

the said act, those by this act are incorporated, established and confirmed.

And likewise all hospitalls, &c. and houses of correction hereafter to be erected, &c. according to the purport of the said statute, shall be incorporated, &c. And note, that this branch makes the act of 39 Elis. &c. a perpetuall law.

Vid. 13 Elis. cap. 7. the moiety of the forfeiture of bankrupts given to the poore within hospitalls.

31 Elis. cap. 6. If any which have election, nomination, voice, or assent thereunto of any person to have roome or place in any hospitall, shall have or take any mony, reward or profit, directly or indirectly, or promise of money, reward or profit, that then such roome and place to be void, and another to be preferred to the place by those that have authority to elect, &c.

13 Elis. cap. 7.

31 Elis. cap. 6.
None that have election, &c. to take reward, &c.

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43 Elis. cap. 4.
A speedy remedy in many cases.

In 43 Elis. a right profitable law was made, for commissioners to enquire of mis-employment of lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and stockes of money given or appointed, some for reliefe of aged, impotent, and poore people, and some for reliefe of sicke and maimed souldiers and mariners, or for maintenance of houses of correction (*inter alia*) and by their orders to reforme the same, which act hath wrought very good effect in many cases.

An Exposition of the Statute of 7 Jac. Regis,
Cap. 4. concerning Houses of Correction,
and the Government of them.

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MANY statutes have been made for the punishment of rogues, vagabonds, and sturdy beggars, but very few to find them worke, and to enforce them thereunto. The principall of that kind is the statute of 39 Elis. ca. 4. which doth enact, that from time to time it shall and may be lawfull to and for the justices of peace of any county or city, assembled at any quarter sessions of the peace within the same county, city, borough, or towne corporate, to set downe order in three things: First, from time to time to erect, or cause to be created one or more * houses of correction within their severall counties or cities. This first branch is a law perpetuall, and the justices of peace for the time being have power by this act from time to time to erect as many houses of correction, or work-houses, as they shall thinke convenient.

* Note, these are not only houses of correction, but work-houses also, as hereafter appeareth.

2. For the providing of stockes of money, and all other things necessary for the same. This also is a law perpetuall from time to time, &c.

See 43 Elis. ca. 2. & 7 Jac. cap. 4. in the 2. branch.

3. For ruling and governing of the same.

4. For correction and punishment of ^a offenders thither to be committed. These two also are lawes perpetuall, *ut supra*.

^a Note the generality of this word.

5. For the better effecting whereof, they may make such orders
as

The life of this
business consist-
eth in framing
of these orders,
& in due execu-
tion of the same.

as they shall from time to time thinke convenient, &c. and from time to time to reforme, take, and set down the same.

6. Which orders shall be of force (being warranted by authority of parliament) and be duly performed, and put in execution.

We passe over all the former lawes before this act of 39 Elis. for punishment of rogues, vagabonds, and sturdy beggars, many whereof were repealed by 1 E. 6. cap. 3. and all the rest are repealed by this act of 39 Elis. and will come to the abovesaid act of 7 Jac. This law consisteth upon a short preamble, and the body of the act, which is divided into nine branches.

The preamble.

Whereas heretofore divers good and necessarie lawes and statutes have been made and provided for the erection of houses of correction, for the suppressing and punishing of rogues, vagabonds, and other idle, vagrant, and disorderly persons, which lawes have not wrought so good effect as was expected, as well for that the said houses of correction have not been built according as was intended, as also for that the said statutes have not been duely and severely put in execution, as by the said statutes were appointed.

In this preamble are rehearsed two causes wherefore the former law and statute took not so good effect as was expected: First, for that houses of correction were not built according as was intended, wherein no deficiencie was in the law, but in the justices of peace, which should have ordered the same to be erected. For seeing education of youth, and setting of worke of idle and disorderly persons, are such essentiall parts of the well being of a commonwealth; and the onely meane to compell them to worke (as the law now standeth) is by houses of correction, seeing there hath been a default in the justices of the peace heretofore, and the mischief so daily increasing, we hope that the justices of peace, having yet power, will erect more houses of correction (which are also called work-houses) so as we shall have neither beggar (as the law of God commandeth) nor idle person in the common-wealth.

See the third part
of the Institutes,
cap. Rogues.

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The second cause (which is the cause of causes) is, for that the statutes in that case made and provided were not put in execution, as by the said statutes was appointed.

* 39 Elis. cap. 4.

And this excellent work is without question feasible: for upon the making of the statute of 39 Elis. and a good space after, whilest justices of peace and other officers were diligent and industrious, there was not a rogue to be seen in any part of England, but when justices * and other officers became *tepidi*, or *trepid*, rogues, &c. swarmed againe.

The 1. branch.

For remedy whereof, be it enacted and established by our soveraign lord the kings majestie, and by the lords spirituall and temporall, and by the commons in this present parliament assembled, and by the authoritie of the same, that all lawes and statutes now in force, made for erecting and building of houses of correction, and for punishing of rogues, vagabonds, and other wandring and idle persons, shall be put in due execution.

The

The first branch of the body of this act consisteth on two parts: First, that all lawes and statutes made for erecting and building of houses of correction now in force should be put in due execution; which is so enacted, for the incitation and encouragement of justices of peace to do their duties in this so important a cause.

2. For punishing of rogues, vagabonds, and sturdy beggars (for those are the words of the former statute now in force) shall be likewise put in due execution. Execution is the end and life of the law. 39 Elis. ubi sup.

And be it further enacted and established by the authority aforesaid, that before the feast of Saint Michael (1) the archangel, which shall be in the yeare of our Lord God one thousand sixe hundred and eleven, there shall be erected, built, or otherwise provided (2) within every countie of this realm of England and Wales, where there is not one house of correction already built, purchased, provided or continued, one or more fit and convenient house or houses of correction, with convenient backside thereunto adjoyning, together with mills, turns, cards (3), and such like necessarie implements, to set the said rogues, or such other idle persons on worke: the same houses to be built, erected or provided in some convenient place or towne in every county: which houses shall be purchased, conveyed, or assured (4) unto such person or persons, as by the justices of peace, or the more part of them, in their quarter sessions of the peace, to be holden within every countie of this realme of England and Wales, upon trust, to the intent the same shall be used and employed for the keeping, correcting, and setting to worke of the said rogues, vagabonds, or sturdy beggars, and other idle and disorderly persons (5). The 2. branch.

