



ANNO VICESIMO NONO
ELIZABETHAE SECUNDAE REGINAE

VICTORIA

Imperial Acts Application Act 1980

No. 9426

An Act to make further provision with respect to certain enactments of the Parliament of England and of the Parliament of Great Britain and of the Parliament of the United Kingdom of Great Britain and Ireland in force at the time of the passing of the Act 9 George IV. c. LXXXIII., to incorporate into the Statute Law of Victoria certain of such enactments, to amend the *Imperial Acts Application Act 1922* and for other purposes.

[Assented to 27 May 1980]

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. This Act may be cited as the *Imperial Acts Application Act 1980* and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette* and is divided into Parts and Divisions as follows :—

Short title,
commencement
and division.

Part I.—General, ss. 2-7.

Part II.

Part II.—Transcribed Enactments, s. 8.

Division 1.—Elections.

Division 2.—Habeas Corpus.

Division 3.—Justice and Liberty.

Division 4.—Monopolies.

Division 5.—Royal Marriages.

PART I.—GENERAL

Interpretation. 2. In the construction of this Part unless inconsistent with the context or subject-matter—

“ Enactment.” The expression “ enactment ” includes any Statute Ordinance or other Provision in the nature of a Statute or Ordinance set out as such in the editions of the Statutes hereinafter referred to and also includes any part of such Statute Ordinance or other Provision and also includes any Statute or part of a Statute made or passed in or since the reign of George the First and also includes any Schedule to any such enactment.

Transcribed enactments 3. The enactments mentioned in the Schedule to the extent set out in Part II. shall continue to have in Victoria whether separately or in combination with any repealed enactment or statutory provision such force and effect, if any, as they had at the commencement of this Act. In construing any such enactment where the whole Statute Ordinance or other Provision is not set out in full regard may be had to any part thereof not so set out. In the case of enactments made or passed prior to the reign of Henry VII. the translation from the original Latin or Norman-French in Part II. shall be deemed to be correct. The titles to the Divisions of Part II. shall be read as descriptive merely and not as affecting the construction of the enactment or enactments set out thereunder.

Enactment not affected by repeal. 4. (1) Nothing in section 5 shall affect or apply to or be construed as affecting or applying to any enactments which (independently of the provisions of the Act 9 George IV. c. LXXXIII.)—

(a) by express words apply to the dominions or other possessions of the Crown and which on their proper construction are applicable to Victoria as being included in such dominions or other possessions ; and

(b) by necessary intendment either as involving matters of Imperial concern or otherwise are applicable to Victoria.

(2) Without limiting the generality or effect of the provisions of the last preceding sub-section nothing in section 5 shall affect

or

or apply to or be construed as affecting or applying to any enactments (so far as they are in force in England at the passing of this Act) relating to the security or safety of the Sovereign.

(3) Nothing in section 5 shall affect or apply to or be construed as affecting or applying to any enactment relating to naval or military matters or to naturalization nationality or aliens or to copyrights patents of inventions or designs or trade marks or to any matter with respect to which the Parliament of the Commonwealth of Australia has made or hereafter makes any law with which a repeal if effected by such section would be inconsistent.

5. Save as aforesaid all the enactments (commencing with the Statute of Merton 20 Henry III. A.D. 1235-6) in force in England at the time of the passing of the Act 9 George IV. chapter LXXXIII. are so far as they are in force in Victoria and so far as the Parliament of Victoria has authority to repeal them hereby repealed in and for Victoria. Repeal.

Provided that where any enactment not repealed by this section has been repealed confirmed revived or perpetuated by any enactment hereby repealed such repeal confirmation revivor or perpetuation shall not be affected by the repeal effected by this section : Saving.

And the repeal by this section of any enactment shall save as hereinafter provided not affect any enactment in which such enactment has been applied incorporated or referred to :

And the repeal by this section of any enactment shall not affect the construction of any enactment not so repealed whether as regards the past or the future :

And this section shall not affect the validity invalidity effect or consequences of anything already done or suffered—or any existing status or capacity—or any right title obligation or liability already acquired accrued or incurred or any remedy or proceeding in respect thereof—or any release or discharge of or from any debt penalty obligation liability claim or demand or any indemnity—or the proof of any past act or thing :

Nor shall this section affect the validity of any marriage heretofore or hereafter celebrated or any established principle or rule or law equity or established jurisdiction form or course of pleading practice or procedure or any existing usage franchise liberty custom privilege restriction exemption office appointment payment allowance emolument or benefit notwithstanding that the same respectively may have been in any manner affirmed recognized or derived by in or from any enactment hereby repealed :

Nor shall this section revive or restore any jurisdiction office duty drawback fee payment franchise liberty custom right title privilege restriction exemption usage practice procedure or other matter or thing not now existing or in force :

Provided

Provided also and without limiting the generality of the foregoing provisos that the repeal effected by this section shall save as hereinafter provided not affect any Statute or Ordinance made in Victoria or made in New South Wales and in force in Victoria whether as regards the past or the future and that such repeal shall not prevent the recognition in Victoria of any status right title or other matter or thing elsewhere acquired under any of the enactments repealed by this section in the same circumstances and to the same extent as such recognition would have been granted or given prior to the commencement of this Act:

Provided further that the repeal effected by this section shall affect section one hundred and ninety of the *Supreme Court Act* 1958 so far as such section may be read as incorporating any enactment but not further or otherwise.

