre les pointz des chartres avantdites par Justices e par autres nos ministres qui contre les pointz des chartres tenent ples devant eus soient defaitz e pur nient tenuz.

Further confirmed by 42 Ed. 3. c. 1.

C A P. III.

The said Charters shall be read in Cathedral Churches twice in the Year.

2 Inst. 527.

AND we will, that the same Charters shall be sent, under our Seal, to Cathedral Churches throughout our Realm, there to remain, and shall be read before the People two Times by the Year.

Voloms qe mesmes celes chartres de futh nostre seal soient envoies as eglises cathedrales parmi nostre Roiaume e la demorgent E soient deuoitiz par an lues devant le poeple.

C A P. IV.

Excommunication shall be pronounced against the Breakers of the said Charters.

2 Inst. 527.

AND that all Archbishops and Bishops shall pronounce the Sentence of Excommunication against all those that by Word, Deed, or Council do contrary to the foresaid Charters, or that in any Point break or undo them. (2) And that the said Curies be twice a Year denounced and published by the Prelates aforesaid. (3) And if the same Prelates, or any of them, be remiss in the Denunciation of the said Sentences, the Archbishops of Canterbury and York for the time being shall compel and distrain them to the Execution of their Duties in Form aforesaid.

EREVEQUES e EVESQUES doignent sentences du grant escomeng' contre toutz ceus qui contre les avantdites chartres vendront en fait ou en ayde ou en conseil ou nul point enfreindront ou encontre vendront. E qe celes sentences soient denuncies e pupplies deuoitiz par an par les avantditz prelatz. E si mesmes les prelatz evesques ou nul de eus soient negligentz en la denunciacion susdite faire par les Ercevesques de Canterbire e de Everwyk qui per tens serront sicome covient soient repris e distreinz a mesme cele denunciacion faire en la fourme avaunt dite.

* Add Bishops.

C A P. V.

Aids, Tasks, and Prises granted to the King shall not be taken for a Custom.

2 Inst. 527.

AND for so much as divers People of our Realm are in Fear, that the Aids and Tasks which they have given to us beforetime towards our Wars and other Business, of their own Grant and good Will (howsoever they were made) might turn to a Bondage to them and their Heirs, because they might be at another Time found in the Rolls, and likewise for the Prises taken throughout the Realm by our Ministers*: (2) We have granted for us and our Heirs, that we shall not draw such Aids, Tasks, nor Prises into a Custom, for any Thing that hath been done heretofore, be it by Roll or any other Precedent that may be founden.

Pur ceo qe aucunes gentz de nostre Roiaume se doutent qe les aides e les mises les queles il nous ont fait avant ces oures pur nos guerres e autres besoignes de leur grant e leur bone volunte en quele manere qe faits soient pussent turner en servage a eus e a leur heirs par ce qil serroient autrefoitz trevez en roule e ausi prises qe ont este faites par my le Roiaume par nos ministres en nostre noun avoms grante pur nous & pur nos heirs qe mes tieles aides mises ne prises ne treroms a custume pur nule chose qe soit fait ou qe par roule ou en autre maniere peult estre treve.

* Add in our Name.

C A P. VI.

The King or his Heirs will take no Aids or Prises, but by the Consent of the Realm, and for the common Profit thereof.

2 Inst. 529.

MOREOVER we have granted for us and our Heirs, as well to Archbishops, Bishops, Abbots, Priors, and other Folk of holy Church, as also to Earls,

Ausi avoms grante pur nous e pur nos heirs as Ercevesques Evesques Abbes e Priurs e as autres gentz de icinte eglise e as Contes e Barons e a tote



CANADA

PRIVY COUNCIL • CONSEIL PRIVÉ

P.C. 1992-2046
17 September, 1992

WHEREAS, pursuant to subsection 3(1) of the Referendum Act, a proclamation has been issued directing that the opinion of the electors of the provinces of Ontario, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta, Newfoundland, the Yukon Territory and the Northwest Territories be obtained at a referendum by putting to the electors the following question:

"Do you agree that the Constitution of Canada should be renewed on the basis of the agreement reached on August 28, 1992?"

Yes

No

THEREFORE, HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Prime Minister, is pleased hereby,

(a) pursuant to subsection 6(2) of the Referendum Act, to determine that the writs of referendum issued pursuant to subsection 6(1) of that Act shall be dated September 17, 1992; and

(b) pursuant to subsection 6(3) of that Act, to determine that the polling day at the referendum shall be October 26, 1992.

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORME

  (44)

CLERK OF THE PRIVY COUNCIL / LE CLERK DU CONSEIL PRIVÉ

→ **Constitution.** The organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers. A charter of government deriving its whole authority from the governed. The written instrument agreed upon by the people of the Union (e.g. United States Constitution) or of a particular state, as the absolute rule of action and decision for all departments (i.e. branches) and officers of the government in respect to all the points covered by it, which must control until it shall be changed by the authority which established it (i.e. by amendment), and in opposition to which any act or ordinance of any such department or officer is null and void. The full text of the U.S. Constitution appears at the end of this dictionary.

In a more general sense, any fundamental or important law or edict; as the Novel Constitutions of Justinian; the Constitutions of Clarendon.

→ **Constitutional.** Consistent with the constitution; authorized by the constitution; not conflicting with any provision of the constitution or fundamental law of the state. Dependent upon a constitution, or secured or regulated by a constitution; as "constitutional monarchy," "constitutional rights."

→ *Fact and law distinguished.* "Fact" is very frequently used in opposition or contrast to "law". Thus, questions of *fact* are for the jury; questions of *law* for the court. Fraud *in fact* consists in an actual intention to defraud, carried into effect; while fraud imputed by *law* arises from the man's conduct in its necessary relations and consequences. A "fact", as distinguished from the "law", may be taken as that out of which the point of law arises, that which is asserted to be or not to be, and is to be presumed or proved to be or not to be for the purpose of applying or refusing to apply a rule of law. *Hinckley v. Town of Barnstable*, 311 Mass. 600, 42 N.E.2d 581, 584. Law is a principle; fact is an event. Law is conceived; fact is actual. Law is a rule of duty; fact is that which has been according to or in contravention of the rule. See Fact question.

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Chapter 39

General Information

Background

The Department of Justice was created by the Department of Justice Act, passed at the first session of Parliament of the Dominion of Canada, and assented to on May 22, 1868. This Act outlined the responsibilities of the Minister of Justice and the Attorney General of Canada and, with a few exceptions, these responsibilities have remained substantially unchanged.

Responsibilities

The work of the Department consists of litigation, provision of legal advice and opinions to the federal government of Canada on a very wide range of matters, and the drafting of legislation, contracts and other legal documents. The Department is also concerned with the legal aspects of developing government policy, and prepares recommendations or reviews recommendations, for reform of the law. To carry out these responsibilities, the Department uses federal Statutes and Regulations. In addition, contributions are made to provide financial assistance to organizations conducting studies and legal research and to other law-related programs. A limited number of grants is made in connection with legal education, and cost-sharing agreements are entered into with provincial governments in connection with young offenders, compensation of victims of violent crimes, Legal Aid in criminal cases for adults and young offenders, native court worker programs, and access to legal information.

The role of the Federal Department of Justice does not include the provision of legal services or advice to members of the public.

Legislation

- Access to Information Act, R.S., c. A-1
- Annulment of Marriages (Ontario) Act, R.S.C. 1970, c. A-14
- Bills of Lading Act, R.S., c. B-5
- Canada Evidence Act, R.S., c. C-5
- Canada Prize Act, R.S.C. 1970, c. P-24
- Canada-United Kingdom Civil and Commercial Judgments Convention Act, R.S., c. C-30
- Canadian Bill of Rights, S.C. 1960, c. 44
- Canadian Human Rights Act, R.S., c. H-6
- Commercial Arbitration Act, R.S., c. 17 (2nd Supp.)
- Criminal Code, R.S., c. C-46
- Crown Liability Act, R.S., c. C-50
- Department of Justice Act, R.S., c. J-2
- Divorce Act, R.S., c. 3 (2nd Supp.)
- Escheats Act, R.S., c. E-13
- Extradition Act, R.S., c. E-23

- Family Orders and Agreements Enforcement Assistance Act, R.S., c. 4 (2nd Supp.)
- Federal Court Act, R.S., c. F-7
- Food and Drugs Act, R.S., c. F-27
- Foreign Enlistment Act, R.S., c. F-28
- Foreign Extraterritorial Measures Act, R.S., c. F-29
- Fugitive Offenders Act, R.S., c. F-32
- Garnishment, Attachment and Pension Diversion Act, R.S., c. G-2
- Identification of Criminals Act, R.S., c. I-1
- Interpretation Act, R.S., c. I-21
- Judges Act, R.S., c. J-1
- Law Reform Commission Act, R.S., c. L-7
- Marriage Act, R.S., c. M-2
- Mutual Legal Assistance in Criminal Matters Act, R.S., c. 30 (4th Supp.)
- Narcotic Control Act, R.S., c. N-1
- Official Languages Act, R.S., c. 31 (4th Supp.)
- Official Secrets Act, R.S., c. O-5
- Postal Services Interruption Relief Act, R.S., c. P-16
- Privacy Act, R.S., c. P-21
- Revised Statutes of Canada, 1985 Act, R.S., c. 40 (3rd Supp.)
- Security Offences Act, R.S., c. S-7
- State Immunity Act, R.S., c. S-18
- Statute Revision Act, R.S., c. S-20
- Statutory Instruments Act, R.S., c. S-22
- Supreme Court Act, R.S., c. S-26
- Tax Court of Canada Act, R.S., c. T-2
- Tobacco Restraint Act, R.S., c. T-12
- United Nations Foreign Arbitral Awards Convention Act, R.S., c. 16 (2nd Supp.)
- Young Offenders Act, R.S., c. Y-1

Organization

■ Deputy Minister's Office

This office provides essential support services to the Deputy Minister. It ensures appropriate communication and liaison on policy and operational issues between the Deputy Minister and the Minister's Office, the Department and other government departments and agencies.

■ Corporate Management Sector

This branch provides services to the Department related to such areas as corporate planning and policy development, program evaluation and internal audit, communications and public affairs, federal-provincial relations, liaison with external associations and groups, and various corporate services. The Branch performs a substantive function in areas that do not fall within the specialized responsibilities of the other branches. It administers certain programs and is involved in the coordination of departmental activities and programs. The Branch also provides administrative support services related to finance, personnel, library, legal information retrieval, accommodation, security, telecommunications,

computer systems and all other logistical elements common to government departments.

■ Legislation Branch

This branch prepares, in both official languages, all bills the government plans to introduce in Parliament. It also drafts motions to amend bills and examines all bills introduced by ministers in the House of Commons to ascertain whether they are consistent with the Canadian Charter of Rights and Freedoms or the Canadian Bill of Rights.

■ Public Law Sector

This sector advises the government on legal and policy issues in the public law field. Specifically, it advises on constitutional, international, administrative, native and human rights law, as well as on matters relating to the machinery and operation of government and to statutory instruments.

■ Constitutional and International Law Section:

Provides policy and legal advice to the government on constitutional issues and international law. It participates in federal-provincial negotiations, the legislative process, the development and implementation of international instruments and litigation involving constitutional questions.

Advisory and Administrative Law Section: Particularly concerned with areas of law relating to the machinery and operation of government. It is actively engaged in developing proposals for administrative law reform, assisting other branches of the Department on such subjects as amendments to the Federal Court Act and preparing legal opinions on a variety of administrative and other legal matters.

Human Rights Law Section: Gives legal opinions to the Crown on the interpretation and application of constitutional provisions, federal legislation and international instruments having human rights implications.

Native Law Section: Provides legal and policy advice on native affairs, especially on the development of aboriginal self-government, on comprehensive claims policy, and in support of native litigation issues. As a specialist resource, it advises on constitutional and international issues affecting natives, and carries out legal and policy research on many native issues.

Federal-Provincial Relations Office Section: Provides legal and policy advice to the Federal-Provincial Relations Office, primarily in the areas of constitutional and native affairs. In particular, it is involved in constitutional reform discussions with the provinces, constitutional discussions with aboriginal peoples, and tripartite discussions on Métis self-government.

Privy Council Office Legal Section: Functions in regard to the Department's responsibilities under the Statutory Instruments Act and reviews all proposed regulations. Counsel in this section also serve as legal advisers to officers of the Privy Council Office and in particular to the Assistant Clerk of the House of Commons responsible for Orders-in-Council.

Statute Revision Commission: Engages in the revision, consolidation and indexing of federal laws and regulations and prepares administrative consolidations of federal laws.

■ Civil Litigation

This branch represents the Attorney General of Canada in civil litigation involving the federal government.

Civil Litigation (Common Law) Section: Handles litigation for or against the Crown which arises everywhere in Canada, except out of the province of Québec.

■ Civil Litigation and Real Property Law (Québec) Section:

Handles litigation for or against the Crown arising out of the province of Québec and is also responsible for providing services in property law matters in the province of Québec.

■ Criminal Law

This branch discharges, on behalf of the Attorney General of Canada and the Minister of Justice, the obligations, duties and responsibilities imposed on the Minister by legislation and under the common law.

Criminal Prosecutions Section: Responsible for prosecution of infractions under federal statutes (other than the Criminal Code over which the provincial

Attorneys General exercise prosecutorial authority) and related matters including the implementation of Canada's obligations under the Extradition Act and the Fugitive Offenders Act. The Section also reviews applications under the Criminal Code for the mercy of the Crown by or on behalf of persons who have been convicted in proceedings by indictment or who have been sentenced to preventive detention, and makes recommendations to the Minister as to their disposition.

■ Tax Law

This branch is responsible for providing functional direction to all lawyers in tax law matters. It also acts on behalf of the Attorney General of Canada in all civil appeals from assessments of income tax and some litigation pursuant to the Unemployment Insurance Act and the Canada Pension Plan. The litigation work is divided between the tax litigation sections at headquarters and the Halifax, Montreal, Toronto, Edmonton and Vancouver regional offices.

■ Admiralty and Maritime Law

This branch is responsible for admiralty litigation, maritime legislation, maritime commercial law, marine casualty investigations and marine international law, and provides specialized legal advice and expertise in these fields.

■ General Counsel Group

This group conducts, on behalf of the Attorney General of Canada, litigation which requires counsel of particular seniority and expertise. Members of the group often participate in legal education, such as panel discussions and seminars arranged by the Department or by provincial and local bar associations.

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With ALPHABETICAL TABLES.

By JOHN RUSHWORTH late of *Lincolns-Inn*, Esq;
Fitted for the Press in his Life-time.

V O L. IV.

L O N D O N :

Printed for D. Brown, J. Waltboe, J. Knapton, R. Knaplock, J. and B. Sprint;
B. Tooke, J. Darby, D. Midwinter, J. Tonsen, S. Buckley, B. Cowse, E. Bell,
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MDCC XXI.

An. 1641.



main beyond the Seas during Pleasure, which lasted to her Death, at Cologne in Germany, whither that Queen, after some short Stay in Holland, retired; and there also this great Princess, overwhelm'd with Miseries and old Age, and in a Condition of Melancholy, fell sick, and deid in the Nature of an Exile, whilst Cardinal *Richelieu*, whom she had raised so high, stood fast in the Favour of the King her Son, having the intire Administration of Affairs, and slighted her Misfortunes.

July. 6. The Judges Charged.

The Committee for the Judges making their Report, the Charges against the Judges were read in the House of Commons; and by them Ordered to be sent up to the Lords; upon the delivery of which, the following respective Speeches were made to their Lordships.

The Speech of William Pierpoint, Second Son to the Right Honourable the Earl of Kingston, against Sir Robert Berkley, Kt. one of the Justices of the King's-Bench; at a Conference of both Houses in the Painted-Chamber, July 6. 1641.