(1) *That before the feast of Saint Michael, &c.*] This clause was to hasten, and upon penalty to inforce justices of peace to so necessary and charitable a worke. * But this clause being in the affirmative, taketh not away the perpetuity of the act of 39 Elis. for the erection of houses of correction and work-houses, from time to time, and at any time hereafter by justices of peace. * Nota.

(2) *Shall be erected, built, or otherwise provided.*] The statute of 39 El. used onely the word [erected,] but that included both the other words of this act, viz. [built and provided.] For if they caused a house already builded, to be provided or purchased, and converted the same to a house of correction, this is an erection of a house of correction within the statute of 39 Elis. because as to the house of correction, it was newly erected. [730]

Erectior senatus erat nostris cohortationibus excitatus.

(3) *With convenient backside thereunto adjoyning, together with mills, turnes, cards, &c.* These particulars, and all other necessary things appertaining thereunto, are included within the generall words of 39 Eliz. viz. [for the providing of stockes, and all other things necessary for the same, &c.] which are generall and large words, and doe include all particulars necessary whatsoever. Cicero ad Brutum.

(4) *Which houses shall be purchased, and conveyed, or assured, &c.*] This may be done by authority of this act, without licence or offence fence

fence of any former law. And these may be incorporated by the statute of 39 Eliz. cap. 5. as in the exposition of that statute appeareth.

The house to be employed to three purposes: 1. for the keeping, 2. for the correcting, 3. for the setting to worke: so as it is not a house of correction alone, but of safe keeping, and setting on worke.

(5) *The said rogues, vagabonds, or sturdy beggars, and other idle and disorderly persons.*] The statute of 39 Elis. by particular words did not extend to rogues, vagabonds, and sturdy beggars, but in generall words, for the punishment of offenders thereunto committed. Which generall words are both by the first branch of this act explained to be wandring or idle persons: and many other branches of this act, to idle or disorderly persons, and specially by the branch, whereby the authority of the justices to commit to the house of correction is warranted. All idle or disorderly persons may be committed by them to the house of correction and workhouse.

And where all the judges of England did for the good of the common-wealth, and the better instruction and direction of justices of peace, and for the due execution of the said act of 39 Elis. amongst other things resolve, that such persons as be of any parish, and have able bodies to worke, and be no wanderers abroad out of the parish, though they refuse to worke at such wages as is taxed (or commonly given) in those parts, are notwithstanding not to be sent to their place of birth, or last dwelling, by the space of a yeare, but to the house of correction, upon consideration had of both the statutes of the poor and rogues. But if they that have any lawfull meanes to live by, though they be of able bodies, and refuse to worke, yet are they not to be sent to the house of correction.

But by this statute of 7 Jac. enacted long after the resolution of the judges, though they have lawfull meanes to live by, yet if they be idle or disorderly persons, the justices of peace have power to commit them to the house of correction, a generall and large power given to them, without exception of any person. And their mittimus to the house of correction may be more safely upon this statute, *quia otioso et inordinata persona*: for that he is an * idle and disorderly person, or that he is an idle person, or that he is a disorderly person, according to the words of this act, then upon the statute of 39 Elis.

* The words in the 5. branch are in the disjunctive.

The 3. branch.

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And be it further enacted by the authoritie aforesaid, that if the said house to be erected, purchased, or provided, shall not be erected, built, or otherwise provided, before the feast of S. Michael the archangel, which shall be in the yeare, one thousand sixe hundred and cleven, next ensuing the last day of this present session of parliament, that then every justice of peace within every countie of this realme of England and Wales, where such house and backside shall not be erected or provided, shall forfeit for his said neglect five pounds of lawfull English money, the one moiety thereof to be unto him or them that will sue for the same by action of debt, bill, plaint, or information: in which suit, no protection, essoine, or wager of law shall be admitted: and the other moiety thereof to be employed and bestowed

flowed towards the erecting, building, procuring or providing the said house and backside, and such necessary implements, as aforesaid.

The penalty of five pounds of every justice of peace, if the house of correction be not provided within the time of this act of 7 Jac. And how the same penalty shall be recovered and employed.

And be it further enacted and established by the authoritie aforesaid, that the justices of peace of every countie within the realme of England and Wales, at their quarter sessions of the peace, to be holden for their severall counties (next after the erecting, providing or building of the said house or houses, and so from time to time) or the most part of them shall elect, nominate and appoint, at their will and pleasure, one or more honest fit person or persons, to be governour or master of the said house or houses so to be purchased, erected, built or provided: which person and persons so chosen by vertue of this present act, shall have power and authoritie, to set such rogues, vagabonds, idle and disorderly persons, as shall be brought or sent unto the said house to worke and labour (being able) from time to time, for such time, as they shall continue and be remaining in the said house of correction, and to punish the said rogues, vagabonds, idle and disorderly persons, by putting fetters or gives upon them, and by moderate whipping of them, and that the said rogues, vagabonds, and idle persons, during such time as they shall continue and remaine in the said house of correction, shall in no sort bee chargeable to the countrie for any allowance, either at their bringing in, or going forth, or during the time of their abode there, but shall have such and so much allowance, as they shall deserve by their owne labour and work.

The 4. branch.

By this branch it is enacted, that the justices of peace, &c. shall elect, &c. one or more fit person or persons, to be governour or master of the said house or houses.

Herein also are added idle and disorderly persons, and power given to the governour or master to punish them, by putting fetters or gives upon them, and by moderate whipping of them.

These idle and disorderly persons shall be in no sort chargeable to the countrie, &c. but shall have such allowance as they shall deserve by their owne labour and worke.

Nota.