Powers of the
Governor in
Council.

6. The Governor in Council may at any time and from time to time by proclamation published in the *Government Gazette* indicate any enactment or enactments as an enactment or enactments which is or are to be added to those mentioned in the Schedule to this Act and to those set out in Part II. of this Act and thereupon such enactment or enactments shall be deemed to have been mentioned at the appropriate place in the Schedule and set out in Part II. and the effect shall be the same as if the Schedule and Part II. had at the time of the passing of this Act included such added enactment or enactments and sections 3 and 5 of this Act shall be construed accordingly.

Repeal of
Parts I. and
II. of
*Imperial Acts
Application
Act 1922.*

7. Parts I. and II. of the *Imperial Acts Application Act* 1922 shall be repealed.

PART II.—TRANSCRIBED ENACTMENTS

Transcribed
enactments.

8. The enactments referred to in section 3 of this Act shall have effect and be construed as provided by that section and are set out in this Part under the Divisions mentioned in section 1 as being included in Part II. and such Divisions shall be deemed to be Divisions of this Part.

DIVISION 1.—ELECTIONS

Freedom of
elections.

(1275) 3 Edward I. (State of Westminster the First) C.V.

And because elections ought to be free, the King commandeth upon great forfeiture, that no man by force of arms, nor by malice, or menacing, shall disturb any to make free election.

DIVISION 2.—HABEAS CORPUS

(1640) 16 Charles I c. X.

An Act for the regulating of the privy council, and for taking away the court commonly called the star-chamber.

Whereas

Whereas by the great charter many times confirmed in parliament, it is enacted, That no freeman shall be taken or imprisoned, or disseised of his freehold or liberties or free customs, or be outlawed or exiled or otherwise destroyed, and that the King will not pass upon him, or condemn him ; but by lawful judgement of his peers, or by the law of the land : (2) and by another statute made in the fifth year of the reign of King Edward the Third, it is enacted, That no man shall be attached by any accusation, nor forejudged of life or limb, nor his lands, tenements, goods or chattels seized into the King's hands, against the form of the great charter and the law of the land : (3) and by another statute made in the five and twentieth year of the reign of the same King Edward the Third, it is accorded, assented and established, That none shall be taken by petition or suggestion made to the King, or to his council, unless it be by indictment or presentment of good and lawful people of the same neighbourhood where such deeds be done, in due manner, or by proceeds made by writ original at the common law, and that none be put out of his franchise or freehold, unless he be duly brought in to answer, and forejudged of the same by the course of the law, and if any thing be done against the same, it shall be redressed and holden for none : (4) and by another statute made in the eight and twentieth year of the reign of the same King Edward the Third, it is amongst other things enacted, That no man of what estate or condition forever he be, shall be put out of his lands or tenements, nor taken, nor imprisoned, nor disinherited, without being brought in to answer by due process of law : (5) and by another statute made in the two and fortieth year of the reign of the said King Edward the Third, it is enacted, That no man be put to answer, without presentment before justices, or matter of record, or by due process and writ original, according to the old law of the land, and if any thing be done to the contrary, it shall be void in law, and holden for error : (6) and by another statute made in the six and thirtieth year of the same King Edward the Third, it is amongst other things enacted, That all pleas which shall be pleaded in any courts before any of the King's justices, or in his other places, or before any of his other ministers, or in the courts and places of any other lords within the realm, shall be entered and enrolled in Latin : (7) and whereas by the statute made in the third year of King Henry the Seventh, power is given to the chancellor, the lord treasurer of England for the time being, and the keeper of the King's privy seal, or two of them, calling unto them a bishop and a temporal lord of the King's most honourable council, and the two chief justices of the King's bench and common pleas for the time being, or other two justices in their absence, to proceed as in that act is expressed, for the punishment of some particular offences therein mentioned : (8) and by the statute made in the one and twentieth year of King Henry the Eighth, the president of the council is

associated

associated to join with the lord chancellor and other judges in the said statute of the Third of Henry the Seventh mentioned : (9) but the said judges have not kept themselves to the points limited by the said statute, but have undertaken to punish where no law doth warrant, and to make decrees for things having no such authority, and to inflict heavier punishments than by any law is warranted.