My Lords,

Mr. Pierpoint's Speech against Judge Berkley, July 6.

I Am Commanded to present to your Lordships these Articles, with which the Knights, Citizens, and Burgesses of the Commons House of Parliament, in their own Name, and in the Name of all the Commons of England; Impeach Sir Robert Berkley, one of the Justices of his Majesty's Court of King's Bench, in Maintenance of their Accusation of High-Treason, and other Great Misdemeanors. They desire that the Articles may be Read: *Which was done by Mr. Newport.*

Articles of Impeachment of Sir Robert Berkley, Kt. one of the Justices of the Court of King's Bench, by the Commons in this present Parliament Assembled, in their own Name, and in the Name of all the Commons of England, in Maintenance of their Accusation; whereby he standeth Charged with High-Treason, and other great Misdemeanours.

Articles against Judge Berkley.

Imprimis, That the said Sir Robert Berkley, then being one of the Justices of the said Court of King's-Bench, hath Traiterously and Wickedly endeavoured to Subvert the Fundamental Laws and Established Government of the Realm of England; and instead thereof to introduce an Arbitrary and Tyrannical Government against Law, which he hath declared by Traiterous and Wicked Words, Opinions, Judgments, Practices and Actions, appearing in the said Articles ensuing.

II. Whereas by the Statute made in the Five and twentieth Year of the Reign of the late King Henry the Eighth, Prices of Victuals are appointed to be Rated, in such manner, as in the Statute is Declared: But it is manifest, by the said Statute, Corn is none of the Victuals thereby intended. Nevertheless, some ill affected Persons, endeavouring to bring a Charge upon the Subjects, contrary to Law, did surmise, that the Prices of Corn might be Rated in such manner, and set according to the Direction of that Statute, and thereupon great Gain might be raised to his Majesty, by Licenses and Dispensations, for selling Corn at other Prices: And a Command from his Majesty, being procured to the Judges, and sent to them by William Noy, Esq; his Majesty's then Attorney-General, to deliver their Opinions touching the Question.

and delivered into the said Court of *King's-Bench*, his *Suggestions*, that the said Cause in the said *Court-Christian*, was only for *Tythes*, for *Rents* of Houses in *Norwich*; which was determinable by the Common Law only; yet he the said Sir *Robert Berkley*, being one of the Justices of the said Court of *King's-Bench*, and sitting in the said Court, deferred to grant a Prohibition to the said *Court-Christian* in the said Cause, although the Council did move in the said Court many several Times, and several Terms, for a Prohibition: And he the said Sir *Robert Berkley* deferred to grant his Majesty's Writ of Prohibition to several other Courts, on the Motions of divers others of his Majesty's Subjects, where the same by the Laws of this Realm ought to have been granted, contrary to the Laws of this Realm and his own Knowledge.

16 Car.

All which Words, Opinions and Actions, were so spoken and done by him the said Sir *Robert Berkley*, traiterously and wickedly, to alienate the Hearts of his Majesty's Liege People from his Majesty, to set a Division betwixt them, and to subvert the Fundamental Laws and Established Government of his Majesty's Realm of *England*; for which they do impeach him the said Sir *Robert Berkley*, one of the Justices of the Court of *King's-Bench*, of High-Treason against our Sovereign Lord the King, his Crown and Dignity, and of the Misdemeanors above-mentioned.

And the said Commons, by Protestation, saving to themselves only the Liberties of exhibiting at any Time hereafter, any other Accusation or Impeachment against the said Sir *Robert Berkley*, and also of replying to the Answer, that he the said Sir *Robert Berkley* shall make to the said Articles, or any of them, or of offering Proof of the Premises, or any other Impeachments or Accusations that shall be exhibited by them, as the Case shall, according to the Course of Parliaments, require, do pray that the said Sir *Robert Berkley*, one of the Justices of the Court of *King's-Bench*, may be put to answer to all and every the Premises; and that such Proceedings, Examinations, Tryals, Judgments, and Executions, may be upon every of them had and used, as is agreeable to Law and Justice.

Which Articles being read, Mr. Pierpoint proceeded as followeth:

My Lords,

THE High-Treason is in the first Article, in his Endeavours to subvert the Fundamental Laws of this Realm, and to introduce an Arbitrary and Tyrannical Government, which have been lately adjudged Treason, in the Cause of the Earl of *Strafford*.

The other Articles prove the first, by his Opinions, Certificates, Judgments, by his Denials of the Benefits of our Laws, which have been read to your Lordships. No Fundamental Law to the Subject is left, our Goods, our Lands, our Bodies, the Peace of a good Conscience, are by him given up to Arbitrary, Tyrannical Government.

Nothing hath been omitted to make a Judge know the Laws, to make him Just; or scare him from being Evil: We have *Inns-of-Court* for that peculiar Study; Judges from thence only chosen; seldom any but what have been twenty Years there; Honours and Revenues are given to Judges, Encouragements to do well; this Judge hath these: Judges are sworn according to Law to serve the King and his People; according to Law to counsel the King; and for not doing so, to be at his Will for Body, Lands, and Goods: This Judge took that Oath. The Law which the Judges study, imposes the greatest Punishments on unjust Judges, and shews that these Punishments have been insisted. More could not be done to persuade or awe a Judge.

His Offences shew in him great Ambition; yet he was most *timorous* of displeasing the Great in Power: He did not forbear doing what he was sworn to do, but was most active against our Laws, and in opposing and punishing any that did maintain them.

To

and delivered into the said Court of *King's-Bench*, his *Suggestions*, that the said Cause in the said *Court-Christian*, was only for *Tythes*, for *Rents* of Houses in *Norwich*; which was determinable by the Common Law only; yet he the said Sir *Robert Berkley*, being one of the Justices of the said Court of *King's-Bench*, and sitting in the said Court, deferred to grant a Prohibition to the said *Court-Christian* in the said Cause, although the Council did move in the said Court many several Times, and several Terins, for a Prohibition: And he the said Sir *Robert Berkley* deferred to grant his Majesty's Writ of Prohibition to several other Courts, on the Motions of divers others of his Majesty's Subjects, where the same by the Laws of this Realm ought to have been granted, contrary to the Laws of this Realm and his own Knowledge.

All which Words, Opinions and Actions, were so spoken and done by him the said Sir *Robert Berkley*, traiterously and wickedly, to alienate the Hearts of his Majesty's Liege People from his Majesty, to set a Division betwixt them, and to subvert the Fundamental Laws and Established Government of his Majesty's Realm of *England*; for which they do impeach him the said Sir *Robert Berkley*, one of the Justices of the Court of *King's-Bench*, of High-Treason against our Sovereign Lord the King, his Crown and Dignity, and of the Misdemeanors above-mentioned.

And the said Commons, by Protestation, saving to themselves only the Liberties of exhibiting at any Time hereafter, any other Accusation or Impeachment against the said Sir *Robert Berkley*, and also of replying to the Answer, that he the said Sir *Robert Berkley* shall make to the said Articles, or any of them, or of offering Proof of the Premises, or any other Impeachments or Accusations that shall be exhibited by them, as the Case shall, according to the Course of Parliaments, require, do pray that the said Sir *Robert Berkley*, one of the Justices of the Court of *King's-Bench*, may be put to answer to all and every the Premises; and that such Proceedings, Examinations, Tryals, Judgments, and Executions, may be upon every of them had and used, as is agreeable to Law and Justice.

Which Articles being read, Mr. Pierpoint proceeded as followeth :

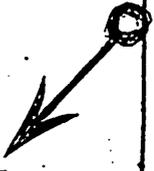
My Lords,

THE High-Treason is in the first Article, in his Endeavours to subvert the Fundamental Laws of this Realm, and to introduce an Arbitrary and Tyrannical Government, which have been lately adjudged Treason, in the Cause of the Earl of *Strafford*.

The other Articles prove the first, by his Opinions, Certificates, Judgments, by his Denials of the Benefits of our Laws, which have been read to your Lordships: No Fundamental Law to the Subject is left, our Goods, our Lands, our Bodies, the Peace of a good Conscience, are by him given up to Arbitrary, Tyrannical Government.

Nothing hath been omitted to make a Judge know the Laws, to make him Just; or scare him from being Evil: We have *Inns-of-Court* for that peculiar Study; Judges from thence only chosen; seldom any but what have been twenty Years there; Honours and Revenues are given to Judges, Encouragements to do well; this Judge hath these: Judges are sworn according to Law to serve the King and his People; according to Law to counsel the King; and for not doing so, to be at his Will for Body, Lands, and Goods: This Judge took that Oath. The Law which the Judges study, imposes the greatest Punishments on unjust Judges, and shews that these Punishments have been inflicted. More could not be done to perswade or awe a Judge.

His Offences shew in him great Ambition; yet he was most timorous of displeasing the Great in Power: He did not forbear doing what he was sworn to do. but was most active against our Laws and in opposing and punishing any



This Judge will not allow us our Knowledge, or any Reason: He will have our Minds, our Souls Slaves: A Grand-Jury-Man gave his Fellows true Information, they present an *Innovation* in the Church, and are threatned and reviled for it; he that told this Truth is charged (I shall use this Judge's own Words) to *sin* in that, and that he made others forswear themselves; this Judge sent him to the Common Goal, where he is laid in *Irons*; and all this, because he and they durst meddle with *Church-Matters*; he is forced to *tear* the Presentment in Pieces in open Court. Our Laws provide for the Peace of our Consciences, many Acts of Parliament there are for it, and the Trust by those Acts set to Juries: This Judge knew well all this; your Lordships have heard what he did to the Jury at *Hertsford*: He would have us know no more Divinity, than to obey what the *Great Men* of the Clergy directed; no more *Law* than what he said was so.

16 Car.

Judges in former Times, (but only such as were Examples of Punishment, as well as of Injustice) in Cases of great and publick Concernment, used to forbear Proceedings, till the next Parliament. This necessitated the calling of Parliaments; this Judge had as many such Causes before him, as ever any had; yet he never desired the Resolution of Parliament in any one; for the Ways he went, the Necessity, was never to have a Parliament; he would pull up that Roof of our Safeties and Liberties, which whilst we enjoy, the Malice or Injustice of all other Courts and Persons can never ruin us, (as most near of late) this only sure Remedy will help us, nothing can ruin a *Parliament* but it self.

The Evils which we have suffered under, they were committed by the Judges, or by them ought to have been, and might have been prevented.

This Judge assisted in causing the Miseries we suffered in the Star-Chamber, and at the Council-Table, he denied the known Rights which he ought to have granted us to stop our Grievances in the Ecclesiastical Courts: He was the Causer of our Sufferings in other Courts.

The best Lovers of their Laws and Liberties; the most honest suffer most by an unjust Judge; they most oppose his Vices: Dishonest Persons find such a Judge to fit their Purposes, the Judge finds them for his, the Bond of Iniquity confederates them.

He that will do no Wrong, will suffer none which he can help: The Man that knows himself to be born free, will do his utmost to live so, and to leave Freedom to his Posterity; were he in Slavery, when by outward Gesture thought to be most delighted, were his Mind then known, there would be found Vexation, and his busie Thoughts employed to redeem himself and Posterity from Thralldom. But to say, Could this Judge intend to make himself and his own Posterity *Slaves*? What he did was through Error of Judgment only: No, *my Lords*, what his Aims and Endeavours were, is apparent. To consider Man in the General, we shall find in every Age, he will be a *Slave to some few*, that many may be Slaves to him, he looks to himself only; this he would do or forbear doing, to be Great, or to be Rich, had he Children, or Kindred, or had he none. This highly unjust Judge, by continuing Sins, maintained his Actions to preserve himself; he knows should he be found guilty in one of his Offences, the Penalty of the Law for it, therefore covers the Offences committed with inventing and acting others.

For a Judge to be unjust, more hurts the Publick than any other: He is not suspected. What a Judge doth is looked on as a Thing that might, that ought to be done. The most pernicious Great Man, that by Cunning hath got to himself the Heart and Tongue of his Prince, his ill Acts have died with him, if not taken up by others, and then they walk in Darkness; no Man will justifie what he doth, by saying such a *Favourite* did it: But the unjust Judgments of this Judge were given in the Noon Day, were done in the Face of the whole Kingdom, in the hearing of such as might carry the News to all Parts of the Realm, and was therefore done: His unjust Judgments were our *Records*. We have seen wicked Great Men most craftily Politick, they hated our Laws, yet not meeting with active Judges, moulded to their Purposes, they and their Acts have died, the Realm flourished; but of late, others less Politick, meeting with most unjust Judges, every way as ill as they could wish them to be; then did the Kingdom faint under the Load of its Misery, did long struggle; now it's rising I assure my self your Lordships will assist to take off the Burden.

An. 1641.

If the Designs of some would not have such a Man at Liberty, a Warrant from some Lords of the Council, would soon have laid him in Prison, and given no Cause: Had he moved this Judge to be discharged or bailed, he could have obtained neither: If their Ways would not have endured that Man to live, a Judge reviling the Prisoner, and his Council that moved for his Discharge, or Bail, joined with the Hate of some Great Men, might soon have moved a Gaoler for unwholsome Rooms, and Lodging, and ill Diet for his Prisoner, and they may soon take Life away.

Offenders in Prisons are looked after to *be safe*; only such as are brought in by Power against Law, are abused. Had a Great Man desired the Estates of others, the Breach of a Proclamation might readily have been charged against them in the Star-Chamber: But they, it may be, could have answered and cleared themselves, and proved their Answers by Testimonies; had they been referred to this Judge, he would have expunged the one, suppressed the other: Then followed Fines to the value of their Estates, or more; then Imprisonments of Course till they paid such Fines; your Lordships have heard what this Judge did to the Soap-boilers.

The Countryman followed the Plough, and his thinking he was assured of his Right of Property and Liberty, gave him Ability to do it: He believed his Neighbour, his Landlord, his King, could not take his Goods from him without his Consent. He knew the usual Payments by Law, and in extraordinary Causes thought to have that Care to choose such for his Knights of his Shire, or for his Burgesses, as might be mindful of the Cause of Payment, and of his Estate.

This Man hath heard the Opinions and Judgments of this Judge, hath seen his Goods taken from him, without his or his Knights of the Shire or Burgesses Consent or Advice. These have made him, his Wife and Children to join in Tears, to wish they had never been born; they have made them think on many Ways to keep safe that Estate which was yet left them, have made them desire to sell all their Goods, and hide the Money: But then he remembers this Judge, how he shall be carried to Prison, and remain there if he pay not what it pleases others to assess him. Then they think idle Persons (the Drones and Moths of the Commonwealth) to be a wise People, whom they formerly conceited to be unworthy to Live. They expect, and can think of nothing but to be Beggars.

Where publick and enormous Offences have been committed, eminent and notorious Punishments must be, such will make your Lordships Proceedings highly esteemed, else there will be so many Offenders, as none without Danger can be punished.

This Judge, subverting our Laws, took away the Hearts of many; he subscribed for the King's Power, but so as he put him on taking his Subjects Goods; and of all other, such Ways be most dangerous; for we know his Majesty is not the last that suffers; and is not the King worth many Thousands?

The Place of this Judge was, to have given and preserved to the King the Hearts of his Subjects; the due Execution of the Laws had done this; and when such notice is taken of a Prince, none will conspire against him, who cannot feign to themselves Safety before or after any Fact committed; Foreign Enemies will not invade his Kingdoms.

Thus has his Majesty now gotten our Hearts, and will for ever have them. This Judge is to answer for what his Majesty, and for what we have suffered.

I am, by Command of the House of Commons, to desire of your Lordships, that the Proceedings against Sir Robert Berkley, Knight, one of the Justices of his Majesty's Court of *King's-Bench*, may be put in as speedy a Way of Trial, as the Course of Parliament will allow.