And be it further enacted by the authoritie aforesaid, that the said justices of peace of every countie within every of their severall divisions, twice in every yeare at the least, and oftner, if there be occasion, shall assemble and meet together for the better execution of this statute, and that some foure or five daies before their assembly and meeting, the said justices or the more part of them, shall by their warrant command the constables and tithingmen

The 5. branch.

tithingmen of every hundred, towne, parish, village, and hamlet within their said severall divisions, which shall be assisted with sufficient men of the same places, to make a generall privie search in one night within their said hundreds, townes, villages, and hamlets, for the finding out and apprehending of the said rogues, vagabonds, wandring and idle persons, and that such rogues, vagabonds, wandring and idle persons, as they shall then find and apprehend in the said search, shall by them be brought before the said justices, at their said assembly or meeting, there to be examined of their idle and wandring life, there to be punished, or otherwise by their warrant to be sent or conveyed unto the said house or houses of correction within the said countie, appointed and prefixed, there to be delivered unto the master or governour of the said house, or to his deputie or assignee, to be set to labour and worke; at which daies and times of assembly or meeting, so to be held by the said justices of peace, the constables and tythingmen of every hundred, parish, towne, village and hamlet, shall then appeare in every their severall divisions, before the said justices of peace, at the said assemblies or meetings, and there shall give account and reckoning, upon oath in writing, and under the hand of the minister of every parish, what rogues, vagabonds, and wandring and disorderly persons they have apprehended both in the same search, and also between every such assemblies and meetings, and how many have been by them punished, or otherwise sent unto the houses of correction: which if the said constables or tythingmen shall neglect to performe, as also to convey safely all such rogues, with all other idle or disorderly persons at the charge of the hundred, as by the justices of peace warrants shall be sent unto the houses of correction in the same county, that then they shall forfeit such further fines, paines, and penalties, as by the said justices of peace, or the most part of them, shall be thought fit and convenient, not exceeding the summe of forty shillings for every offence.

The justices of peace within their severall divisions, twice every yeare at the least, and oftener, if there be occasion, shall assemble and meet together, &c.

Generall and privie search shall be made in every hundred, towne, &c.

The constables account of idle or disorderly person, &c. apprehended.

Note this.

In this branch these words are specially to be observed, viz. With all other idle or disorderly persons, at the charge of the hundred, as by the justices of peace warrants shall be sent to the houses of correction.

The 6. branch.

And for that it is convenient, that the masters or governours of the said houses of correction should have some fit allowance and maintenance for their travell and care to be had in the said service,

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service, as also for the relieving of such as shall happen to be weake and sicke in their custodie, and that the subjects of this realme should in no sort be overcharged, to raise up money for stockes to set such on worke as shall be committed to their custody: be it therefore enacted and established by the authoritie of this present parliament, that the masters or governours of the said houses of correction, shall have such summe of money yearly, as shall be thought meet, by the most part of the justices of peace within the said countie, at the quarter sessions of the peace, the same to be paid quarterly before-hand by the treasurers, appointed by one act made in the three and fortieth yeare of the late queene Elisabeth, intituled, An Act for the reliefe of the poore, during the time they the said masters or governours shall be employed in the said service (the said master or governour giving sufficient securitie, for the continuance and performance of the said service) which if the said treasurer shall neglect or refuse to performe, that then the said master or governour of the house of correction, shall have authoritie by this present act, to levie the same, or so much thereof as shall be unpaid, upon the said treasurers account, in such manner and forme as by the said statute they the said treasurers are appointed and authorized to levie the weekly summe or payment, being to them unpaid.

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This branch provideth for fit allowance and maintenance to be made to the masters or governours of the said houses, &c. *Dignus sperarius mercede.*

Treasurers appointed by one act made *anno* 43 Elis. cap. 2. intituled, For the reliefe of the poor (and falsly intituled in the last printed book of statutes, Who shall be overseers for the poore, their office, duty and account) which act of 43 Elis. by the right title, being but a probationer, hath been, and yet is continued, as it appeareth by the statute of 4 Car. regis, cap. 4.

See 1 Jac. cap. 25. an addition thereunto.

1 Jac. c. 25.
21 Jac. cap. 28.
The 7. branch.

And because great charge ariseth upon many places within this realme, by reason of bastardy, besides the great dishonour of Almighty God, be it therefore enacted by the authoritie aforesaid, that every lewd woman, which after this present session of parliament, shall have any bastard, which may be chargeable to the parish, the justices of peace shall commit such lewd woman unto the house of correction, there to be punished, and set on worke during the terme of one whole yeare: and if she shall eftsoones offend againe, that then to be committed to the said house of correction as aforesaid, and there to remaine untill she can put in good sureties for her good behaviour, not to offend so againe.

The punishment of lewd women having bastards, &c. That every lewd woman, which shall have any bastard, which may be chargeable to the parish, the justices of peace may commit her to the

See 18 Elis. c. 3.
and continued
to this day,
3 Jac. cap. 4.

the house of correction, &c. So as if she will discharge the parish of the keeping of the bastard, she cannot be punished by this statute, but by that of 18 Elis. cap. 3.

The 8. branch.

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And for that many wilfull people, finding that they having children, have some hope to have reliefe from the parish wherein they dwell, and being able to labour, and thereby to relieve themselves and their families, doe nevertheless run away out of their parishes, and leave their families upon the parish: for remedy whereof, be it further enacted by this present parliament, and the authoritie of the same, that all such persons so running away, shall be taken and deemed to be incorrigible rogues, and endure the pains of incorrigible rogues: and if either such man or woman being able to work, and shall threaten to run away, and leave their families as aforesaid, the same being proved by two sufficient witnesses upon oath before two justices of peace in that division, that then the said person so threatening, shall by the said justices of peace be sent to the houses of correction, (unlesse he or she can put in sufficient sureties for the discharge of the parish) there to be dealt with and detained as a sturdy and wandring rogue, and to be delivered at the said assembly or meeting, or at the quarter sessions, and not otherwise.

This branch consisteth upon two parts: first, if any man or woman having children, being able to labour, and thereby to relieve their families doe run away out of the parishes, and leave their families upon the parish, he or she is taken and deemed by authority of this parliament an incorrigible rogue.

2. If any such man or woman, being able to work, shall threaten to run away, and leave their families as aforesaid, the same being proved by two sufficient witnesses before two justices of peace in that division, the same person so threatening, &c. shall be sent to the house of correction, as a sturdy and wandring rogue, &c. unlesse sufficient surety be found for the discharge of the parish.

The 9. branch.

