

men : it was resolved *per totam Curiam*, that in case of necessity, for the saving of the lives of the passengers, it was lawful to the defendant, being a passenger, to cast the casket of the plaintiff out of the barge, with the other things in it ; for *quod quis ob tutelam corporis sui fecerit, jure ul fecisse videtur*, to which the defendant pleads all this special matter ; and the plaintiff replies, *de injuria sua propria absque tali causa* : and the first day of this term, this issue was tried, and it was proved directly, that if the things had not been cast out of the barge, the passengers had been drowned ; and that *levandi causa* they were ejected, some by one passenger, and some by another ; and upon this the plaintiff was nonsuit.

It was also resolved, that although the ferryman surcharge the barge, yet for safety of the lives of passengers in such a time and accident of necessity, it is lawful for any passenger to cast the things out of the barge : and the owners shall have their remedy upon the surcharge against the ferryman, for the fault was in him upon the surcharge ; but if no surcharge was, but the danger accrued only by the act of God, as by tempest, no default being in the ferryman, everyone ought to bear his loss for the safeguard and life of a man : for *interest reipublice quod homines conserventur*, 8 Ed. 4. 23, &c. 12 H. 8. 15. 28 H. 8. Dyer, 36. plucking down of a house, in time of fire, &c. and this *pro bono publico ; et conseratio vite hominis est bonum publicum*. So if a tempest arise in the sea, *levandi navis causa*, and for salvation of the lives of men, it may be lawful for passengers to cast over the merchandizes, &c.

PROHIBITIONS DEL ROY.

Mich. 5 Jacobi 1.

The King in his own person cannot adjudge any case, either criminal or betwixt party and party ; but it ought to be determined and adjudged in some Court of Justice, according to the law and custom of England.

The King may sit in the King's Bench, but the Court gives the judgment. No King after the conquest assumed to himself to give any judgment in any cause whatsoever which concerned the administration of justice, within the realm ; but these causes were solely determined in the Courts of Justice.

The King cannot arrest any man.

4 Inst. 71. Com. Dig. Courts, A. See and note the introduction to Gibson's Codex, p. 20, 21.

Note, upon Sunday the 10th of November in this same term, the King, upon complaint made to him by Bancroft, Archbishop of Canterbury, concerning prohibitions, the King was informed, that when the question was made of what matters the Ecclesiastical Judges have cognizance, either upon the exposition of the statutes concerning tithes, or any other thing ecclesiastical, or upon the statute 1 El. concerning the high commission or in any other case in which there is not express authority in law, the King himself may decide it in his Royal person ; and that the Judges are but the delegates of the King, and that the King may take what causes he shall please to determine, from the determination of the Judges, and may determine them himself. And the Archbishop said, that this was clear in divinity, that such authority belongs to the King by the word of God in the Scripture. To which it was answered by me, in the presence, and with the clear consent of all the Judges of England, and Barons of the Exchequer, that the King in his own [64] person cannot adjudge any case, either criminal, as treason, felony, &c. or betwixt party and party, concerning his inheritance, chattels, or goods, &c. but this ought to be determined and adjudged in some Court of Justice, according to the law and custom of England ; and always judgments are given, *ideo consideratum est per Curiam*, so that the Court gives the judgment ; and the King hath his Court, viz. in the Upper House of Parliament, in which he with his Lords is the supreme Judge over all other Judges ; for if error be in the Common Pleas, that may be reversed in the King's Bench ; and if the Court of King's Bench err, that may be reversed in the Upper House of Parliament,

by the King, with the assent of the Lords Spiritual and Temporal, without the Commons: and in this respect the King is called the Chief Justice, 20 H. 7. 7 a. by Brudnell: and it appears in our books, that the King may sit in the Star-Chamber; but this was to consult with the justices, upon certain questions proposed to them, and not *in judicio*: so in the King's Bench he may sit, but the Court gives the judgment: and it is commonly said in our books, that the King is always present in Court in the judgment of law; and upon this he cannot be nonsuit: but the judgments are always given *per Curiam*; and the Judges are sworn to execute justice according to law and the custom of England. And it appears by the Act of Parliament of 2 Ed. 3. cap. 9. 2 Ed. 3. cap. 1. that neither by the Great Seal, nor by the Little Seal, justice shall be delayed; *ergo*, the King cannot take any cause out of any of his Courts, and give judgment upon it himself, but in his own cause he may stay it, as it doth appear 11 H. 4. 8. And the Judges informed the King, that no King after the Conquest assumed to himself to give any judgment in any cause whatsoever, which concerned the administration of justice within this realm, but these were solely determined in the Courts of Justice: and the King cannot arrest any man, as the book is in 1 H. 7. 4. for the party cannot have remedy against the King; so if the King give any judgment, what remedy can the party have. *Vide* 39 Ed. 3. 14. one who had a judgment reversed before the Council of State; it was held utterly void for that it was not a place where judgment may be reversed. *Vide* 1 H. 7. 4. Hussey Chief Justice, who was attorney to Ed. 4. reports that Sir John Markham, Chief Justice, said to King Ed. 4. that the King cannot arrest a man for suspicion of treason or felony, as others of his lieges may; for that if it be a wrong to the party grieved, he can have no remedy: and it was greatly marvelled that the archbishop durst inform the King, that such absolute power and authority, as is aforesaid, belong to the King by the word of God. *Vide* 4 H. 4. cap. 22. which being translated into Latin, the effect is, *judicia in Curia Regis reddita non annihilentur, sed stet judicium in suo robore quousque per judicium Curie Regis tanquam erroneum, &c. vide West. 2. cap. 5. Vide the stat. de Maribridge, cap. 1. Provisum est, concordatum, et concessum, quod tam majores quam minores justitiam habeant et recipiant in Curia domini Regis, et vide the stat. de Magna Charta, cap. 29. 25 Ed. 3. cap. 5. None may be taken by petition or suggestion made to our lord the King or his Council, unless by judgment: and 43 Edw. 3. cap. 3. no man shall be put to answer without presentment before the justices, matter of record, or by due process, or by writ original, according to the ancient law of the land: and if any thing be done against it, it shall be void in law and held for error. *Vide* 28 Edw. 3. c. 3. 37 Edw. 3. cap. 18. *Vide* 17 R. 2. *ex rotulis Parliamenti in Turri, art. 10.* A controversy of land between parties was heard by the King, and sentence given, which was repealed for this, that it did belong to the common law: then the King said, that he thought the [65] law was founded upon reason, and that he and others had reason, as well as the Judges: to which it was answered by me, that true it was, that God had endowed His Majesty with excellent science, and great endowments of nature; but His Majesty was not learned in the laws of his realm of England, and causes which concern the life, or inheritance, or goods, or fortunes of his subjects, are not to be decided by natural reason but by the artificial reason and judgment of law, which law is an act which requires long study and experience, before that a man can attain to the cognizance of it: that the law was the golden met-wand and measure to try the causes of the subjects; and which protected His Majesty in safety and peace: with which the King was greatly offended, and said, that then he should be under the law, which was treason to affirm, as he said; to which I said, that Bracton saith, *quod Rex non debet esse sub homine, sed sub Deo et lege.**

[Note, Bracton and Fleta both affirm, *Rex habet superiores in regno Deum et legem. Item Curiam suam, i.e. comites et barones, &c.*]—Note to former edition.