→ The Decree at large concerning Depopulation
against Sir *Anthony Roper*, in the Court of
Star-Chamber.

*In Camera Stellata coram Concilio ibidem, decimo die Octobris,
Anno decimo Caroli Regis.*

→ **T**His day came to be heard the matter of Complaint exhibited into this Court by his Majesty's Attorney General upon the Prosecution, and by the relation of *John Philpot Esquire*, against Sir *Anthony Roper Knight*, Defendant, for Depopulation, converting great quantities of Land into Pasture, which formerly, for the space of about forty years, had been Arable, used to Tillage, and occupied as belonging to several Farm-houses and houses of Husbandry in the Parish of *Farmingham* in the County of *Kent*, and for suffering the said Farm-houses, with their Out-houses, to be ruined and uninhabited, and one Water-Grist-Mill to decay and go to ruin, as by the said Information more fully and at large it doth and may appear. Upon full and deliberate hearing whereof it plainly and evidently appear'd to this Honourable Court by the Testimonies of several good and sufficient Witnesses, this day openly read in Court, that the said Defendant being seized in Fee of five several antient Messuages and Farm houses, and of a Water-Grist-Mill, lying in *Farmingham, Evesford, Horton, Kirby, and Knight-down*, in the County of *Kent*, one of which was call'd *Petham's Place*, or *Petham's-Farm*, late in the occupation of *Thomas Newington*; to which Farm antiently belonged and was used, as Arable, one hundred, or one hundred and twenty Acres of Land, and whereupon was usually kept one or two Plows, and divers Servants employ'd in and about the tilling, manuring, and husbanding thereof, to the great benefit of the Common-wealth, and of his Majesty. One other Farm-house, late in the occupation of *John Newington*, whereunto belonged, and was antiently used one hundred and forty Acres of Land as Arable, and whereon was usually kept one Plow for Husbandry, and half a dozen Servants employed in the Husbandry thereof. One other Farm, late in the occupation of one *Roger White*, whereunto also antiently belonged, and was used six or seven score Acres of Land as Arable, and for Tillage by the said *Roger White*, who ordinarily kept and employed six Servants in the husbanding thereof. One other Farm, heretofore in the tenure and occupation of *Francis Best*, whereunto was antiently used one hundred and twenty Acres of Land for Tillage, whereon one Plow was usually kept; and several Servants employed in the plowing, manuring, and husbanding thereof: and one other Farm, heretofore in the occupation of one *John Best*, whereunto was antiently used one hundred and six Acres of Land for Tillage and sowing of Corn, whereon one Plow and six Servants were usually kept and employed in the husbanding of the said Corn-Land. And all the said several Farms, when they were used in Tillage, were furnished with sufficient Houses, Barns, and Out-houses, necessary for Farmers to dwell in, who sold and vented to

London and elsewhere yearly about forty or fifty Quarters of Wheat, besides other Grain, out of each Farm one with another, and many poor Men and Women were then and there set on work, and about twenty persons fit for War were maintained in and upon the said Farms; as also several Carts ready and fit to do his Majesty Service in carrying Timber for repair of his Navy, and otherwise^{pp. 11} which the said Defendant nothing regarding, but respecting his own Commodity above the general good of the King, Country, and Commonwealth, hath of late years taken into his own occupation all the said several Farms, and converted all the Lands thereunto, formerly used for Tillage, into Pasture, to the great decay of Husbandry in those parts, altho he might have had sufficient Tenants for them, that would have given as great or greater Rents for the said several Farms than they were formerly let for, and hath also depopulated and pulled down three of the said Farm-houses, and suffered the other two to run to ruin, and to lie uninhabited; in-somuch, that whereas in former times one of the said Farms, called *Pelham's-Place*, was a great defence and succour to Travellers who passed that way, the same, since the depopulation thereof, hath been a harbour for Thieves, and many Robberies have been thereabouts committed, and moneys recovered by the robbed persons from the Hundred, which, together with the want of those Plows which were formerly kept there, hath been a great burden to that part of the Country, there being never a Cart now kept upon any of the said three Farms. And it also further appeared that the said Defendant hath not only depopulated the said several Farms, and converted the Arable into Pasture, but hath in like sort, to the great inconvenience and prejudice of the said Town of *Farmingham*, pulled down, and suffered to go to decay, and be uninhabited one Water Corn Mill, which heretofore ground good store of Corn weekly. Upon grave and deliberate consideration of all which matters the Court did with a joynt Consent and Opinion declare, that the said Defendant was clearly guilty of the said depopulation, and converting his Arable into Pasture, wherewith he is charged by the Information in manner as before is expressed, and that the said offences are punishable by the Common Law of this Kingdom, and fit to be severely punished, the rather for that it is a growing evil, and hath already spread it self into very many parts of the Kingdom; and mean time if it be not met withal, and prevented by the just Censure of this Court, grow very prejudicial and dangerous to the State and Commonwealth: and therefore their Lordships hold him to be a very great Offender, shall stand and be committed to the Prison of the Fleet, and pay a Fine of 4000 l. to his Majesty's Use, and, at the next Assizes to be held for the said County of Kent, shall in the open Court, the Judges and Justices there sitting, acknowledge his said Offences; at which time and place, for the better manifestation of his Offence to the Country, and to the end others seeing his punishment, may thereby hereafter be warned to forbear to commit the like Offences, it is ordered that this their Lordships Sentence and Decree shall be publickly read. And further, the Court considering and commending the pains, care and travel taken by the Relator in bringing this Cause to Judgment, and being satisfied upon hearing of the Cause, that the Poor of the said Parish of *Farmingham*, and the Minister there, have been severally damnified by the said Defendant; their Lordships have further ordered and decreed, that the said Defendant shall pay unto the said Relator an hundred Pounds for a recompence of his

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Global 2000: Implications for Canada



By
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P.H. Freeman
C.A. Ulinski

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nation with a per capita GNP of approximately \$7,000 and a diversified industrial base. On the other hand Canada's economy is structurally similar to that of many resource-exporting LDCs. Canada is a major exporter of minerals, metals, natural gas, wheat, lumber, pulp, paper and fish, which altogether constitute more than half of Canada's total exports.¹

Foreign markets for Canada's various commodities are virtually certain to expand in the coming decades. In fact, the demand for many commodities such as certain minerals, wheat and lumber, will probably increase at a rate faster than the average rates of economic growth, due (in the case of minerals and lumber) to the contraction of supplies elsewhere and (in the case of wheat) to the higher than average growth in demand combined with a relative flattening of the supply curve as production potentials are reached and the supply of unused arable land diminishes around the world.

Increasing foreign demand for its export commodities places Canada in the position of being able to choose from among a number of options for exploiting this situation to the greatest advantage. It also raises a number of important issues which have begun to occupy Canadians, such as the extent of foreign ownership of Canadian resources and industry (a carefully monitored aspect of the Canadian economy), the extent of processing or manufacture of commodities (value added questions), the role of foreign technology and capital, and the "importation of pollution" from the United States.

In the international arena, Canada will find its political power enhanced by its resource surpluses. This should in turn enhance Canada's unique role as a small, Western bloc developed nation that does not represent a military threat to the world. Canada can influence world events through political and commercial ties with the United States in particular, as well as the rest of the world. Thus, if grain is to be used as an instrument of peace (or war, according to one's outlook), for example, Canada could be reckoned as a world power, able to export grain and decide who may be given access to the supplies.

However, with increased international political influence also comes a number of questions. If, as is likely, Canada's international political leverage is enhanced in proportion with the greater demand for her resource surpluses, how will Canada exercise this leverage? To what extent would this leverage be influenced by foreign ownership or other foreign participation in the Canadian economy? To what extent does Canada's dependency on resource exports to the United States, Japan and Europe put it in league with (or at least in sympathetic standing with) LDC nations whose economies are dependent upon exports of basic resources?

The opportunity for increased Canadian exports seems to be fully understood and appreciated at high levels of government policymaking, but, looked at from the outside, Canada seems very weak in its ability to put into place foreign policies and resource management programs that will ensure stable trade, continuing productivity of renewable resources and maximum value added from renewable and non-renewable resources. Canada is not expected to be able to take full advantage of its opportunities until it makes some significant changes in its trade arrangements and domestic economy. With regard to trade, Canada may need to obtain greater control over its resource wealth and development by renegotiating terms of trade and other agreements with foreign capital sources and by broadening the base of Canadian trade. Domestically, Canada must deal effectively with its energy economy (which is now a liability and vulnerability) and with the future of its population growth (especially immigration).

Relations with the United States

Canada's relations with the United States are extensive and complex and it is not possible here to project the future evolution of these relations in any detail.* From the perspective of the Global 2000 Study, however, a few major developments seem likely.

It must be recognized from the outset that United States and Canadian influences on each other in the decades ahead are taken as granted. Such influences are not only unavoidable, but in fact beneficial in many ways to both Canada and the United States. The U.S. economy provides a large market close to Canada. Trade is easy and convenient. About 70 percent of Canada's trade is with the United States, and about half of the foreign investment in Canada is of U.S. origin.

The Global 2000 Study describes several trends in the United States that are likely to have significant implications for U.S.-Canadian relations. The primary change is that the United States, like most nations, is becoming more interdependent with — or perhaps even more dependent upon — the rest of the world for resources. As a result, the United States may in time become less able to determine and shape its future and in fact may become more vulnerable to conditions in the rest of the world.

Probably the single most important fact about the future of the United States is this: *The United States has already burned half of its ultimately recoverable conventional crude oil.* As can be seen in Figure 2-1, no other area of the world has burned so much of this resource.

The United States must develop a new energy economy. It might be possible — on a crash basis — to make a major shift in the U.S. energy economy over a period as short as 15 years. In the interim, the United States will remain critically dependent on oil from the Middle East. What are the chances of a complete interruption in the flow of oil from the Middle East sometime in that period? Assuming that 15 years are available for the development of a new U.S. energy economy, does the United States have a clear policy, plan and commitment?

The United States has adopted and abandoned several energy plans since 1973 — Project Independence, the National Energy Plan (NEP), NEP II, etc. To the extent that these various plans have addressed the long term, they have assumed that nuclear fission and coal would fill in for oil until nuclear fusion was developed and on-line, providing energy "too cheap to meter." While progress has been made on fusion energy, this technology is still decades away at best and it is expected to be at least as expensive as fission energy.²

Recently, the role of fission energy in filling the oil gap has come under further question. There have long been public concerns over reactor safety, nuclear waste disposal and the proliferation of nuclear weapons facilitated by fission power and the nuclear accident at Three Mile Island (TMI) did nothing to reassure the public on these points. Nevertheless, until recently, the financial community has continued to regard nuclear energy as a good investment. Since the TMI accident, the risks of insurance

* For an excellent and exhaustive analysis of resources in Canadian-U.S. relations, see C.E. Beigie and A.D. Hero, Jr., *Natural Resources in United States-Canadian Relations*, Boulder: Westview Press, 1980. This three-volume work will be re-reading for many years for everyone seriously interested in U.S.-Canadian relations and in resource issues.

ACTS

OF THE

PARLIAMENT OF THE UNITED KINGDOM

OF

GREAT BRITAIN AND IRELAND

PASSED IN THE SESSIONS HELD IN THE

FIRST AND SECOND AND SECOND AND THIRD YEARS OF THE
REIGN OF HIS MAJESTY

KING GEORGE V.

BEING THE FIRST AND SECOND SESSIONS OF THE THIRTIETH PARLIAMENT
OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND



OTTAWA

PRINTED BY CHARLES HENRY PARMELEE

LAW PRINTER (FOR CANADA) TO THE KING'S MOST EXCELLENT MAJESTY

ANNO DOMINI 1913

Department of External Affairs.

Department of External Affairs.

His Royal Highness the Governor General has received a despatch from the Secretary of State for the Colonies, dated 3rd January, 1913, notifying that on the 1st November, 1912, the Netherlands acceded to the International Copyright Convention signed at Berlin, November 13, 1908.

Vide Canada Gazette, vol. xlvi., p. 2637.

His Royal Highness the Governor General has received a despatch from the Secretary of State for the Colonies, dated 16th January, 1913, No. 51, notifying that on the 1st July, 1912, Denmark acceded to the International Copyright Convention signed at Berlin, 13th November, 1908.

Vide Canada Gazette, vol. xlvi., p. 2743.

By Order in Council of the 21st of March, 1913, it was ordered that the Order of His Majesty in Council of the 11th of February, 1913* extending *The Geneva Convention Act, 1911*, to Canada, shall come into force on the 1st day of May, 1913.

Vide Canada Gazette, vol. xlvi., p. 3546.

By Order in Council of the 29th of October, 1912, it was ordered that the Great Seal, transmitted by the Right Honourable the Secretary of State for the Colonies with His Majesty's Warrant, dated the 7th day of October, 1912, be used as the Great Seal of Canada for the sealing of all public instruments whatsoever which shall pass the Great Seal of the Dominion on, from and after the 29th day of October, 1912.

Vide Canada Gazette, vol. xlvi., p. 1407.

**Vide Imperial Orders in Council, p. xlviii.*

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CANADA

TREATY SERIES 1980 No. 37 RECUEIL DES TRAITÉS

VIENNA CONVENTION ON THE LAW OF TREATIES

Done at Vienna, May 23, 1969

→ Canada's Instrument of Accession deposited
October 14, 1970

→ Entered into force January 27, 1980

CONVENTION DE VIENNE SUR LE DROIT DES TRAITÉS

Fait à Vienne le 23 mai 1969

L'instrument d'adhésion du Canada déposé
le 14 octobre 1970

En vigueur le 27 janvier 1980

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OTTAWA, 1984

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PART V

INVALIDITY, TERMINATION AND SUSPENSION OF THE
OPERATION OF TREATIES

Section 1. General Provisions

ARTICLE 42

Validity and continuance in force of treaties

1. The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.

2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

ARTICLE 43

Obligations imposed by international law independently of a treaty

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

ARTICLE 44

Separability of treaty provisions

1. A right of a party, provided for in a treaty or arising under article 56, to denounce, withdraw from or suspend the operation of the treaty may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree.

2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article 60.

3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:

- (a) the said clauses are separable from the remainder of the treaty with regard to their application;
- (b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and

ARTICLE 48

Error

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.

2. Paragraph 1 shall not apply if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error.

3. An error relating only to the wording of the text of a treaty does not affect its validity; article 79 then applies.

ARTICLE 49

Fraud

If a State has been induced to conclude a treaty by the fraudulent conduct of another negotiating State, the State may invoke the fraud as invalidating its consent to be bound by the treaty.

ARTICLE 50

Corruption of a representative of a State

If the expression of a State's consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State, the State may invoke such corruption as invalidating its consent to be bound by the treaty.

ARTICLE 51

Coercion of a representative of a State

The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect.

ARTICLE 52

Coercion of a State by the threat or use of force

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

CONSULTER SUR PLACE

United Nations

Press Release

Department of Public Information • News Coverage Service • New York

Press Release GA/7977
22 January 1990

RESOLUTIONS AND DECISIONS ADOPTED BY THE GENERAL ASSEMBLY DURING THE FIRST PART OF ITS FORTY-FOURTH SESSION

From 19 September to 29 December 1989

Dept. of External Affairs
Min. des Affaires extérieures
OTTAWA

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- (i) External debt;
- (ii) International trade and commodities;
- (iii) Technology;
- (iv) Industrial policies; food and agricultural policies;
- (v) Economic policy frameworks;
- (b) Priority aspects of development:
 - (i) Eradication of poverty and hunger;
 - (ii) Human resources and institutional development;
 - (iii) Population;
 - (iv) Environment;
 - (v) Food and agriculture;
- (c) The need to take account of different requirements, situations and problems, including those of the least developed countries;
- (d) Development financing.