And because there shall be the more care taken by all such masters of the houses of correction, that when the country hath been at trouble and charge, to bring all such disorderly persons as aforesaid to their safe keeping, that then they shall performe their duties in that behalfe, be it therefore enacted by the authoritie aforesaid, that if they shall not every quarter sessions yeeld a true and lawfull account unto the justices of peace, of all such persons as have been committed to their custody: or if the said persons committed to their custody, or any of them, shall be troublesome unto the country, by going abroad, or otherwise, shall escape away from the said house of correction, before they shall be from thence lawfully delivered, that then the said justices shall set downe such fines and penalties upon the said master or governours, as the most part of them in their quarter sessions shall thinke fit and convenient, and all fines and

and penalties not herein before limited, shall be paid unto the treasurer, and accounted for by the treasurer aforesaid: this act to have continuance for the space of seven yeares, and from thence to the end of the next session of parliament after the said seven yeares. 3 Car. 4. continued untill the end of the first session of the next parliament.

The masters of the houses of correction shall yeeld a true and lawfull account at every quarter sessions of all such disorderly persons as have been committed to their custody.

This act was but a probationer for a certaine time, but it hath been continued: and lastly, by the said statute of 4 Car. cap. 4.

Thus much have we written for the better and more speedy execution of these excellent statutes; and the rather, for that few or none are committed to the common gaole amongst so many malefactors, but they come out worse then they went in. And few are committed to the house of correction, or working house, but they come out better.

And where some are of opinion, that in particular townes a discreet and expert workman may set the young and idle people as voluntaries on worke: certainly, the youth on both sexes hath (in the time of this great negligence) gotten such a * trade of picking theevery, stealing of wood, and the like, through idlenesse, as they will be never brought to worke, unlesse they be thereunto compelled (and the rather, for that some of their parents and masters have benefit by them) but compelled they may be, and this great worke happily effected, if by the order of the justices of peace these statutes be put in due execution. See the statute of 43 Elis. cap. 2.

We have not gone about to speake of the statute of 39 Elis. or other statutes concerning rogues, &c. or the poore, &c. which all the judges of England have upon due consideration explained, and which are truly rehearsed and imprinted, and ought to be observed, other then such as later acts of parliament have altered, whereof somewhat hath been said.

* Morem fecerat
usus, Ovid.
Ars sit quæ à
teneris primum
conjungitur an-
nis, Ovid.

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Lamb. Justice
of Peace, lib. 2.
page 207.

An Exposition upon the Statute of 31 Elis.
Cap. 7. Concerning Cottages and Inmates.

[736]

FOR the avoiding of the great inconveniences which are found by experience to grow by the erecting and building of great numbers and multitude of cottages (1), which are daily more and more increased in many parts of this realme: be it enacted by the queenes most excellent majesty, and the lords spirituall and temporall, and the commons in this present parliament assembled, and by the authority of the same, that after the end of this session of parliament, no person (2) shall within this realme of England, make, build, or erect, or cause

The 1. branch.

II. INST.

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to

to be made, builded, or erected any manner of cottage for habitation or dwelling, nor convert or ordaine any building or housing, made, or hereafter to be made, to be used as a cottage for habitation or dwelling, unlesse the same person doe assigne and lay to the same cottage or building foure acres of ground at the least, to be accounted according to the statute or ordinance *de terris mensurandis*, being his or her owne free-hold and inheritance, lying neere to the said cottage, to be continually occupied and manured the.ewith, so long as the same cottage shall be inhabited, upon paine that every such offender shall forfeit to our soveraigne lady the queens majesty, her heires and successors, ten pounds of lawfull mony of England, for every such offence.

1. part Vet. Mag. Chart. 128.

(1) *Cottage.*] Is derived from the Saxon word *cote*, unde *coterelli* for cottagers, and *cottagium* for a cottage. *Vide* the first part of the Institutes, sect. 1. fol. 5. out of Domesday. And the statute entituled, *Extentia manerii, anno 4 E. 1. Item inquirendum est de coterellis, viz. qui cottagia et curtillagia teneant.* And this signification it had by the common law.

(2) *No person, &c.*] This extends as well to persons politicke and incorporate, as to naturall persons whatsoever.

If an ancient cottage had been wholly decayed before this act, it is not lawfull newly to erect the same after the end of our act.

This first branch prohibiteth foure things: first, the new erecting or building of any cottage after the end of this parliament, which was 29 *Martii, anno 31 Elis. anno Dom. 1589.*

2. It prohibiteth the conversion or ordaining of any housing or building, made, or hereafter to be made, to be used as a cottage.

3. Albeit the house or building were made before this act, yet if the conversion were after the 29 day of March 1589. it is prohibited by this statute; for in point of conversion the words be (made, or hereafter to be made.)

4. These things are prohibited in this branch, upon paine of forfeiture of ten pounds to the king for every such offence.

The 2. branch.

And be it further enacted by the authority aforesaid, that every person, which after the end of this session of parliament, shall willingly uphold, maintaine, and continue any such cottage hereafter to be erected, converted, or ordained for habitation or dwelling, whereunto four acres of ground, as is aforesaid, shall not be assigned and laid to be used and occupied with the same, shall forfeit to our said soveraigne lady the queenes majesty, her heires and successors, forty shillings for every moneth that any such cottage shall be by him or them upholden, maintained, and continued.

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Nota, this word [*sub*] referreth to the cottages described to be erected or converted after the end of our parliament.

This branch inflicteth punishment upon such as shall willingly uphold, maintaine, and continue any * such cottage after the end of this parliament, either erected, or converted, or ordained, as is aforesaid, for habitation, &c. upon the penalty of forty shillings to the king for every moneth that any such cottage shall be maintained.

So as a cottage is two fold, either newly erected, or builded after our

our statute, or of a house built before or after our statute, and converted after our statute to a cottage.

But out of these two branches are five exceptions.

By the first branch of this act any person may either erect a new cottage, or convert an old or a new house to a cottage, if he lay to it foure acres of ground at the least, which must have these foure incidents: first, these acres must be accounted according to the statute or ordinance *de admesuratione terræ, anno 35 E. 1.* which is after sixteen foot and an halfe to the pole. 2. These foure acres must be his or her freehold and inheritance (for neither grounds holden by copy, or for life or lives, or for any number of yeares will serve) and it must be freehold either in fee-simple, or fee-taile. 3. They must lye neere the said cottage. 4. They must be continually occupied therewith, so long as the cottage shall be inhabited.

This act extends not to cottages erected, or houses converted to cottages before the 29 day of March 1589. The second branch maketh this cleare.