IV. ROLE OF UNITED NATIONS ORGANS

V. REVIEW AND APPRAISAL

44/170. Charter of Economic Rights and Duties of States

Date: 19 December 1989

Meeting: 83

Vote: 131-1-23 (recorded)

Report: A/44/746/Add.3

The General Assembly,

Recalling its resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974, containing the Declaration and the Programme of Action on the Establishment of a New International Economic Order, 3281 (XXIX) of 12 December 1974, containing the Charter of Economic Rights and Duties of States, and 3362 (S-VII) of 16 September 1975 on development and international economic co-operation, which laid the foundations of the new international economic order,

Taking note of the report of the Secretary-General on the implementation of the Charter of Economic Rights and Duties of States, 2/

Deeply concerned that, since the adoption of the Charter of Economic Rights and Duties of States, the economic situation of the developing countries has continuously worsened and the economic, social, scientific and technological disparities between the developed and the developing countries have continued to widen,

Emphasizing that the aggravation of global economic problems, which affect, in particular, the developing countries, necessitates more concerted international action in order to facilitate the establishment of just and equitable economic relations and the promotion of international social justice,

1. Calls upon all States to take concrete steps and measures to implement fully the Charter of Economic Rights and Duties of States, which will contribute to the effective restructuring of the international economic system and to the reactivation of the economic growth and development of the developing countries;

2. Reaffirms the right of every country to adopt without external interference the economic and social system that it deems most appropriate for its own development;

3. Requests the Secretary-General to submit to the General Assembly at its forty-ninth session an analytical report on the progress achieved in compliance with the Charter of Economic Rights and Duties of States and its impact on the solution of the main economic problems confronting the developing countries and the reactivation of their economic growth and development.

RECORDED VOTE ON RESOLUTION 44/170:

In favour: Afghanistan, Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Bahamas, Bahrain, Bangladesh, Barbados, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Byelorussia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cote d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic Kampuchea, Democratic Yemen, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Fiji, Gabon, Gambia, German Democratic Republic, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, India, Indonesia, Iran, Iraq, Jamaica, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Qatar, Romania, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, Sri Lanka, Sudan, Suriname, Swaziland, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukraine, USSR, United Arab Emirates, United Republic of Tanzania, Uruguay, Vanuatu, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.

Against: United States.

Abstaining: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Federal Republic of Germany, Greece, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Turkey, United Kingdom.

Absent: Belize, Malta, Saint Kitts and Nevis.

44/171. Integration of women in development

Date: 19 December 1989
Adopted without a vote

Meeting: 83
Report: A/44/746/Add.4

The General Assembly,

Recalling its resolution 40/204 of 17 December 1985 on the effective mobilization and integration of women in development, in which it requested the Secretary-General to update the survey on the role of women in development on a regular basis,

Also recalling Economic and Social Council resolution 1986/64 of 23 July 1986 concerning the approach to be taken in updating the survey, Assembly resolution 42/178 of 11 December 1987 and Council resolution 1989/106 of 27 July 1989 on the effective mobilization and integration of women in development as well as Council resolution 1989/105 of 27 July 1989 on the co-ordination of activities of the United Nations system to advance the status of women and to integrate women in development,

Stressing the need for the United Nations operational system to take fully into account the position of women in its activities and recognizing the catalytic role played by the United Nations Development Fund for Women,



General Assembly

DOCUMENTS OFFICIALS

Distr.
GENERAL

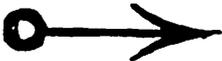
A/RES/44/170
14 February 1990

Forty-fourth session
Agenda item 82 (c)



RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[on the report of the Second Committee (A/44/746/Add.3)]



44/170. Charter of Economic Rights and Duties of States

The General Assembly,

Recalling its resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974, containing the Declaration and the Programme of Action on the Establishment of a New International Economic Order, 3281 (XXIX) of 12 December 1974, containing the Charter of Economic Rights and Duties of States, and 3362 (S-VII) of 16 September 1975 on development and international economic co-operation, which laid the foundations of the new international economic order,

Taking note of the report of the Secretary-General on the implementation of the Charter of Economic Rights and Duties of States, 1/

Deeply concerned that, since the adoption of the Charter of Economic Rights and Duties of States, the economic situation of the developing countries has continuously worsened and the economic, social, scientific and technological disparities between the developed and the developing countries have continued to widen,

Emphasizing that the aggravation of global economic problems, which affect in particular the developing countries, necessitates more concerted international action in order to facilitate the establishment of just and equitable economic relations and the promotion of international social justice,

1/ A/44/266-E/1989/65 and Add.1 and 2.

1. Calls upon all States to take concrete steps and measures to implement fully the Charter of Economic Rights and Duties of States, thus contributing to the effective restructuring of the international economic system and to the reactivation of the economic growth and development of the developing countries;

2. Reaffirms the right of every country to adopt without external interference the economic and social system that it deems most appropriate for its own development;

3. Requests the Secretary-General to submit to the General Assembly at its forty-ninth session an analytical report on the progress achieved in compliance with the Charter of Economic Rights and Duties of States and its impact on the solution of the main economic problems confronting the developing countries and the reactivation of their economic growth and development.

83rd plenary meeting
19 December 1989

UN
29th and 30th
62

UNITED NATIONS
Press Section
Office of Public Information
United Nations, N.Y.

Press Release GA/5194
20 December 1974

RESOLUTIONS OF THE GENERAL ASSEMBLY
AT ITS
TWENTY-NINTH REGULAR SESSION
17 September - 18 December 1974

Stressing the importance of ensuring appropriate conditions for the conduct of normal economic relations among all States, irrespective of differences in social and economic systems, and for the full respect for the rights of all peoples, as well as the strengthening of instruments of international economic co-operation as means for the consolidation of peace for the benefit of all,

Convinced of the need to develop a system of international economic relations on the basis of sovereign equality, mutual and equitable benefit and the close interrelationship of the interests of all States,

Reiterating that the responsibility for the development of every country rests primarily upon itself but that concomitant and effective international co-operation is an essential factor for the full achievement of its own development goals,

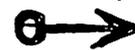
Firmly convinced of the urgent need to evolve a substantially improved system of international economic relations,

Solemnly adopts the present Charter of Economic Rights and Duties of States.

CHAPTER I

Fundamentals of international economic relations

Economic as well as political and other relations among States shall be governed, inter alia, by the following principles:

-  (a) Sovereignty, territorial integrity and political independence of States;
-  (b) Sovereign equality of all States;
- (c) Non-aggression;
-  (d) Non-intervention;
- (e) Mutual and equitable benefit;
- (f) Peaceful coexistence;
- (g) Equal rights and self-determination of peoples;
- (h) Peaceful settlement of disputes;
- (i) Remedying of injustices which have been brought about by force and which deprive a nation of the natural means necessary for its normal development;
-  (j) Fulfilment in good faith of international obligations;
-  (k) Respect for human rights and fundamental freedoms;
- (l) No attempt to seek hegemony and spheres of influence;
- (m) Promotion of international social justice;
- (n) International co-operation for development;
- (o) Free access to and from the sea by land-locked countries within the framework of the above principles.

Economic rights and duties of States

Article 1

Every State has the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever.

Article 2

1. Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities.

2. Each State has the right:

(a) To regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investment;

(b) To regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, co-operate with other States in the exercise of the right set forth in this subparagraph;

(c) To nationalize, expropriate or transfer ownership of foreign property in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means.

Article 3

In the exploitation of natural resources shared by two or more countries, each State must co-operate on the basis of a system of information and prior consultations in order to achieve optimum use of such resources without causing damage to the legitimate interest of others.

Article 4

Every State has the right to engage in international trade and other forms of economic co-operation irrespective of any differences in political, economic and social systems. No State shall be subjected to discrimination of any kind based solely on such differences. In the pursuit of international trade and other forms of economic co-operation, every State is free to choose the forms of organization of its foreign economic relations and to enter into bilateral and multilateral arrangements consistent with its international obligations and with the needs of international economic co-operation.

BANK OF CANADA: MANAGEMENT AND ACCOUNTABILITY



This memorandum was originally prepared by the Bank of Canada in March 1975 for the Royal Commission on Financial Management and Accountability. It was revised in April 1981 to take account of amendments to the Bank of Canada Act and other banking legislation.

by the Governor, Senior Deputy Governor, the Advisers responsible for administration and the Comptroller. Special presentations may be made to directors in connection with major items of expenditure where significant developments are contemplated, such as the note issue or the Canada Savings Bond system.

The approval of the budgetary proposals by the Board, on the recommendation of the Budget Committee and after further discussion by the whole Board, constitutes the authority under which current and capital expenditures may be made during the following year. In the event of unforeseen circumstances requiring significant changes in expenditure programs, approval is sought from the Executive Committee (or the Board) at the earliest opportunity. As noted earlier, the budget for the current year is again reviewed each spring and fall by the Budget Committee and the Board.

Appendix

The Constitution and Functions of the Bank of Canada

Ownership

The Bank was founded in 1934 as a privately owned corporation. By 1938 ownership had passed in two stages to the Government of Canada and since that time the Minister of Finance has held the entire \$5 million share capital issued by the Bank. The Bank of Canada Act provides that, except for such amounts as may be required (under a formula laid down in the Act) to build up the Rest Fund gradually to \$25 million, the annual profits of the Bank are to be remitted to the Receiver General for Canada for credit to the Consolidated Revenue Fund. The Rest Fund limit was reached in 1956 and since then all of the profits have gone to the Receiver General.

Management

The responsibility for the affairs of the Bank of Canada rests with a Board of Directors composed of the Governor, the Senior Deputy Governor, and twelve directors appointed from diversified occupations for three-year terms by the Minister of Finance with the approval of the Governor in Council. The Deputy Minister of Finance is also a member of the Board but does not have the right to vote; other members each have one vote. No director can be a director, officer or shareholder of a chartered bank, a bank to which the Quebec Savings Bank Act applies, any other member of the Canadian Payments Association that maintains a deposit with the Bank, or an investment dealer that acts as a primary distributor for new Government of Canada securities. The directors appoint the Governor and Senior Deputy Governor, also with the approval of the Governor in Council, for seven-year terms during good behaviour. The Governor, the Senior Deputy Governor and the other directors are eligible for reappointment on the expiration of their terms of office. The Board normally meets at least seven times a year. Between its meetings an Executive Committee, composed of the Governor, the Senior Deputy Governor, four other directors and the Deputy Minister of

Finance (without a vote), acts for the Board and has all the powers of the Board. It is required to submit its minutes to the next Board meeting. It is specified in the by-laws that the Executive Committee shall meet at least each week in which there is not a meeting of the Board.

The presence of the Deputy Minister of Finance on both the Board of Directors and the Executive Committee provides a formal channel of communication between the Bank of Canada and the Department of Finance. It is supplemented by many other close contacts of a less formal character.

The Governor is Chairman of the Board and Chief Executive Officer of the Bank and handles the direction and control of the Bank's affairs on behalf of the Board.

In the absence of the Governor, the Senior Deputy Governor exercises all the powers of the office.

The salaries of the Governor and Senior Deputy Governor, who are full-time officers of the Bank, are determined by the directors subject to the approval of the Governor in Council. The other directors are not paid salaries; they are entitled to receive fees as may be fixed by the by-laws of the Bank with the approval of the Governor in Council.

In addition to the Senior Deputy Governor, who is a member of the Board of Directors, there may be one or more Deputy Governors appointed by the Board to perform such duties as are assigned to them. At April 30, 1981 there were four Deputy Governors so appointed by the Board.

Monetary Policy Function

The duties of the Bank are stated in a very general way in the preamble to the Act, which indicates that the Bank is to "regulate credit and currency in the best interests of the economic life of the nation, to control and protect the external value of the national monetary unit and to mitigate by its influence fluctuations in the general level of production, trade, prices and employment, so far as may be possible within the scope of monetary action, and generally to promote the economic and financial welfare of the Dominion". The Act does not specify the methods by which the Bank should pursue its objectives but certain powers that it grants to the Bank, together with certain provisions of other legislation, enable the Bank to influence the rate of monetary expansion and credit conditions.

The Bank of Canada Act gives the Bank the sole right to issue notes intended for circulation in Canada, and the Currency and Exchange Act provides that Bank of Canada notes are legal tender and, except for gold coin and for subsidiary coin in very small amounts, the only form of legal tender in Canada.

Each chartered bank is required to maintain on the average during each half-monthly reserve period cash reserves in the form of Bank of Canada notes and deposits at the Bank of Canada which after the reductions that are being phased in following changes in the Bank Act, will be not less than the sum of: 10 per cent of its Canadian dollar deposit liabilities payable on demand; 2 per cent of its total Canadian dollar notice deposit liabilities plus an additional 1 per cent of the amount by which its Canadian dollar notice deposit liabilities exceed \$500 million; and 3 per cent of its foreign currency

deposit liabilities of Canadian residents with branches of the bank in Canada.* The Bank of Canada Act permits the Bank to buy and sell a broad range of financial assets. These provisions, in conjunction with the Bank's management of the Government of Canada's bank balances, enable the Bank to vary the amount of cash reserves available to the banking system and by so doing influence the rate of growth of the banking system, the level of short-term interest rates, and the trend of the money supply. The Bank of Canada may buy and sell Government of Canada securities (including guaranteed issues), provincial securities, bills of exchange and promissory notes endorsed, accepted or issued by a chartered bank, foreign exchange, Special Drawing Rights issued by the International Monetary Fund, securities of the United States and short-term securities of the United Kingdom. In practice, purchases and sales of financial assets undertaken in the market for the purpose of influencing monetary and credit conditions have been conducted almost exclusively in Government of Canada securities.

The Bank may make short-term advances to chartered banks, to banks that operate under the Quebec Savings Bank Act or to other members of the Canadian Payments Association that maintain deposits with the Bank, on the pledge or hypothecation of a wide range of financial assets. The Bank may also make short-term advances to the Government of Canada. The minimum rate at which the Bank is prepared to make advances is called the Bank Rate and the Bank of Canada Act requires that it shall be made public at all times. The Bank also enters into purchase and resale agreements with money market dealers.

The Bank has the power to alter the minimum secondary reserve ratio of the chartered banks between 0 per cent and 12 per cent of Canadian dollar deposit liabilities provided that it gives notice of at least one month before any increase is made and provided that it does not increase the ratio by more than one percentage point above 6 per cent in any one month. Secondary reserves are cash reserves in excess of the minimum requirement, day-to-day loans to money market dealers and treasury bills.

Fiscal Agency Functions

The Bank of Canada Act requires the Bank to act as fiscal agent for the Government of Canada without charge. When acting as fiscal agent the Bank carries out the instructions of the Minister of Finance, with whom responsibility for the related policies rests. As fiscal agent the Bank operates the Government's deposit account through which flow virtually all Government receipts and expenditures, and it handles debt management and foreign exchange transactions for the Government. In respect of debt management, the Bank looks after the arrangements for the sale of new Government security issues and all the work connected with the outstanding public debt, including the maintenance of records, interest

*In accordance with the Banking Law Revision Act, 1980, these reserve requirements are being phased in over a period extending to September 1, 1984; previously, reserve requirements were 12 per cent on demand deposits and 4 per cent on notice deposits.

payments and redemption of Government securities at maturity date. The Bank also handles the foreign exchange business of the Government including the transactions of the Exchange Fund Account.

Other Functions

In addition to the accounts of the Government of Canada and the chartered banks, the Bank of Canada operates deposit accounts for banks that operate under the terms of the Quebec Savings Bank Act, for any other member of the Canadian Payments Association, and for foreign central banks and international financial institutions. The Government of Canada maintains foreign currency balances with the Bank of Canada and in this connection and in order to facilitate foreign exchange arrangements the Bank of Canada carries foreign currency accounts with foreign central banks. The Bank of Canada does not accept deposits from the general public.