This act shall not extend to any cottage, which shall be ordained (that is, converted) or erected to or for habitation or dwelling in any citie, towne corporate, ancient borough, or market towne.

Nor to any cottages or buildings erected or converted for the necessary habitation of any labourers in any minerall workes, collieries, quarries, or delfes of stone or slate, or about making of brick, tile, lime, or coles; so as the same cottages or buildings be not above one mile distant from the minerall, or other works.

Nor to any cottage to be made in three places, *viz.* 1. within a mile of the sea, 2. upon the side of such part of a navigable river, where the * admirall ought to have jurisdiction, so long as a sailer shall dwell therein, or some person of manuell occupation, for the making, furnishing, or victualling of any ship, &c. 3. In any forrest, chase, warren, or parke, so long as the under keeper or warrener dwell therein, &c.

4. Nor to any cottage * heretofore made, 1. for a common herdman, 2. for a common shepherd, &c. (of whom his cottage is called a shepcote) so long as a common herdman or shepherd shall therein dwell, 3. for a poore, lame, sick, aged, or impotent person.

Note, this exception extendeth onely to cottages erected or made before this act, by reason of these words [heretofore made] but none of these three can be erected after this statute, for any of these three purposes, unlesse there be laid to it foure acres of ground with the foure incidents abovesaid. Lambert Justice of Peace, pag. 476. mistaketh this part, and for heretofore, saith hereafter. But by the statute of 43 Elis. cap. 2. either the church-wardens and over-seers, or the greatest part of them, by the leave of the lord of the waste, &c. in writing, under the hand and seale of the lord, or by order of the justices of peace at their generall quarter sessions, by the leave of the lord, as is aforesaid, may erect convenient houses of habitation for poore impotent people, and also to place inmates, or more families then one in one cottage or house. First, note that this extendeth only to such as be poore and impotent. 2. It extendeth not to any common herdman or shepherd, as hath been likewise mistaken.

Nor doth our act extend to any cottage to be made and decreed upon complaint made to justices of assise, or justices of peace in

The 1. exception.

This statute is named in our act, the statute or ordinance *de terris admesurandis.*
Vid. 35 El. c. 6.

The 2. exception.

The 3. exception.

The 4. exception.

The 5. exception.

* See for this the fourth part of the Institutes, ca. of the court of the admiralty.

* This fourth part needed not: for the body of the act extended to cottages hereafter; but *abundans cautela non nocet.*

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open assises, or quarter sessions of the peace to continue for habitation during the time only of such decree. This last branch extendeth only to cottages made after our statute.

The 3. branch.

Provided also, and be it enacted, that from and after the feast of All Saints next coming, there shall not be any inmate, or more families or households then one, dwelling or inhabiting in any one cottage (1), made, or to be made or erected, upon paine that every owner or occupier of any such cottage, placing, or willingly suffering any such inmate, or other family then one, shall forfeit and lose to the lord of the leet, within which such cottage shall be, the summe of ten shillings of lawfull mony of England, for every moneth that any such inmate, or other family then one, shall dwell or inhabit in any one cottage, as aforesaid. And that all and every lord and lords of leet and leets, and their stewards within the precinct of his and their leet and leets, shall have full power and authority within their severall leets, to enquire, and to take presentment by the oath of jurors of all and every offence and offences in this behalfe, and upon such presentment had or made to levie by distresse to the use of the lord of the leet, all such summes of mony as so shall be forfeited: and moreover, that it shall be lawfull for the lord of every such leet where such presentment shall be made, to recover to his own use any such forfeiture, by action of debt in any of the queenes majesties courts of record, wherein no esoine, protection, or wager of law shall be allowed.

(1) *There shall not be any inmate or more families or households then one dwelling or inhabiting in any one cottage, &c.* Inmate. In the statute of 35 Elis. cap. 6. it is said inmate, or under fitter. It is here well explained by these words (or more families in any one cottage.)

See the statute of 43 Elis. ca. 2. ut sup. concerning inmates.

Inquilinus (derived of *in* & *colo*, to dwell within) is the proper word for an inmate, or underfitter.

* Coke lib. Int. 165. b.

Here seven things are to be observed:

1. That no inmate or under-fitter can be within this statute, but in a cottage.

2. This branch concerning inmates extendeth to cottages as well made before this statute, as after.

3. And as well to * cottages having foure acres of ground or more laid to them as is aforesaid, as others that have no ground at all.

4. Upon paine that every owner or occupier of any such cottage, placing, or willingly suffering any such inmate, or other family then one, shall forfeit and lose to the lord of the leet, within which such cottage shall be, the summe of ten shillings for every moneth, &c. This moneth is to be accounted according to the computation of 28 daies.

5. And upon such presentment had or made, to levie by distresse, &c. that is, to sell the distresse which he shall take within the precinct of the leet for such forfeiture; and if there be a surplusage over the value of the forfeiture, to deliver it to the owner.

6. This act extendeth as well to inmates in cottages in any city, towne corporate, ancient borough, or market town, as in any other cottage wheresoever. *Vide Hill. 8 Jacobi in communi banco, Rot. 2193. between John Pafe plaintife, and Robert Peat defendand in trespasse,*

3 H. 7. 4.

trespasse, Salop, A justification upon this statute for the penalty for keeping an inmate.

7. Hereby the act giveth election to the lord to take his remedy by action of debt in any of the kings courts of record.

Be it further enacted by the authoritie aforesaid, that all justices of assises, and justices of peace in their open sessions, and every lord within the precinct of his leet, and none others, shall have full power and authority within their severall limits and jurisdictions, to enquire of, heare and determine all offences contrary to this present act, as well by indictment, as otherwise by presentment or information, and to award execution for the levying of the severall forfeitures aforesaid, by fieri facias, elegit, capias, or otherwise, as the cause shall require.

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The 4. branch.

In this branch these foure things are to be observed :

1. That these 3. *viz.* justices of assises, justices of peace, and lords of leets and no other judges or justices can enquire. &c. any of the offences against this statute. And therefore the sheriffe in his turn cannot enquire, &c. of any offence against this statute committed within the leet of any lord thereof.

2. That they may enquire, heare, and determine all offences, &c. so as there is a concurrent power in every of these three, and the judgement, &c. of such one of them, as doe first enquire, heare, and determine the same, shall stand ; and each of them may enquire of all and every of the offences against this act.

3. As well by inditement, or otherwise by presentment or information. The difference between an inditement and presentment is this, that the inditement is drawne and ingrossed in parchment in forme of law, and delivered to the jurors to be enquired of, &c. And a presentment is properly that which the jurors find and present to the court, without any former inditement delivered to them, which afterward is reduced to a formed inditement. Every inditement which is found by the jurors is presented by them to the court: for the record saith, *juratores presentant*, &c. when they find an inditement. And therefore every inditement is a presentment, but every presentment is not an inditement.

Offences found in leets, court barons, &c. are commonly called presentments; which was the reason that this act giving jurisdiction to a leet, doth use this word (presentment) in this and the third branch.

4. To award execution by * *feri facias, elegit, capias*, or otherwise: hereby is greater jurisdiction given to the leet, then it had at the common law; so as the lord of the leet hath by the third b. anch power to levie the forfeiture due to him by distresse, or by action of debt by the common law; and by this fourth branch, by *feri facias, elegit, or capias*.

Co. li. Intra:
665, 666.

Provided alwaies, that this statute, or any thing therein contained, shall not in any wise be extended to any cottage, which shall be ordained or erected to, or for habitation or dwelling in any city, towne corporate, or ancient borough, or market towne within this realme, nor to any cottages or buildings, which shall be erected, ordained, or converted to, and for the necessary and convenient habitation or dwelling of any workmen, or labourers

in any minerall workes, cole mines, quarries, or delfes of stone, or slate, or in or about the making of brick, tile, lime, or coles within this realme; so as the same cottages or buildings be not above one mile distant from the place of the same minerall or other workes, and shall be used onely for the habitation and dwelling of the said workmen, nor shall in any sort prejudice, charge, or impeach any person or persons, for the erecting, maintaining, or continuing of any such cottages, as are before in this proviso mentioned and specified.

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Provided alwaies, that this act shall not extend to any cottage to be made within a mile of the sea, or upon the side of such part of any navigable river, where the admirall ought to have jurisdiction, so long as no other person shall therein inhabit; but a sailer, or man of manuell occupation, to or for making, furnishing, or victualling of any ship or vessell, used to serve on the sea; nor to any cottage to be made in any forrest, chase, warren, or parke, so long as no other person shall therein inhabit, but an under-keeper or warrener, for the good keeping of the deere, or other game of warren, nor to any cottage heretofore made, so long as no other person shall therein inhabit, but a common herdman or shepherd, for keeping the cattell or sheep of the towne; or a poore lame, sick, aged, or impotent person, nor to any cottage to be made, which for any just respect upon complaint to the justice of assise at the assises, or to the justices of peace at the quarter sessions, shall by their order entered in open assises or quarter sessions, be decreed to continue for habitation, for and during so long time onely, as by such decree shall be tolerated and limited. Stat. 35 Elis. 6. 43 Elis. 2.

Of these proviso's sufficient hath been spoken before in the second branch of this statute.

The inconveniences that grow by unlawfull cottages, and inmates in cottages against this statute, as appeare by the preamble, are great, being nests to hatch idlenesse, the mother of pickings, theeveries, stealing of wood, &c. tending also to the prejudice of lawfull commoners; for that new erected cottages within the memory of man, though they have foure acres of ground, or more laid to them, according to this act, ought not to common in the wastes of the lord; but the greatest inconvenience of all is, the ill breeding and educating of youth, which inconveniences may be easily helped and remedied by the provisions of this excellent law, if lords of leets and their stewards would looke to the execution of this act, which we hold the readiest meanes: for albeit the cottage erected, or converted, cannot by any provision in this statute be demolished, or pulled downe; yet the execution of the penalty of this act will make it inhabitable, and work the desired effect. And they may also be amerced for wrongfull commoning in the court baron.

*Casa à casu (id est) ruina, quia ruinæ est obnoxia.
Domuncula, tugurium à tegendo.*

Virg. 2. Eglog.

Pauperis et tuguri congestum cespitè culmen,

A Col.

A Collection and Exposition upon the Statutes of Employments, viz. 14 R. 2. cap. 1. and 2. 2 H. 4. cap. 5. 4 H. 4. cap. 15. 5 H. 4. cap. 9. 6 H. 4. cap. 4. 11 H. 4. cap. 8. 9 H. 5. cap. 9. Stat. 2. 8 H. 6. cap. 24. 27 H. 6. cap. 3. 17 E. 4. cap. 1. 1 H. 7. cap. 2. 3 H. 7. cap. 8.

With their severall Alterations and Repeales, and Expirations of some of them; our principall Aime ever being to set down how the Law standeth at this Day.

BEFORE the making of any of these statutes, we find that merchant-strangers found sureties that they should not carry out the merchandizes which they brought in.

Rot. Vascon.
18 E. 2. m. 21.

It was ever the policie of this realme to entertaine merchant-strangers fairly and freely, having respect how our merchants were demaned abroad.

See Mag. Charta
c. 30. 5 H. 4.
c. 7.

In the 18 yeare of E. 1. in the parliament roll it is contained thus: *Cives London petunt quod alienigenæ mercatores expellantur à civitate, quia ditantur ad depauperationem civium, &c.*

Rot. Parliament.
18 E. 1. fol. 4.
nu. 55.

Responsio. Rex intendit quod mercatores extranei sunt idonei et utiles magnatibus, &c. et non habet consilium eos expellendi.

There be two kinds of statutes concerning employments, the one where merchandizes, &c. are brought in, the other upon exchange. And first of the first.

The statutes of 14 R. 2. cap. 1. and 2 H. 4. cap. 5. are altered by the statute of 4 H. 4. cap. 15. And therefore we will begin with it.

It is ordained and established that all merchant* aliens, strangers, and denizens (1), which bring merchandizes into the realme of England, and the same do sell within the realme, and receive English money (2) for the same, shall bestow the same money upon other merchandizes of England, without carrying of any gold or silver, in coine, plate or masse out of the saide realme, upon paine of forfeiture of the same, saving alwaies their reasonable costs.

* The Parliament Roll hath aliens, which of late hath bene omitted. Vid. 17 E. 4. cap. 1. This act extendeth to the whole merchandizes, and to the whole money, whereas

the two former extended but to the halfe. 27 H. 6. cap. 3. further provision was added, but that statute is expired. This act is confirmed by the statute of 5 H. 4. cap. 9. vid. 17 E. 4. cap. 1. and 3 H. 7. cap. 8.