The Bank is empowered to accept deposits from and make short-term loans to any provincial government.

Canadian coin is made and issued by the Royal Canadian Mint but the Bank of Canada arranges for shipment to the main branches of the chartered banks.

Internal Organization

As at the end of 1980 the Bank's total regular staff numbered 2,171 persons organized into the following groups:

Governors and Advisers	14
Securities Department	89
Research Department	54
Department of Monetary and Financial Analysis	44
International Department	46
Department of Administrative Services:	
Head Office	214
Regional Agencies	379
Department of Banking Operations	214
Public Debt Department	413
Computer Services Department	104
Secretary's Department	114
Comptroller's Department	49
Department of Personnel Administration	60
Audit Department	41
Sub-total	1,835
Building maintenance	336
Total	2,171

Reporting

The Act provides that within two months after the end of the financial year the Bank shall transmit to the Minister of Finance a statement of its accounts and an Annual Report by the Governor covering such matters as he may deem desirable or as the Minister may require. (There is no requirement for the publication of a classification of the Bank's expenditures



CHAPTER J-1

CHAPITRE J-1

An Act respecting judges of federal and provincial courts

Loi concernant les juges des cours fédérales et provinciales

SHORT TITLE

TITRE ABRÉGÉ

Short title

1. This Act may be cited as the *Judges Act*.
R.S., c. 159, s. 1.

1. La présente loi peut être citée sous le titre: *Loi sur les juges*. S.R., c. 159, art. 1.

INTERPRETATION

INTERPRÉTATION

Definitions

2. In this Act

2. Dans la présente loi

"county"

"county" includes district;

«comté» comprend un district;

"judge"

"judge" includes a chief justice, president, senior judge, chief judge and junior judge;

«cour supérieure» comprend la Cour suprême du Canada et la Cour de l'Échiquier du Canada;

"superior court"

"superior court" includes the Supreme Court of Canada and the Exchequer Court of Canada. R.S., c. 159, s. 2.

«juge» comprend un juge en chef, un président, un juge doyen, un premier juge et un juge junior. S.R., c. 159, art. 2.

ELIGIBILITY

PERSONNES QUI PEUVENT ÊTRE NOMMÉES JUGES

Eligibility for appointment

3. No person is eligible to be appointed a judge of a superior, circuit or county court in any province unless, in addition to other requirements prescribed by law, he is a barrister or advocate of at least ten years standing at the bar of any province. R.S., c. 159, s. 3.

3. Nul ne peut être nommé juge d'une cour supérieure, d'une cour de circuit ou d'une cour de comté dans une province, à moins d'être un avocat inscrit au barreau d'une province pendant au moins dix ans, en sus d'autres conditions prescrites par la loi. S.R., c. 159, art. 3.

SALARIES

TRAITEMENTS

Salaries of judges of Supreme Court of Canada

4. The salaries of the judges of the Supreme Court of Canada are as follows:

4. Les traitements des juges de la Cour suprême du Canada sont les suivants:

Per annum

Par année

(a) The Chief Justice of Canada \$40,000

a) Le juge en chef du Canada \$40,000

(b) Eight puisne judges, each 35,000

b) Huit juges puinés, chacun 35,000

1955, c. 48, s. 1; 1963, c. 8, s. 1; 1966-67, c. 76, s. 1.

1955, c. 48, art. 1; 1963, c. 8, art. 1; 1966-67, c. 76, art. 1.

Salaries of judges of Exchequer Court

5. The salaries of the judges of the

5. Les traitements des juges de la Cour de l'Échiquier

Prorating

(2) For any period less than a year, the salaries and annuities payable under this Act shall be paid pro rata.

(2) Pour toute fraction d'année, les traitements et pensions sont payés au prorata.

Paiement au prorata

Monthly instalments

(3) The salaries and annuities payable under this Act shall be paid by monthly instalments.

(3) Les traitements et pensions sont payables mensuellement.

Mensualité

First payment

(4) The first payment of salary of any judge shall be made pro rata on the first day of the month that occurs next after the appointment of the judge.

(4) Le premier versement du traitement s'effectue, au prorata des jours travaillés, le premier jour du mois qui suit la nomination de l'intéressé.

Premier versement

Legal representatives

(5) If a judge resigns the office of judge or dies, the judge or his legal representatives are entitled to receive such proportionate part of the judge's salary as has accrued during the time that the judge executed the office since the last payment.

(5) En cas de démission ou de décès, le juge ou ses ayants cause ont droit à la fraction du traitement correspondant à la période écoulée depuis le dernier versement.

Ayants cause

L.R. (1985), ch. J-1, art. 53; 1989, ch. 8, art. 13.

R.S., 1985, c. J-1, s. 53; 1989, c. 8, s. 13.

Absence from Judicial Duties

Absence

Leave of absence

54. (1) No judge of a superior court or of the Tax Court of Canada shall be granted leave of absence from his judicial duties for a period in excess of thirty days except with the approval of the Governor in Council and, whenever any such leave of absence is granted, the Minister of Justice of Canada shall forthwith notify the chief justice or chief judge, if any, of the court and the attorney general of the province accordingly.

54. (1) Les congés de plus de trente jours demandés par des juges des juridictions supérieures, des cours de comté ou de la Cour canadienne de l'impôt sont subordonnés à l'autorisation du gouverneur en conseil; s'ils sont accordés, le ministre de la Justice du Canada en informe sans délai le juge en chef du tribunal concerné et le procureur général de la province.

Congés

Chief justice or chief judge to report

(2) If it appears to the chief justice of a superior court of a province or to the chief judge, if any, of the county court of a province or of the Tax Court of Canada that a judge of the court is absent from his judicial duties for a period in excess of thirty days without leave of the Governor in Council, the chief justice or chief judge shall report the absence to the Minister of Justice of Canada.

(2) Les juges en chef des juridictions supérieures et des cours de comté des provinces et le juge en chef de la Cour canadienne de l'impôt doivent signaler au ministre de la Justice du Canada les cas de congés de plus de trente jours non autorisés qu'ils constatent au sein de leurs tribunaux respectifs.

Rapport du juge en chef

Absentee judge to report

(3) Whenever a judge of a superior or county court or of the Tax Court of Canada is absent from his judicial duties for a period in excess of thirty days, the judge shall report the absence and the reasons therefor to the Minister of Justice of Canada. R.S., c. J-1, s. 35; R.S., c. 16(2nd Supp.), s. 11; 1974-75-76, c. 48, s. 21; 1980-81-82-83, c. 158, s. 44.

(3) S'ils s'absentent pendant plus de trente jours, les juges d'une juridiction supérieure, d'une cour de comté ou de la Cour canadienne de l'impôt sont tenus d'en informer le ministre de la Justice du Canada et de lui faire part des motifs de l'absence. S.R., ch. J-1, art. 35; S.R., ch. 16(2^e suppl.), art. 11; 1974-75-76, ch. 48, art. 21; 1980-81-82-83, ch. 158, art. 44.

Motifs de l'absence

Extra-judicial Employment

Fonctions extrajudiciaires

Judicial duties exclusively

55. No judge shall, either directly or indirectly, for himself or others, engage in any occupation or business other than his judicial duties, but every judge shall devote himself

55. Les juges se consacrent à leurs fonctions judiciaires à l'exclusion de toute autre activité, qu'elle soit exercée directement ou indirecte-

Incompatibilités

exclusively to those judicial duties. R.S., c. J-1, s. 36.

ment, pour leur compte ou celui d'autrui. S.R., ch. J-1, art. 36.

Acting as commissioner, etc.

56. (1) No judge shall act as commissioner, arbitrator, adjudicator, referee, conciliator or mediator on any commission or on any inquiry or other proceeding unless

56. (1) Les juges ne peuvent faire fonction de commissaire, d'arbitre, de conciliateur ou de médiateur au sein d'une commission ou à l'occasion d'une enquête ou autre procédure que sur désignation expresse :

Qualité de commissaire

(a) in the case of any matter within the legislative authority of Parliament, the judge is by an Act of Parliament expressly authorized so to act or the judge is thereunto appointed or so authorized by the Governor in Council; or

a) par une loi fédérale ou par une nomination ou autorisation à cet effet du gouverneur en conseil, s'il s'agit d'une question relevant de la compétence législative du Parlement;

(b) in the case of any matter within the legislative authority of the legislature of a province, the judge is by an Act of the legislature of the province expressly authorized so to act or the judge is thereunto appointed or so authorized by the lieutenant governor in council of the province.

b) par une loi provinciale ou par une nomination ou autorisation à cet effet du lieutenant-gouverneur en conseil de la province, s'il s'agit d'une question relevant de la compétence législative de la législature d'une province.

Acting as statutory assessor or arbitrator

(2) Subsection (1) does not apply to judges acting as arbitrators or assessors of compensation or damages under the *Railway Act* or any other public Act, whether of general or local application, of Canada or of a province, whereby a judge is required or authorized without authority from the Governor in Council or lieutenant governor in council to assess or ascertain compensation or damages. R.S., c. J-1, s. 37.

(2) Le paragraphe (1) ne s'applique pas aux juges faisant fonction d'arbitre ou d'évaluateur expert en matière d'indemnité ou de dommages-intérêts sous le régime de toute loi publique fédérale ou provinciale, d'application générale ou locale, notamment la *Loi sur les chemins de fer*, prévoyant l'exercice de cette fonction par un juge, sans nécessité d'autorisation du gouverneur en conseil ou du lieutenant-gouverneur en conseil. S.R., ch. J-1, art. 37.

Évaluateurs ou arbitres

Extra Remuneration

Rémunération supplémentaire

No extra remuneration

57. (1) Except as provided in subsection (3), no judge shall accept any salary, fee, remuneration or other emolument or any expenses or allowances for acting in any capacity described in subsection 56(1) or as administrator or deputy of the Governor General or for performing any duty or service, whether judicial or executive, that the judge may be required to perform for or on behalf of the Government of Canada or the government of a province.

57. (1) Sauf cas prévu au paragraphe (3), ne donne lieu à aucune rémunération ou indemnité l'exercice par un juge des fonctions — soit visées au paragraphe 56(1), soit en qualité d'administrateur du Canada ou de suppléant du gouverneur général, soit ressortissant au pouvoir judiciaire ou exécutif — qu'il est tenu de remplir pour le gouvernement du Canada ou d'une province ou en leur nom.

Absence de rémunération supplémentaire

Exception

(2) The right of a judge to receive remuneration under any Act of the legislature of a province, other than for acting in any capacity described in subsection 56(1), is not affected by subsection (1), but no judge is entitled to receive remuneration under any such Act or Acts in an aggregate amount exceeding \$3,000 per annum.

(2) Le paragraphe (1) n'a pas pour effet d'empêcher un juge de recevoir au titre de lois provinciales, pour des fonctions autres que celles visées au paragraphe 56(1), une rémunération qui ne saurait toutefois dépasser 3 000 \$ par an au total.

Exception

Expenses excepted

(3) In the cases described in subsection (1), a judge may receive his moving or transportation expenses and the reasonable travel and other

(3) Dans les cas visés au paragraphe (1), le juge peut toutefois être indemnisé de ses frais de transport et des frais de séjour et autres

Indemnités

THE
ENGLISH REPORTS

→ VOLUME XCII

7403

→ KING'S BENCH DIVISION

XXI

CONTAINING

LORD RAYMOND, 2 AND 3; FORTESCUE; COMYNS, 1 AND 2

WILLIAM GREEN & SONS, EDINBURGH
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1909

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of which the plaintiff was taken the same first of October at York, (the imprisonment being laid in Middlesex) and continued in prison for the same time, which arrest and imprisonment sunt ead' insult' & imprisonment' & detent', &c. absque hoc quod culp' in Midd' seu alibi out of York city, or at any time before the delivery of the writ of outlawry to the sheriff, or after the return of the said writ; to which plea the plaintiff demurs, and shews for cause, [380] that the defendant does not aver that the cap' utlagat' was filed and remained of record, and doth not say prout patet per record'; and upon this, judgment was given in the Common Pleas for the plaintiff, that the plea was naught, and on a writ of error brought in B. R. judgment was affirmed; the traverse was held naught, quæ est ead' transgressio is good without any traverse; and he says first it is the same imprisonment, i.e. for seven months, and yet in the traverse, which is any time before the delivery and after the return, so leaves out all the time between the delivery and the return, which the Court of Common Pleas said was incurable, so an ill plea per both Courts. Vide *Courtney and Satchwel*, post.

COURTNEY *versus* SATCHWELL. PASCH. 12 GEO. I.

Trespass, justification by officer, &c.

Action of assault, battery and imprisonment in London first of April; the defendant justifies by virtue of a precept out of the Sheriffs Court in London, and that he took him on the 20th of March before, which is the same assault and imprisonment, and then traverses, absque hoc, that he was guilty at any time before granting the precept, or after the return, or at any place out of the jurisdiction of the said Court, vel alibi vel alio modo, &c.

And per Cur', let the plaintiff have judgment; for que est ead' transgr' is a traverse, and here is another express traverse too, absque hoc, and this is shewn for cause, and it is impertinent; and they relied on Lutw. 1457, and on a modern case in B. R. of *Carvil and Manly*, ante.

TAYLOR *versus* WOOLLEN. PASCH. 2 GEO. II.

Repugnant pleas.

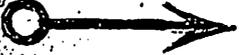
Trespass, and a plea of justification for two times; pleads one title by lease for lives, and one life living 12th of July, and yet as to 12th of July another title and seisin in fee, which is repugnant; and so naught.

[381] WRIGHT *versus* PENN. MICH. 4 GEO. II.

Damage-feasant pleaded in trespass, &c.

An action of trespass was brought for breaking and entering an house, and taking away his goods and converting and disposing of them to his own use; the defendant pleaded that he took them damage-feasant, and removed them to communem venellam prope the house, and left them for the use of the plaintiff.

Cur': It is no good plea; for, it is no answer to the conversion to his own use, which he could not justify for damage-feasant; and per Fortescue, you cannot put perishable goods into a pound overt; at least you should give notice, for it is a pound covert; so judgment pro quer'.

 [382] PRECEDENCE, &c. OF THE JUDGES.

Precedence of Judges, on promotion to a Superior Court.

Term. Pasch. 4 & 5 Philip and Mary. Judge Dyer was on Monday before full term made Judge of the King's Bench, being then a Judge of the Common Pleas; and the

Coke, he was attainted of high treason by Act of Parliament, and after that was up in arms against Henry the Seventh in the first year of his reign, and being defeated fled to a sanctuary near Abingdon in Oxfordshire; and the Abbot of Abingdon came to the Judges and shewed letters patent, that all inhabiting within such a district were subject to him and none else; but notwithstanding that, they had taken him from this sanctuary; and the Judges met about this, and debated the matter, whether sanctuary was to be allowed; and some of the Judges objected how can we debate this matter which will come before us soon? and it is not good order to argue this matter, and give our opinions, before it comes before us judicially. The Attorney General said, if the King knew that the sanctuary would save him, it should not come before them, and therefore the King would know their opinion before hand; but Fairfax and others said it was hard to give their opinions before hand; notwithstanding that, they assign'd the day after to hear the abbot and his counsel; but before they met, Chief Justice Hussey came to town, and went to the King and requested the favour that he would not desire to know their opinions; for, he supposed it would come into the King's Bench judicially, and then they would do that which [390] was right, and the King accepted of it; and the prisoner was brought up to the King's Bench to know what he had to say for himself, and he insisted on the sanctuary and letters patent; and all the justices met after to consider of it. 1 H. 7, 25, 26.

On the trial of a peer in Parliament, the opinion of the Judges is asked publickly in the presence of the prisoner. 3 Inst. 29.