There were two notable causes of the making of this act, as it is declared by the statute of 5 H. 4. ca. 9. viz. First, for the better keeping of gold and silver within this realme. Secondly, for the increase of the commodities of the same.

* The former two statutes extended to strangers onely. Nota, the originall is merchant-aliens, strangers and denizens, which doth

cleare it. See the first part of the Institutes, f. 198. f. 129. for this word *denizen*. † So resolved 7 Eliz. by the Barons.

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This act of 17 E. 4. is confirmed by 3 H. 7. cap. 8.

* Nota, [liege people,] so as he cannot pay it to a stranger, or he that is made *denizen*, for liege is as much as subject borne. † 1 H. 7. cap. 2. 11 H. 7. cap. 14.

8 H. 6. cap. 24.

See a case upon this Stat. in an information, &c. 20 H. 7. a. b. 9 H. 6. cap. 2.

30 H. 7. 7. b. Sir William Capps case. 5 E. 6. cap. 7.

(1) * *Denizens.*] Here denizens are taken for merchant-aliens, strangers which have obtained letters patents of denizations: and in this case they are derived from *donaison, id est, donatio*, because his freedome is given to him by the king, and were inconvenient if it should extend to naturall borne subjects; and the stranger made denizen is in equall † mischiefe if not in greater, with the meere stranger, and this statute standeth yet in force.

But the statute of 17 E. 4. cap. 1. extends not to strangers which are made denizens: and therefore such as are so made denizens, are out of the penalty of that statute, but within the penalty of this of 4 Hen. 4. And that act of 17 E. 4. hath altered this act in another point, viz. that either hee may employ the money upon the merchandizes, whereunto 4 H. 4. only extended or other commodities of the realme, or hee may put the same in payment to the kings * liege people within this realme.

Such as are made denizens † by letters patents, or by parliament, or otherwise, shall pay for his merchandize like custome and subsidie, as they ought or should pay afore they were made denizens. See 11 H. 7. cap. 14. and 22 H. 8. cap. 3. See the statute of 1. Eliz. cap. 11.

(2) *English money.*] This is intended of all money of gold or silver currant within the realme of England, although it bee not coined within England. By this act he might have received English money either in silver or gold, but by the statute of 8 H. 6. cap. 24. he cannot receive any gold, nor ought to refuse the payment in silver.

By the said act of 8 H. 6. no Englishman should sell within this realme, &c. to any merchant alien, &c. any manner of merchandizes but onely for ready payment in hand, or else in merchandizes for merchandizes, to be paid and contented in hand, upon pain of forfeiture of the same; but by the statute of 9 H. 6. ca. 2. at the next parliament libertie was given for clothes onely from six moneths to six moneths next ensuing after such buyings made, without giving any further day of payment, upon paine of forfeiture of the same. This ordinance to endure as long as it shall please the king (3), but for all other merchandizes the statute of 8 H. 6. standeth in force.

(3) *As long as it shall please the king.*] This statute standeth untill the king or some of his successors (for successors are included under the name of king) shall adnull or make the same voide by proclamation under the great seale, which is the meane to make this act voide, and all others of like nature. Like acts are in 6 Hen. 6. cap. 1. 8 Hen. 6. cap. 8. 18 Hen. 6. cap. 13. 5 Ed. 6. cap. 7. &c.

The said act of 4 H. 4. cap. 15. prescribed no time for the employing of the money, but the statute of 5 H. 4. cap. 9. doth bind them to employment within a quarter of a year after their coming
into

into this realme: but at the next parliament holden the next yeare, that branch onely for the limitation to a quarter of the yeare is made void and annulled: but the two other branches, viz. for the taking of * sureties by customers and controllers in all the parts of England for due employment; and concerning money taken by exchange in this realme (whereof more shall be said hereafter) are not repealed by 6 H. 4.

6 H. 4. cap. 4.

* A necessary branch to be put in execution.

See the resolution of the barons of the exchequer *anno* 7 Eliz. and entered in the custom-house concerning the statutes of employments.

The justices of peace have power to heare and determine, all defaults and forfeitures purviewed or inflicted by the statute of 17 E. 4. cap. 1.

The other kind of statutes concerning employments upon exchange.

The second part.

That for every exchange that shall bee made by merchants to the court of Rome, or elsewhere (beyond the seas) that the said merchants bee firmly and surely bound in the chancery, to buy within three moneths after the exchange made merchandizes of the staple, as wooll, leather, woolfells, leade or tinne, butter or cheefe, clothes or other commodities of the land, to the value of the sum so exchanged, upon paine of forfeiture of the same.

14 R. 2. cap. 2. It was altered by the statute of 9 H. 5. cap. 9. stat. 2. but that statute is expired, and 14 R. 2. standeth in force.

This statute extendeth to exchanges made by any merchant alien, denizen, or borne subject to foreine parts.

And also that the money delivered by exchange in England be employed upon the commodities of this realme within the same realme, upon pain of forfeiture of the same money.

[743]
5 H. 4. cap. 9.

This act extendeth to money delivered by way of exchange within the realme; and this branch is not repealed by the statute of 6 H. 4. cap. 4.

Anno 23 H. 8. a proclamation was made for observation of the statutes of employments.

Holl. Chron. an. 23 H. 8. pag. 297.

An usuall thing when necessary statutes have beene (most commonly for private ends) for a time discontinued, to give all men notice thereof by proclamation, that such statutes for the time to come should bee put in due execution.

This have wee done upon consideration of all the said severall statutes for advancement of trade and traffick, especially of our native commodities, the life of every kingdome, and principally of isles.

The Statute of 25 Hen. 8. cap. 15. Concerning
Printers, and Binders of Bookes.

BE it enacted, &c. that no person or persons resident or inhabitant within this realme, &c. shall buy to sell againe any printed bookes, brought from any parts out of the kings obedience ready bound in boords, leather, or parchment, upon paine to lose and forfeit for every book bound out of the kings obedience, and brought into this realme, and bought by any person or persons within the same to sell againe contrary to this act, six shillings eight pence.

And be it further enacted by the authority aforesaid, that no person or persons inhabitant or resident within this realme, &c. shall buy within this realm, of any stranger born out of the kings obedience, other then of denizens, any maner of printed books brought from any the parties beyond the sea, except only by engrosse, and not by retaile: upon pain of forfeiture of 6 s. 8d. for every book so bought by retaile, contrary to the form and effect of this estatute, the said forfeitures to be alwaies levied of the buyers of any such bookes, contrary to this act: The one halfe of all the said forfeitures to be to the use of our soveraigne lord the king, and the other moitie to be to the party that will seise or sue for the same in any of the kings courts, be it by bill plaint, or information, wherein the defendant shall not be admitted to wage his law, nor no protection, ne essoin shall be unto him allowed.

Provided alway, and be it enacted by the authority before said, that if any of the said printers, or sellers of printed books, inhabited within this realme, at any time hereafter happen in such wise to enhance and encrease the prices of any such printed books in sale or binding, at too high and unreasonable prices, in such wise as complaint be made thereof unto the kings highnesse, or unto the lord chancellor, lord treasurer, or any of the chief justices of the one bench or of the other: that then the same lord chancellor, lord treasurer, and two chief justices, or any two of them, shall have power and authority to enquire thereof, as well by the oaths of twelve honest and discreet persons, as otherwise by due examination by their discretions. And after the same enhaunsing and encreasing of the said prices of the said books and binding shall be so found by the said twelve men, or otherwise by examination of the said lord chancellor, lord treasurer, and justices, or two of them: that then the same lord chancellor, lord treasurer, and justices, or two of them at the least, from time to time, shall have power and authoritie to reform, and redresse such enhaunsing of the prices of printed books, from time to time, by their discretions, and to limit prices as well of the bookes, as for the binding of them: and
over

over that the offender or offenders thereof, being convicted by the examination of the same lord chancellor, lord treasurer, and two justices, or two of them, or otherwise, shall lose and forfeit for every booke by them sold, whereof the price shall be enhanced, for the booke or binding thereof three shillings four pence, the one halfe thereof shall be to the kings highnesse, and the other halfe unto the parties grieved, that will complaine upon the same, in manner and forme before rehearsed.

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To the end, that not onely this second part of the Institutes, but all other bookes of what argument soever, may be sold at reasonable prices, and that the subjects of this realme, being printers, and binders of bookes, may be set on worke, we have thought good in this treatise of statutes to conclude with this statute of 25 H. 8. cap. 15. which consisteth on these three parts:

25 H. 8. cap. 15.

1. That no inhabitant or resident within this realme shall buy to sell againe any printed bookes brought from any parts out of the kings obeyfance ready bound in boords, leather, or parchment.

2. Nor shall buy within this realme of any stranger borne out of the kings obedience, other then of denizens, any manner of printed bookes brought from beyond the seas, except onely by ingrosse, and not by retaile.

3. That the lord chancelor, lord treasurer, and the two chiefe justices, or any two of them shall have power to enquire as well by the oath of twelve men, as otherwise by due examination by their discretion, of the enhancing and encreasing of the prices of bookes, or binding of the same, and the same so found, they, or any two of them, from time to time have power to limit prices as well of the bookes, as for the binding of them, as by the said act appeareth.

Which we have thought good to adde, to the end it might be knowne what the law is in these cases; and that if any enhancing or encreasing of prices be either of the bookes, or the binding of them, that it may be knowne who may and ought to redresse the same.

The Epilogue.

THUS have we, by the mercifull goodnesse of Almighty God, brought this second part of the Institutes (a large and laborious volume) containing an exposition of Magna Charta, and many other ancient and later statutes, to an end; wherein we could not follow or be guided by any other, for that never any (that we have seen or heard of) have enterprised to publish the like in this kind: and therefore if the piercing eyes of the learned shall find out errors herein, we are not without some kind of excuse. And we desire them to amend and correct those errors, according to the true sense of law, for the which we shall not

The Epilogue.

not onely give them thankes, but subscribe to the truth, and take it as some recompence for those our manifold and painfull labours herein, which we from the beginning have undertaken for the generall good and profit of the whole realme.

Post varios casus, post tot discrimina rerum.

Nunc sequitur conclusio.

DEO gloria & gratia.

Fucunda est præteritorum laborum memoria.

Cic. lib. 2. fin.

[746]

Die Mercurii 12^o Maii, 1641.

UPON debate this day had in the Commons House of Parliament, the said House did then desire and held it fit, that the Heire of Sir Edward Coke, should publish in print the Commentary upon Magna Charta, the Plees of the Crowne, and the Jurisdiction of Courts, according to the intention of the said Sir Edward Coke. And that none but the Heire of the said Sir Edward Coke, or hee that shall be authorised by him, do presume to publish in print any of the foresaid Bookes, or any Copy thereof.

H. Elfyng Cler. Domus Com.

Die Veneris 3^o Junii, 1642.

WHEREAS by an order dated the 12th of May, 1641, this House desired and held fit, that the Heire of Sir Edward Coke should publish in print the Commentaries of Magna Charta, the Plees of the Crowne, and the Jurisdiction of Courts: and that none but the said Heire, or his assignes should presume to print the same: and where by another order of this House, dated the seventh of March last, it was ordered, that a bill should be drawn, for the preventing the re-printing of the said bookes for a time certaine to be assigned in the said bill, as by the said severall orders may appeare: according to which last mentioned order a bill was drawne and preferred to this House, and hath been once read: but in respect of the many great and weighty affaires of the kingdome, no further proceedings have been, or as yet can be had therein. It is this day ordered, that, forasmuch as one of the said bookes (*viz.*) the Comment upon Magna Charta

Charta is already printed, and ready to be published, and the other two also ready for the presse, that none but the said Heire of Sir *Edward Coke*, or he or they that shall be authorised by him, doe print or re-print, or cause to be printed or re-printed any of the said books, or any part of them, or any of them, before a full yeare after the publishing, and putting to sale of the same respectively: and that the Master and Wardens of the company of Stationers be required to take a speciall care for the due performance of this order; and if any shall notwithstanding presume to print or re-print, within the time aforesaid, any of the said books, or any part thereof (other then the said Heire or his assignes) that then they certifie their names, to the intent some course may be taken for the punishing of the offenders, as to this house shall seem meet.

H. Elsynge Cler. Parl. D. Com.

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