And yet in all criminal cases, especially high treason, the Judges met at the request of the Attorney General to advise the King in those prosecutions; as on the Restoration the Judges met to consult concerning the prosecution of the regicides, and the Attorney General made several queries, not only in framing of the indictments, but in relation to overt acts and evidence, in which all the Judges gave their opinions. Keyl. 9, 10.

So on the prosecution of Francia the Jew, for high treason, who was to be tried by three of the Judges at the Old Baily, all the Judges gave their opinions, and those three that were to try him, the Attorney Northey and myself as solicitor, were present. 3 Geo. 1.

→ The case of ship money, and the Judges opinions thereon, is remarkable. The Act reciting that the Barons adjourned the case into the Exchequer Chamber, and there it was argued and agreed by the greater part of the Judges and Barons, that Mr. Hambden was chargeable with the ship money; that all the said Judges having been formerly consulted with by His Majesty's command, had set their hands to an extrajudicial opinion expressed to the same purpose, which opinion was inrolled in all the Courts of Westminster-Hall, and according to the said agreement of the justices, the Barons of the Exchequer gave judgment against the said Mr. Hambden. And it was enacted, that the said charge, called ship money, and the said extrajudicial opinion, and the said agreement or opinion of the greater part of the said justices and Barons, and the said judgment given against the [391] said Hambden, were against the laws and statutes of the realm, the right of property, liberty of the subject, and against former resolutions of Parliament, and the petition of right.

→ This amounts to no more than that their judicial as well as extrajudicial opinions were against law, not that they were against law because extrajudicial. Rushworth's Appendix 216.

→ After the records were vacated, the Lords resolv'd that the resolutions of the Judges touching ship money, and the judgment given against Mr. Hambden, are against the great charter, therefore void; and ordered that vacats and cancellations be made of the resolutions of the Judges, and of the inrolment thereof. Id. 218.

Lord Clarendon, when Mr. Hyde, carried up articles of impeachment against the Judges; in his speech, he says nothing of extrajudicial, as in his history; he has laid them on pretty well, but does not blame them as extrajudicial. Id. 238.

The Lord Falkland, in his speech about ship money, said the Judges had delivered an opinion in an extrajudicial manner, i.e. such as came not within their conusance; they being Judges, but neither philosophers nor politicians. Id. 242.

A noble lord, in his speech to the Lords, told them that there was a certain lord solicited these opinions, and he severally procured the Judges hands, and as he got them he injoin'd every one secrecy; and then after about a year the King sent by

letter for all their opinions, which was produced by the other. Id. 249. And the case put by the King was signed above and below, Charles Rex..

Lord Clarendon says nothing of these opinions being extrajudicial; but that they were illegal; because reasons of State were urged as elements of law, and judgment of [392] law grounded on matter of fact, of which there was neither inquiry nor proof. Clarendon vol. 1.

Notwithstanding the opinion above, the Judges were left free, and this was acknowledged by two of the Judges in the Exchequer Chamber, who argued against those opinions, viz. Hutton and Crook, with this protestation, that if there were any miscarriage it must fall wholly on themselves, for the King was blameless, for His Majesty's carriage in this business had clear'd his justice. The oaths of the Judges as they bind them to administer justice to the subjects according to law, so also as they are of the King's Council, by their oaths they are bound lawfully to counsel him, i.e. when their opinions are demanded they are to deliver them according to law.

The eleventh of Richard the Second, the Judges were sent for to Nottingham Castle, where, in presence of the King they were commanded on their allegiance to deliver their opinions concerning a commission which was awarded in Parliament; they subscribed an opinion with the King's Serjeant, that this commission was in derogation of the Crown, and that persuading the King in Parliament to do it, was high treason; this was condemn'd as high treason in the next Parliament: this opinion was extorted. Rushworth Appendix 261.

Foster, Chief Justice of the Common Pleas, was sworn Chief Justice of the King's Bench, taking the oaths of allegiance and supremacy, (which oaths were read to him out of the roll, and not out of the Lord Chancellor's book), and being in Court, and not at the Bar.

At which time also the eldest serjeant put a case to Bridgman, that was made Chief Justice of the Common Pleas, and he gave an answer to it extempore. 1 Sid. 3.

Where the law is known and clear, tho' not equitable, the Judges must determine as the law is, but where the law is doubtful they ought to judge according to what is most [393] consonant to reason, and least inconvenient. Vaughan 37, 38.

Ingham Justice, for altering and rasing a record, in the case of a poor man qui finem fecerit pro quodam debito at 13s. 4d. made a rasure of the record, and pro pietate fecit inde, 6s. 8d. he was fined 800 marks. 2 R. 3, 10.

The discretion of the Judges ought to be thus described, discretio est discernere per legem quid sit justum; this is prov'd by the common law, in the case of a special verdict, et sup' totam materiam petunt discretionem justiciariorum; i.e. they desire that the Judges would discern by law what is just, and so give judgment accordingly. 4 Inst. 4. 12 R. 2, cap. 13.

The stat. 20 Ed. 3, cap. 1, the Judges are to take no fee but from the King to do equal right and justice, without regard to letters or commandment from the King or any other; and if any letters come, the justices are to proceed as if there were none such; and they shall certify to the King and Council of such commandments; and there is the Judges oath quod vide; and the reason given, is, because the King had increased the fees of the Judges. The Judges are not punishable for what they do judicially, if it be done for want of knowledge. 2 R. 3, 10. The common faults of the Judges shall be tried by a jury of 12 men, and if they be convicted they shall lose their offices, and be fined to the King according to their merit. Id.

By 12 & 13 W. 3, intituled, An Act for Further Limitation of the Crown, and Securing the Rights of the Subject, cap. 2, the Judges commissions must be quamdiu se bene gesserint, but the Judges are removeable by an address of both Houses of Parliament, and their salaries to be ascertained and established. Vide 1 W. & M. cap. 2.

Justice Croke was continued a Judge, and his attendance dispenced withal; the like of Mr. Justice Powell of Gloucester; and the like of Mr. Smith, Baron of the Exchequer, made [394] Lord Baron of Scotland. But Mr. Justice Blencow surrender'd and had a pension of 1000l. per annum only; so also Mr. Justice Powis and Mr. Justice Tracy, who had a pension of 1500l. per annum, paid during the life of King George the First, but refused to be paid in King George the

Second's time. Sir William Ellis was made a Judge of the Common Pleas, and turn'd out, and then restor'd, and had his former precedency of those who were put in since his removal, and that precedency was only by verbal signification from the King, and not express'd in the patent. Raym. 251.

Justice Archer was remov'd from the Common Pleas, but his patent being quamdiu se bene gesserit, he refused to surrender his patent without a scire facias, and continued justice, tho' prohibited to sit there, and in his place Sir William Ellis was sworn. Raym. 217.

Mr. Justice Twisden was dispensed withal as to his attendance, and had a pension of 500l. per ann. Raym. 475.

Debated by order of the Lords among the Judges and civilians attendants, whether if a lord grant to three, jointly and severally, to be his proxy, and one consent, and two dissent, that be a good voice; it was held no good one, and this opinion was affirmed by the Lords. 4 Inst. 13. In what case the Lord High Steward is to be appointed, and where not. 13 H. 8, 11.

On a bill exhibited against Lord Lincoln in 1626, in the Star-Chamber, for riots and misdemeanors, he put his answer in on his honour; and by all the Judges and Lords agreed it ought to be put in on oath, especially in cases criminal, where the King is party, and in all cases where they are to be witnesses between party and party they ought to be sworn; and if a peer affirm on honour only, there is no remedy, but if on oath econtra, they may be prosecuted upon the statute for perjury; and it was said this was juramentum purgationis, and not promissionis, and princes are sworn to their leagues. 1 Cro. 64. *The Earl of Lincoln's case*, 1 Jones 152. And an attachment was granted against [395] the said lord for a contempt therein; there is first juramentum promissionis, as fealty to the King, to do his duty in any office, as chancellor, president, &c. all lords are oblig'd to this. 2dly, there is juramentum purgationis, when the lord is charged to answer; and the keeper of the Great Seal said there were infinite precedents, modern as well as antient, that peers answer'd on oath in the Star-Chamber and other places: so if sued in the Spiritual Court, they shall answer on oath; and so if a lord wage his law, it shall be on oath. 3dly, there is juramentum probationis, when a lord is produced as a witness, he ought to be sworn, else he is no competent witness. 4thly, there is juramentum triationis, there lords are excused, as in the assises, &c. yet if they should be put on the assises they must be sworn; but the lords are not sworn where they try upon their honour, because they are Judges and not as jurors. But in May 1628, resolved by the House of Lords that the nobility of the kingdom, and the Lords of the Upper House of Parliament, are of antient right to answer in all Courts as defendants, upon protestation of honour only, and not upon the common oath.

30th of April 1723, on a bill of pains and penalties, against George Kelly, the Lords seemed to agree that the same rule as above extended to lords plaintiffs as well as defendants, on examinations on interrogatories in criminal as well as civil cases; because they cannot hurt others being no evidence, but may hurt themselves; but allow'd Lord Townsend and Lord Carteret to prove the examination of one Neyno then dead, upon honour, on a question, because they acted in their legislative capacity and not in their judicial. And it has been determined, that peers may be bound to their good behaviour.

The Chief Justice of England is called in old histories Capitalis Justicia & Prima post Regem in Anglia Justicia. Lamb. Eirenarcha, p. 4.

The stile now of the King's Bench is pli'ta coram domino Rege; and in antient records you will find the High Court [396] of King's Bench and the High Court of Common Pleas, as well as the expression of the High Court of Chancery, and perhaps before it.

THE KING *versus* LAYER. MICH. 9 GEO. I. B. R.

Hab' cor' ad testificand'.

The defendant on an indictment for high treason mov'd by his counsel for an habeas corpus to bring up Lord Orrery and Lord North and Grey, then in the

W. J. M. Doat

T H E

Statutes at Large



From the Tenth Year of

KING WILLIAM the THIRD,

To the End of the Reign of

QUEEN ANNE.

To which is prefixed,

A TABLE of the TITLES of all the Publick and Private Statutes during that Time.

VOLUME the FOURTH.

A NEW EDITION.



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MDCCLXIX.

X. And be it further enacted by the Authority aforesaid, That from and after the said twenty-ninth Day of September, which shall be in the Year of our Lord one thousand seven hundred and one, there shall be no Customs or Duties whatsoever paid or secured to be paid for any of the said Goods or Commodities, which shall be imported at any Time from and after the said twenty-ninth Day of September one thousand seven hundred and one, other than and except the Half Subsidy, which is to remain by Law after the Goods are exported; but that all other Customs and Duties, now chargeable upon or payable for the said Goods, shall from that Time cease and determine.

After 29 Sept. no Duties to be paid for such Goods imported, except the Half Subsidy.

C A P. XI.

An Act to repeal an Act made in the ninth Year of his Majesty's Reign, intituled, *An Act for rendering the Laws more effectual for preventing the Importation of Foreign Bone Lace, Loom Lace, Needle-work, Point and Cut-work*, three Months after the Prohibition of the Woollen Manufactures in Flanders shall be taken off.

WHEREAS great Complaints are daily made of the Decay of the Woollen Manufactures in this Kingdom, to the Impoverishment of many thousands of poor Families: And whereas by Experience it is found, that an Act made in the ninth and tenth Years of his now Majesty's Reign, intituled, *An Act for rendering the Laws more effectual, for preventing the Importation of Foreign Bone Lace, Loom Lace, Needle-work, Point and Cut-work*, has been one great Cause thereof by being the Occasion that our Woollen Manufactures are prohibited to be imported into Flanders: For Remedy therefore of the Mischief aforesaid, Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That at the End of three Months, to commence from the Time of taking off the Prohibition of the English Woollen Manufactures in Flanders, the said Act, and every Clause, Matter, and Thing therein contained, shall be and become hereby repealed, determined, and of no Force.

9 & 10 W. 3. c. 9.
Repealed.

C A P. XII.

An Act to punish Governors of Plantations in this Kingdom, for Crimes by them committed in the Plantations.

WHEREAS a due Punishment is not provided for several Crimes and Offences committed out of this his Majesty's Realm of England, whereof divers Governors, Lieutenant Governors, Deputy Governors, or Commanders in Chief of Plantations and Colonies within his Majesty's Dominions beyond the Seas, have taken Advantage, and have not been deterred from oppressing his Majesty's Subjects within their respective Governments and Commands, nor from committing several other great Crimes and Offences not deeming themselves punishable for the same here, nor accountable for such their Crimes and Offences to any Person within their respective Governments and Commands: For Remedy whereof, Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the Authority of the same, That if any Governor, Lieutenant Governor, Deputy Governor, or Commander in Chief of any Plantation or Colony within his Majesty's Dominions beyond the Seas, shall after the first Day of August one thousand seven hundred, be guilty of oppressing any of his Majesty's Subjects beyond the Seas, within their respective Governments or Commands, or shall be guilty of any other Crime or Offence, contrary to the Laws of this Realm, or in force within their respective Governments or Commands, such Oppressions, Crimes, and Offences, shall be enquired of, heard and determined in his Majesty's Court of King's Bench here in England, or before such Commissioners, and in such County of this Realm, as shall be assigned by his Majesty's Commission, and by good and lawful Men of the same County, and that such Punishments shall be inflicted on such Offenders, as are usually inflicted for Offences of like Nature committed here in England.

25 Car. 2. c. 7.
Oppression of Governors, &c. of any Colony, &c. beyond Sea, may be tried in England.

C A P. XIII.

An Act for continuing several Laws therein mentioned; and for explaining the Act, intituled, *An Act to prevent the Exportation of Wooll out of the Kingdoms of Ireland and England into Foreign Parts, and for the Encouragement of the Woollen Manufactures in the Kingdom of England.*

WHEREAS divers temporary Laws, which by Experience have been found useful and beneficial, are expiring; Therefore for continuing the same, Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That an Act made in the Session of Parliament held in the thirteenth and fourteenth Years of the Reign of King CHARLES the Second, intituled, *An Act for providing Carriages by Land and by Water, for the Use of his Majesty's Navy and Ordnance*, which was thereby to have Continuance, and be in Force, until the End of the first Session of the next Parliament, and no longer; which said Act, being expired, was, by one Act made in the first Year of the Reign of the late King JAMES the Second, revived, and was enacted to have Continuance during the

13 & 14 Car. 2. c. 20. for providing Carriages, &c. 1 Jac. 2. c. 11. EXP.

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THE

Thomas

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Quinsee

CONSOLIDATED STATUTES

1870

OF

CANADA.

11
17

PROCLAIMED AND PUBLISHED UNDER THE AUTHORITY OF THE ACT
22 VICT. CAP. 29, A. D. 1859.

*Chambre de l'orateur du
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ROLL OF THE SAID CONSOLIDATED STATUTES DEPOSITED IN THE OFFICE

OF THE CLERK OF THE LEGISLATIVE COUNCIL AS DIRECTED BY

THE SAID ACT, 22 VICT. CAP. 29, 1859.

1859.

(It is improbable that any cases now remain to which the two next preceding clauses can apply.)

(Sections 46 and 47 referred to the Imp. Act 18 Geo. 3, c. 12, and were to the same effect and in the same terms as section 43 of the Union Act (3, 4 V. c. 35) which applies to the now Province of Canada.)

(Sections 48, 49 and 50 were mere temporary provisions relating to the coming into force of the Act and matters preliminary thereto.)

IMP. ACT, 3, 4 V. c. 35—1840. ←

An Act to Re-unite the Provinces of *Upper* and *Lower* Canada, and for the Government of *Canada*.

WHEREAS it is necessary that provision be made for the Preamble.
good Government of the Provinces of *Upper* Canada and *Lower* Canada, in such manner as may secure the rights and liberties and promote the interests of all classes of Her Majesty's subjects within the same: And whereas to this end it is expedient that the said Provinces be re-united and form one Province for the purposes of Executive Government and Legislation: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament Assembled, and by the authority of the same, That it shall be lawful for Her Majesty, with the advice of Her Privy Council, to declare, or to authorize the Governor General of the said Two Provinces of *Upper* and *Lower* Canada to declare, by Proclamation, that the said Provinces, upon, from, and after a certain day in such Proclamation to be appointed, which Day shall be within fifteen calendar months next after the passing of this Act, shall form and be One Province, under the name of the Province of *Canada*, and thenceforth the said Provinces shall constitute and be One Province, under the name aforesaid, upon, from, and after the day so appointed as aforesaid. Declaration of union.

2. So much of an Act passed in the Session of Parliament held in the Thirty-first Year of the Reign of King *George* the Third, intituled, *An Act to repeal certain Parts of an Act passed in the fourteenth Year of His Majesty's Reign, intituled, 'An Act for making more effectual Provision for the Government of the Province of Quebec in North America,' and to make further Provision for the Government of the said Province, as provides for constituting and composing a Legislative Council and Assembly within each of the said Provinces respectively, and for the making of Laws; and also the whole of an Act passed in the Session of Parliament held in the first and second years of the*

Repeal of Acts
 31 G. 3 c. 31,
 1 & 2 V. c. 9.
 2 & 3 V. c. 53,
 1 & 2 W. 4, c.
 23.

14 G. 3, c. 88.

Proviso.

Composition
and powers of
legislature.Appointment of
Legislative
Councillors.

the Reign of Her present Majesty, intituled, *An Act to make temporary provision for the Government of Lower Canada*; and also the whole of an Act passed in the Session of Parliament held in the second and third years of the Reign of Her present Majesty, intituled, *An Act to amend an Act of the last Session of Parliament, for making temporary Provision for the Government of Lower Canada*; and also the whole of an Act passed in the Session of Parliament held in the first and second years of the Reign of His late Majesty King *William the Fourth*, intituled, *An Act to amend an Act of the Fourteenth Year of His Majesty King George the Third, for establishing a Fund towards defraying the Charges of the Administration of Justice and the Support of Civil Government in the Province of Quebec in America*, shall continue and remain in force until the day on which it shall be declared, by Proclamation as aforesaid, that the said two Provinces shall constitute and be One Province as aforesaid, and shall be repealed on, from, and after such day: Provided always, that the Repeal of the said several Acts of Parliament and Parts of Acts of Parliament shall not be held to revive or give any force or effect to any enactment which has by the said Acts, or any of them, been repealed or determined.

3. From and after the Re-union of the said Two Provinces there shall be within the Province of *Canada* One Legislative Council and One Assembly, to be severally constituted and composed in the Manner hereinafter prescribed, which shall be called "The Legislative Council and Assembly of *Canada*;" and, within the Province of *Canada*, Her Majesty shall have power, by and with the Advice and Consent of the said Legislative Council and Assembly, to make laws for the peace, welfare, and good Government of the Province of *Canada*, such Laws not being repugnant to this Act, or to such Parts of the said Act passed in the thirty-first Year of the Reign of His said late Majesty as are not hereby repealed, or to any Act of Parliament made or to be made, and not hereby repealed, which does or shall, by express enactment or by necessary intendment, extend to the Provinces of *Upper and Lower Canada*, or to either of them, or to the Province of *Canada*; and that all such Laws being passed by the said Legislative Council and Assembly, and assented to by Her Majesty, or assented to in Her Majesty's Name by the Governor of the Province of *Canada*, shall be valid and binding to all intents and purposes within the Province of *Canada*.

4. For the purpose of composing the Legislative Council of the Province of *Canada*, it shall be lawful for Her Majesty, before the time to be appointed for the first meeting of the said Legislative Council and Assembly, by an instrument under the Sign Manual, to authorize the Governor, in Her Majesty's Name, by an Instrument under the Great Seal of the said Province, to summon to the said Legislative Council of the said

Province,

Province, such persons, being not fewer than twenty, as Her Majesty shall think fit; and it shall also be lawful for Her Majesty from time to time to authorize the Governor in like manner to summon to the said Legislative Council such other person or persons as Her Majesty shall think fit, and every person who shall be so summoned, shall thereby become a Member of the Legislative Council of the Province of *Canada*; Provided always, that no Person shall be summoned to the said Legislative Council of the Province of *Canada*, who shall not be of the full Age of Twenty-one Years, and a natural-born subject of Her Majesty, or a subject of Her Majesty naturalized by Act of the Parliament of *Great Britain*, or by Act of the Parliament of the United Kingdom of *Great Britain and Ireland*, or by an Act of the Legislature of either of the Provinces of *Upper or Lower Canada*, or by an Act of the Legislature of the Province of *Canada*.

Qualification of
Legislative
Councillors.

(But, as to this and the other sections relating to Members of the Legislative Council, see the Provincial Act 19, 20 V. c. 140, making all future Members Elective, but continuing Members theretofore appointed subject to the provisions of this Act. As regards Elective Members, see the said Act 19, 20 V. c. 140.

5. Every Member of the Legislative Council of the Province of *Canada*, shall hold his seat therein for the term of his life, but subject nevertheless to the provisions hereinafter contained for vacating the same.

Tenure of office
of Councillor.

6. It shall be lawful for any Member of the Legislative Council of the Province of *Canada*, to resign his seat in the said Legislative Council, and upon such resignation the seat of such Legislative Councillor shall become vacant.

Resignation of
Legislative
Councillor.

7. If any Legislative Councillor of the Province of *Canada*, shall for two successive sessions of the Legislature of the said Province, fail to give his attendance in the said Legislative Council, without the permission of Her Majesty or of the Governor of the said Province, signified by the said Governor to the Legislative Council, or shall take any oath or make any declaration or acknowledgment of allegiance, obedience, or adherence to any Foreign Prince or Power, or shall do, concur in, or adopt any act whereby he may become a subject or citizen of any Foreign State or Power, or whereby he may become entitled to the rights, privileges, or immunities of a subject or citizen of any Foreign State or Power, or shall become bankrupt, or take the benefit of any Law relating to insolvent debtors, or become a public defaulter, or be attainted of treason, or be convicted of felony or of any infamous crime, his seat in such Council shall thereby become vacant.

Vacating seat
by absence,
adhesion to a
Foreign State
bankruptcy,
&c.

take the chair on account of illness or other cause.

during any part of the sittings of the said Assembly on any day, he may call upon any member thereof to take the chair and to act as Speaker during the remainder of such day, unless the Speaker himself resume the chair before the close of the sittings for that day: and the member so called upon shall take the chair and act as Speaker accordingly; and every Act passed, and every order made and thing done by the said Assembly, while such member is acting as Speaker as aforesaid, shall be as valid and effectual to all intents and purposes as if done while the Speaker himself was presiding in the chair. 19, 20 V. c. 41.

C A P . V .

An Act respecting the Provincial Statutes.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

FORM OF ENACTING.

Former enact-
ing clause to
be disused.

Another form
substituted.

Clauses to
follow in a con-
cise form.

To what Acts
the interpreta-
tion clauses of
this Act shall
apply.

1. The following words, formerly inserted in the Preamble of Statutes and indicating the authority by virtue of which they are passed: "Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, as follows:" having been disused and replaced by the words following, "Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: The said last mentioned form shall continue to be used. 18 V. c. 88, s. 1.

2. After the insertion of the words aforesaid, which shall follow the setting forth of the considerations or reasons upon which the law is grounded, and which shall with these considerations or reasons constitute the entire Preamble, the various clauses of the Statute shall follow in a concise and enunciative form. 18 V. c. 88, s. 2.

INTERPRETATION.

3. This section and the fourth, fifth and sixth sections of this Act, and each provision thereof, shall extend and apply to these Consolidated Statutes of Canada, and to every Act passed in the Session held in the twelfth year of Her Majesty's Reign, or in any

any subsequent or future Session of the Provincial Parliament, except in so far as the provision is inconsistent with the intent and object of such Act, or the interpretation which such provision would give to any word, expression or clause is inconsistent with the context,—and except in so far as any provision thereof is in any such Act declared not applicable thereto;—Nor shall the omission in any Act of a declaration that the “Interpretation Act” shall apply thereto, be construed to prevent its so applying, although such express declaration may be inserted in some other Act or Acts of the same Session. 12 V. c. 10, s. 1.

4. The Clerk of the Legislative Council shall endorse on every Act of the Parliament of this Province, immediately after the title of such Act, the day, month and year when the same was by the Governor assented to in Her Majesty's name, or reserved the same for the signification of Her Majesty's pleasure thereon,—and in the latter case, he shall also endorse thereon the day, month and year when the Governor has signified either by speech or message to the Legislative Council and Assembly, or by Proclamation, that the same was laid before Her Majesty in Council, and that Her Majesty was pleased to assent to the same;—And such indorsement shall be taken to be a part of such Act, and the date of such Assent or Signification, as the case may be, shall be the date of the commencement of the Act, if no later commencement be therein provided. 12 V. c. 10, s. 2.

Date of assent to be endorsed on every Act.

As to reserved Acts.

Effect of such indorsement.

5. Any Act of the Parliament of this Province may be amended, altered or repealed by any Act to be passed in the same Session thereof. 12 V. c. 10, s. 3.

Acts may be amended, &c., during same Session.

6. Subject to the limitations aforesaid,—in every Act of the Parliament of this Province, to which this section applies:—

Interpretation of certain words, &c., viz:

First. The words “Her Majesty,” “the Queen,” or “the Crown,” shall mean—Her Majesty, Her Heirs and Successors, Sovereigns of the United Kingdom of Great Britain and Ireland;

Her Majesty, &c.

Secondly. The words “Governor,” “Governor of this Province,” “Governor General,” or “Governor in Chief,” shall mean—the Governor, Lieutenant Governor, or person administering the Government of this Province for the time being;

Governor, &c.

Thirdly. The words “Governor in Council,” shall mean—the Governor, Lieutenant-Governor, or person administering the government of this Province for the time being, acting by and with the advice of the Executive Council thereof;

Governor in Council.

Fourthly. The words “Lower Canada,” shall mean all that part of this Province which formerly constituted the Province of Lower Canada;

Lower Canada.

Fifthly.

Twenty-fifthly. No provision or enactment in any such Act, as aforesaid, shall affect in any manner or way whatsoever, the rights of Her Majesty, Her Heirs or Successors, unless it is expressly stated therein that Her Majesty shall be bound thereby; nor shall it affect the rights of any person or of any body politic, corporate or collegiate, (such only excepted as are therein mentioned,) unless such Act is a Public General Act.

Acts not to affect the Crown, &c., unless expressly declared so to do.

Twenty-sixthly. Every such Act as aforesaid shall be so construed as to reserve to the Legislature the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person or party, whenever such repeal, amendment, revocation, restriction or modification is deemed by the Legislature to be required for the public good; And unless it is otherwise expressly provided in any such Act passed for chartering any Bank, it shall be in the discretion of the Legislature at any time thereafter to make such provisions and impose such restrictions with respect to the amount and description of notes which may be issued by such Bank, as to the said Legislature appears expedient.

Power to amend any Act.

And if it be a Bank Act.

Twenty-seventhly. If any such Act as aforesaid be declared to be a Public Act, such declaration shall be construed as an enactment that such Act shall be judicially noticed by all Judges, Justices of the Peace and others without being specially pleaded;—And every such Act which shall not, either by its nature or by express provision, be a Public Act, shall be deemed a Private Act, and shall be judicially noticed only when specially pleaded;—And all copies of any such Acts, public or private, printed by the Queen's Printer, shall be evidence of such Acts and of their contents, and every copy purporting to be printed by the Queen's Printer shall be deemed to be so printed, unless the contrary be shewn;

Public Act.

Private Act.

Printed copies of Acts.

Twenty-eighthly. The Preamble of every such Act as aforesaid shall be deemed a part thereof intended to assist in explaining the purport and object of the Act;—And every such Act and every provision or enactment thereof, shall be deemed remedial, whether its immediate purport be to direct the doing of any thing which the Legislature deems to be for the public good or to prevent or punish the doing of any thing which it deems contrary to the public good,—and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment,—according to their true intent, meaning and spirit.

Preamble to be part of Act.

All Acts remedial.

Twenty-ninthly. Nothing in this Section shall exclude the application to any such Act as aforesaid, of any Rule of Construction applicable thereto, and not inconsistent with this Section, or to exclude the application of any Rule of Construction

Application of Rules of Construction inserted or not inserted herein.

10. If after the distribution of the said printed Acts any copies remain in the hands of Her Majesty's Printer, he may deliver any number thereof to any person by order of the Governor, on notice thereof by the Secretary of the Province,—or to the Members of the Legislative Council or of the Legislative Assembly, on the order of the Speaker of the said Houses respectively. 8 V. c. 68, s. 5.

If any copies remain, &c.

11. Each volume of the Provincial Statutes, distributed under this Act, shall be half-bound in cloth, with backs of White Sheep, and lettered; and the Statutes shall be printed in Royal Octavo Form, on fine paper, in Small Pica Type, thirty-two ems by fifty-five ems, including marginal notes in Brevier, such notes referring to the year and chapter of previous Statutes, whenever the text amends, repeals or changes the enactments of former years. 14, 15 V. c. 81, s. 2.

How the Statutes shall be printed and bound.

12. Her Majesty's Printer shall, before the opening of each Session of the Provincial Parliament, make a Report in triplicate to the Governor, (to be by him laid before each of the other Branches of the Legislature within fifteen days after the opening of such Session), shewing the number of copies of the Acts of each Session which have been printed and distributed by him since the then last Session,—and the Departments, Administrative Bodies, Officers and persons to whom the same have been distributed, the number of copies delivered to each, and under what authority, and the numbers of copies of the Acts of each Session then remaining in his hands,—and containing also a detailed account of the expenses by him actually incurred in carrying this Act into effect, to the end that provision may be made for defraying the same, after such account has been duly audited and allowed. 8 V. c. 68, s. 6.

Printer to report in triplicate to the Governor, shewing the number of copies printed and distributed.

And also the expense.

13. The party obtaining a private or personal Act shall furnish, at his own cost, one hundred and fifty printed copies of such Act to the Provincial Government; but such copies need not be furnished in the French language if the Act relates only to Upper Canada. 12 V. c. 16, s. 3.

Parties obtaining private Acts, to furnish 150 copies.

PROOF OF PROVINCIAL STATUTES.

14. Any copy of the Statutes and Ordinances of the Province of Lower Canada, printed and published by the Printer duly authorized to print and publish the same by Her Majesty, or by any of Her Royal Predecessors, shall be received as conclusive evidence of the several Statutes made and enacted prior to the Union of the Provinces of Upper and Lower Canada, by the Legislature of the Province of Lower Canada, and of the tenor of such Statutes and Ordinances, in any Court of Civil or Criminal Jurisdiction in Upper Canada.

Copies of Acts of L. C. printed by Queen's Printer to be conclusive evidence thereof.

Copies of Acts of U. C. printed by Queen's Printer to be conclusive evidence thereof.

2. And in like manner a copy of the Statutes of the late Province of Upper Canada, printed and published by the Printer duly authorized by Her Majesty, or by any of Her Royal Predecessors, to print and publish the same, shall be received as conclusive evidence of the several Statutes made and enacted by the Legislature of the said Province of Upper Canada, prior to the Union of the said Provinces of Upper and Lower Canada, and of the tenor of such Statutes, in any Court of Civil or Criminal Jurisdiction in Lower Canada. 7 V. c. 4, s. 1.

Short Title of this Act.

15. This Act may be cited as "The Interpretation Act."

CAP. VI.

An Act respecting Elections of Members of the Legislature.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

WHO SHALL NOT VOTE AT ELECTIONS.

Persons disqualified from voting for Members of the Legislative Council or Legislative Assembly.

1. The Chancellor and Vice Chancellors of Upper Canada,—the Chief Justice and Judges of the Court of Queen's Bench for Lower Canada,—the Chief Justices and Judges of the Courts of Queen's Bench and Common Pleas in Upper Canada, and of the Superior Court in Lower Canada,—the Judge of the Court of Vice Admiralty in Lower Canada,—the Judge of any Court of Escheats,—all County and Circuit Judges, all Commissioners of Bankrupts,—all Recorders of Cities,—all Officers of the Customs,—all Clerks of the Peace, Registrars, Sheriffs, Deputy Sheriffs, Deputy Clerks of the Crown and Agents for the sale of Crown Lands,—and all Officers employed in the collection of any duties payable to Her Majesty in the nature of duties of excise,—shall be disqualified and incompetent to vote at any Election of a Member of the Legislative Council or of the Legislative Assembly ;

Penalty for contravention.

2. And if any public officer or person mentioned in this section votes at any such election, he shall forfeit thereby the sum of two thousand dollars, to be recovered by such person as shall sue for the same, by action of debt, bill, plaint or information, in and before any Court of competent civil jurisdiction in this Province, and his vote at such election shall be null and void. 20 V. c. 22, s. 2.

Certain officers and persons not to vote.

2. No Returning Officer, Deputy-Returning Officer, Election Clerk or Poll Clerk,—and no person who, at any time, either during the Election or before the Election, is or has been employed at the said Election or in reference thereto, or for



STATUTES

OF

UPPER CANADA,

PASSED IN THE



FIRST SESSION OF THE FIRST PROVINCIAL PARLIAMENT
OF UPPER CANADA:

MET AT NIAGARA, ON THE SEVENTEENTH DAY OF SEPTEMBER, IN THE THIRTY-SECOND YEAR
OF THE REIGN OF OUR SOVEREIGN LORD GEORGE THE THIRD, AND PROROGUED
ON THE FIFTEENTH DAY OF OCTOBER FOLLOWING.

HIS EXCELLENCY JOHN GRAVES SIMCOE, ESQUIRE,
LIEUTENANT GOVERNOR.



ANNO DOMINI 1792.



CHAP. I.

AN ACT to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled "An Act for making more effectual provision for the Government of the Province of Quebec, in North America," and to introduce the English Law as the Rule of Decision in all matters of Controversy, relative to Property and Civil Rights.

[Passed 15th October, 1792.]

WHEREAS, by an Act passed in the fourteenth year of His present Majesty, intituled, "An Act for making more effectual provision for the Government of the Province of Quebec, in North America," it was, among other things, provided, "that in all matters of controversy relative to Property and Civil Rights, resort should be had to the laws of Canada, as the rule for the decision of the same," such provision being manifestly and avowedly intended for the accommodation of His Majesty's Canadian Subjects: And whereas, since the passing of the Act aforesaid, that part

Preamble.

Recital of Act 14 Geo. III. chap. 33.

of the late Province of Quebec now comprehended within the Province of Upper Canada, having become inhabited principally by British Subjects, born and educated in countries where the English Laws were established, and who are unaccustomed to the Laws of Canada, it is inexpedient that the provision aforesaid, contained in the said Act of the fourteenth year of His present Majesty, should be continued in this Province—*Be it enacted* by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America', and to make further provision for the Government of the said Province," and it is hereby enacted, That from and after the passing of this Act, the said provision contained in the said Act of the fourteenth year of His present Majesty, be, and the same is hereby repealed; and the authority of the said Laws of Canada, and every part thereof, as forming a rule of decision in all matters of controversy relative to property and civil rights, shall be annulled, made void and abolished, throughout this Province, and that the said Laws, nor any part thereof as such, shall be of any force or authority within the said Province, nor binding on any of the inhabitants thereof.

The same repealed in so far as it constitutes the laws of Canada a rule of decision in matters of controversy, relative to property and civil rights.

Without affecting claims on real property, or contracts or securities already executed.

II. *Provided always, and be it enacted by the authority aforesaid,* That nothing in this Act shall extend to extinguish, release or discharge, or otherwise to affect any existing right, lawful claim or incumbrance, to and upon any lands, tenements or hereditaments, within the said Province, or to rescind or vacate, or otherwise to affect any contract or security, already made and executed conformably to the usages prescribed by the said Laws of Canada.

The laws of England to be henceforth the rule of decision.

III. *And be it further enacted by the authority aforesaid,* That from and after the passing of this Act, in all matters of controversy relative to Property and Civil Rights, resort shall be had to the Laws of England, as the rule for the decision of the same.

But the ordinances of the Province of Quebec are no further repealed than as by this Act they are necessarily varied.

IV. *Provided always, and be it enacted by the authority aforesaid,* That nothing in this Act shall extend, or be construed to extend, to repeal or vary any of the Ordinances made and passed by the Governor and Legislative Council of the Province of Quebec, previous to the division of the same into the Provinces of Upper and Lower Canada, otherwise than as they are necessarily varied by the provisions hereinafter mentioned.

The rules of evidence to be regulated by those established in England.

V. *And be it further enacted by the authority aforesaid,* That all matters relative to testimony and legal proof, in the investigation of fact, and the forms thereof, in the several Courts of Law and Equity within this Province, be regulated by the rules of evidence established in England.

VI. *Provided always, and be it enacted by the authority aforesaid,* That nothing in this Act contained shall vary or interfere, or be construed to vary or interfere, with any of the subsisting provisions respecting Ecclesiastical rights or dues within this Province, or with the forms of proceeding in civil actions, or the jurisdiction of the Courts already established, or to introduce any of the Laws of England respecting the maintenance of the poor, or respecting bankrupts.

But no alteration is made in the subsisting provisions respecting ecclesiastical rights or dues, or the jurisdiction of courts of justice, or the poor or bankrupt laws.

CHAP. II.

AN ACT to establish Trials by Jury.

[Passed 15th October, 1792.]

WHEREAS the Trial by Jury has been long established and approved in our Mother Country, and is one of the chief benefits to be attained by a free Constitution: *Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America', and to make further provision for the Government of the said Province," and it is hereby enacted, That from and after the first day of December, in this present year of our Lord one thousand seven hundred and ninety-two, all and every issue and issues of fact, which shall be joined in any action, real, personal or mixed, and brought in any of His Majesty's Courts of Justice within this Province aforesaid, shall be tried and determined by the unanimous verdict of twelve Jurors, duly sworn for the trial of such issue or issues, which jurors shall be summoned and taken conformably to the law and custom of England.*

Preamble.

(See 34 Geo. III. chap. 1.
36 Geo. III. chap. 2.
37 Geo. III. chap. 9.
43 Geo. III. chap. 13.
2 Geo. IV. chap. 1, sec. 30)

All issues of fact to be determined by the verdict of 12 jurors conformably to the law and custom of England.

II. *Provided always, and be it further enacted by the authority aforesaid,* That nothing herein contained shall prevent, or be construed to prevent the said Jurors, in all cases where they shall be so minded, from bringing in a special verdict.

Who may bring in a special verdict.

CHAP. III.

AN ACT to establish the Winchester Measure, and a Standard for other Weights and Measures throughout this Province.

[Passed 15th October, 1792.]

[REPEALED BY 4th GEO. IV. SESS. 1, CH. 16.]

STATUTES OF UPPER CANADA,

PASSED IN THE

FOURTH SESSION OF THE SECOND PROVINCIAL PARLIAMENT OF UPPER CANADA:

MET AT YORK, ON THE SECOND DAY OF JUNE, IN THE FORTIETH YEAR OF THE REIGN
OF OUR SOVEREIGN LORD GEORGE THE THIRD, AND PROROGUED ON THE
FOURTH DAY OF JULY FOLLOWING.

THE HONOURABLE PETER HUNTER, ESQUIRE,
LIEUTENANT GOVERNOR.

ANNO DOMINI 1800.



CHAP. I.

*AN ACT for the further introduction of the Criminal Law of England
into this Province, and for the more effectual Punishment of certain
Offenders.*

[Passed 4th July, 1800.]

Preamble.

WHEREAS the Criminal Law of England was, by an Act of the Parliament of Great Britain, passed in the fourteenth year of His Majesty's reign, intituled, "An Act for making more effectual provision for the Government of the Province of Quebec, in North America," introduced and established as the Criminal Law of this Province: And whereas divers amendments and improvements have since been made in the same by the mother country, which it is expedient to introduce and adopt in this Province; Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America,' and to make further provision for the Government of the said Province," and by the authority of the same, That the Criminal Law of England, as it stood on the seventeenth day of September, in the year of our Lord one thousand seven hundred and ninety-two, shall be and the same is hereby declared to be the Criminal Law of this Province.

The Criminal Law of
England introduced as it
stood on the 17th day of
September, 1792.

STATUTES OF UPPER CANADA,

PASSED IN THE

FOURTH SESSION OF THE ELEVENTH PROVINCIAL PARLIAMENT OF UPPER CANADA:

MET AT YORK, ON THE NINETEENTH DAY OF NOVEMBER, IN THE FOURTH YEAR OF THE
REIGN OF OUR SOVEREIGN LORD WILLIAM THE FOURTH, AND PROROGUED ON
THE SIXTH DAY OF MARCH FOLLOWING.

SIR JOHN COLBORNE, K. C. B.
LIEUTENANT GOVERNOR.

ANNO DOMINI 1834.

→ CHAP. I.

AN ACT to amend the Law respecting Real Property, and to render the proceedings for recovering possession thereof in certain cases, less difficult and expensive.

[Passed 6th March, 1834.]

Preamble.

WHEREAS it is expedient to amend the law relating to real estates, by making certain alterations in the law of inheritance, and respecting the conveyance of real property by devise and by deed, and in regard to dower, and the limitation of actions and suits relating to real property, and for simplifying the remedies for trying the rights thereto; *Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America,' and to make further provision for the Government of the said Province," and by the authority of the same, That in every case descent shall be traced from the purchaser; and to the intent that the pedigree may never be carried farther back than the circumstances of the case and the nature of the title shall require, the person last entitled to the land shall for the purposes of this Act be considered to have been the purchaser thereof, unless it shall be proved that he inherited the same, in which case, the person from whom he inherited the same shall be considered to have been the purchaser, unless it shall be proved that he inherited the same;*

Descent shall always be traced from the purchaser, but the last owner shall be considered to be the purchaser, unless the contrary be proved.

tenants, unless an intention sufficiently appears on the face of such letters patent, assurance or will, that they shall take as joint tenants.

XLIX. *And be it further enacted by the authority aforesaid,* That when the will of any person who shall die after the passing of this Act shall contain a devise in any form of words, of all such real estate as the testator shall die seized or possessed of, or of any part or proportion thereof, such will shall be valid and effectual to pass any land that may have been or may be acquired by the devisor after the making of such will, in the same manner as if the title thereto had been acquired before the making thereof.

Estates acquired after the making of a will, may pass by the will where such intention is expressed.

L. *And be it further enacted by the authority aforesaid,* That whenever land is or shall be devised in a will made by any person who shall die after the passing of this Act, it shall be considered that the devisor intended to devise all such estate as he was seized of in the same land, whether fee simple or otherwise, unless it shall appear upon the face of such will that he intended to devise only an estate for life, or other estate less than he was seized of at the time of making the will containing such devise.

A devise of land shall be taken to carry as large an estate as the testator had in the land, unless a contrary intention be expressed.

LI. *And whereas* by the adoption in this Province of the law of England, it is made necessary that a will of real estate shall be executed in the presence of three witnesses, which provision there is reason to believe operates in many instances injuriously in this Province, by reason that lands are held in small portions by persons of all conditions and degrees of intelligence, many of whom, not aware of this positive provision of the law, are only careful to provide two witnesses, as is customary with respect to sealed instruments in general, and in all such cases the intentions of the testator fail of their effect, frequently to the great injury of families: *Whereas*, on the other hand, it is doubtful whether any intended fraud is in fact prevented by requiring an attestation by three witnesses: *Be it therefore enacted by the authority aforesaid,* That any will affecting land executed after the passing of this Act, in the presence of and attested by two or more witnesses, shall have the same validity and effect as if executed in the presence of and attested by three witnesses, any former law to the contrary notwithstanding; and that it shall be sufficient if such witnesses subscribe their names in presence of each other, although their names may not be subscribed in presence of the testator.

Not more than two witnesses shall be necessary to a will;

And they need not subscribe in the presence of the testator.

LII. *And whereas* plaintiffs in actions of ejectment brought against persons who are merely intruders, are subject to be defeated in the recovery of land to which they have just claim, as purchasers or heirs, on account of some want of technical form in their title, or some imperfection not affecting the merits of their case, and of which it is desirable that mere strangers to the title, having no claim, or colour of legal claim, to the possession, should not be encouraged or permitted to take advantage: *Be it therefore enacted by the authority aforesaid,* That it shall and

Defendants in ejectment setting up no title, shall not be allowed to take formal exceptions to the title of the lessor of the plaintiff, against the merits of the case;

may be lawful for the lessor of the plaintiff, or his attorney, in any action of ejectment hereafter to be brought, to serve a notice upon the defendant in such ejectment in these words :

Defendant may be called upon to shew what title he has to the possession ;

“ Take notice, that I claim the premises for which this action is brought as the bonâ fide purchaser thereof, from A. B. —, or as heir-at-law of A. B., of —, (or otherwise as the case may be,) and that you will be required to show upon the trial of this cause what legal right you have to the possession of the premises,”

or a notice in any other form of words to the same effect; and that if upon the trial of such ejectment to be afterwards had, the evidence of title given by the lessor of the plaintiff shall shew to the satisfaction of the Court and Jury that he is entitled in justice to be regarded as the proprietor of the land, or is entitled to the immediate possession thereof for any term of years, but that he cannot shew a perfect legal title by reason of some want of legal form in any instrument produced, or by reason of the defective registration of any will or instrument produced, or from any cause not within the power of the lessor of the plaintiff to remedy by using due diligence, it shall be competent to the Jury, under the direction of the Court, to find a verdict for the plaintiff, unless the defendant, or his counsel, upon being required by the other party so to do, shall give such evidence of title as shall shew that he is the person legally entitled, or does bonâ fide claim to be the person legally entitled to the land, by reason of the defect in the title of the lessor of the plaintiff, or that he holds, or does bonâ fide claim to hold, under the person so entitled : *Provided always nevertheless, that when a verdict shall be rendered under the authority of this provision, it shall be endorsed as given under this Act, and it shall be stated in the postea and entry of the judgment to have been so given ; and in any action which may thereafter be brought for the mesne profits, such judgment in ejectment shall not be evidence to entitle the plaintiff to recover.*

Provision respecting action for mesne profits.

More easy remedy against tenants who wrongfully hold over ;

Application to the Court of King's Bench, or a Judge in vacation ;

Affidavit ;

LIII. *And whereas* the wrong committed by tenants in holding over vexatiously and without colour of right, after their term has expired, requires a more speedy and less expensive remedy than is now provided by law : *Be it therefore further enacted by the authority aforesaid, That it shall and may be lawful for any landlord, or the agent of any landlord, whose tenant shall, after the expiration of his term, (whether the same was created by writing or parol,) wrongfully refuse, upon demand made in writing, to go out of possession of the land demised to him, to apply to the Court of King's Bench in term, or to a Judge thereof in vacation, setting forth, on affidavit, the terms of the demise, if by parol, and annexing a copy of the instrument containing such demise, if the same were in writing, and also a copy of the demand made for the delivering up possession, and stating also the refusal of the tenant to go out of possession, and the reason given for such refusal, (if any were given,) adding such explanation in regard to the ground of refusal as the truth of the case may*