II. And for asmuch as all matters examinable or determinable before the said judges, or in the court commonly called the star-chamber, may have their proper remedy and redress, and their due punishment and correction, by the common law of the land, and in the ordinary course of justice elsewhere : (2) and forasmuch as the reasons and motives inducing the erection and continuance of that court do now cease : (3) and the proceedings, censures and decrees of that court, have by experience been found to be an intolerable burthen to the subjects, and the means to introduce an arbitrary power and government : (4) and forasmuch as the council-table hath of late time assumed unto itself a power to intermeddle in civil causes and matters only of private interest between party and party, and have adventured to determine of the estates and liberties of the subject, contrary to the law of the land and the rights and privileges of the subject, by which great and manifold mischiefs and inconveniencies have arisen and happened, and much uncertainty by means of such proceedings hath been conceived concerning mens rights and estates ; for settling whereof, and preventing the like in time to come.

III. Be it ordained and enacted by the authority of this present parliament, That the said court commonly called the star-chamber, and all jurisdiction, power and authority belonging unto, or exercised in the same court, or by any of the judges, officers or ministers, thereof, be from the first day of August in the year of our Lord God one thousand six hundred forty and one, clearly and absolutely dissolved, taken away and determined : (2) and that from the said first day of August neither the lord chancellor, or keeper of the great seal of England, the lord treasurer of England, the keeper of the King's privy seal, or president of the council, nor any bishop, temporal lord, privy counsellor or judge, or justice whatsoever, shall have any power or authority to hear, examine or determine any matter or thing whatsoever, in the said court commonly called the star-chamber, or to make, pronounce or deliver any judgement, sentence, order or decree, or to do any judicial or ministerial act in the said court : (3) and that all and every act and acts of parliament, and all and every article, clause and sentence in them, and every of them, by which any jurisdiction, power or authority is given, limited or appointed unto the said court commonly called the star-chamber, or unto all or any of the judges, officers or ministers thereof, or for any proceedings to be had or made in the said court, or for any matter or thing to be drawn unto question, examined or

determined

determined there, shall for so much as concerneth the said court of star-chamber, and the power and authority thereby given unto it, be from the said first day of August repealed, and absolutely revoked and made void.

IV. And be it likewise enacted, That the like jurisdiction now used and exercised in the court before the president and council in the marches of Wales : (2) and also in the court before the president and council established in the northern parts : (3) and also in the court commonly called the court of the duchy of Lancaster, held before the chancellor and council of that court : (4) and also in the court of exchequer of the county palatine of Chester, held before the chamberlain and council of that court : (5) the like jurisdiction being exercised there, shall from the said first day of August one thousand six hundred forty and one, be also repealed and absolutely revoked and made void ; any law, prescription, custom or usage, or the said statute made in the third year of King Henry the Seventh, or the statute made in one and twentieth of Henry the Eighth, or any act or acts of parliament heretofore had or made, to the contrary thereof in any wise notwithstanding : (6) and that from henceforth no court, council or place of judicature, shall be erected, ordained, constituted or appointed within this realm of England, or dominion of Wales, which shall have, use or exercise the same or the like jurisdiction as is or hath been used, practised or exercised in the said court of star-chamber.

V. Be it likewise declared and enacted by authority of this present parliament, That neither his Majesty, nor his privy council, have or ought to have any jurisdiction, power or authority, by English bill, petition, articles, libel or any other arbitrary way whatsoever, to examine or draw into question, determine or dispose of the lands, tenements, hereditaments, goods or chattels of any of the subjects of this kingdom, but that the same ought to be tried and determined in the ordinary courts of justice, and by the ordinary course of the law.

VI. And be it further provided and enacted, That if any lord chancellor, or keeper of the great seal of England, lord treasurer, keeper of the King's privy seal, president of the council, bishop, temporal lord, privy counsellor, judge or justice whatsoever, shall offend, or do any thing contrary to the purport, true intent and meaning of this law, then he or they shall for such offence forfeit the sum of five hundred pounds of lawful money of England unto any party grieved, his executors or administrators, who shall really prosecute for the same, and first obtain judgement thereupon, to be recorded in any court of record at Westminster, by action of debt, bill, plaint or information, wherein no essoin, protection, wager of law, aid prayer, privilege, injunction or order of restraint, shall be in any wise prayed, granted, or allowed, nor any more than

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one imparlance : (2) and if any person against whom any such judgement or recovery shall be had as aforesaid, shall after such judgement or recovery offend again in the same, then he or they for such offence shall forfeit the sum of one thousand pounds of lawful money of England unto any party grieved, his executors or administrators, who shall really prosecute for the same, and first obtain judgement thereupon, to be recorded in any court of record at Westminster, by action of debt, bill, plaint or information, in which no ession, protection, wager of law, aid prayer, privilege, injunction or order of restraint shall be in any wise prayed, granted or allowed, nor any more than one imparlance : (3) and if any person against whom any such second judgement or recovery shall be had as aforesaid, shall after such judgement or recovery offend again in the same kind, and shall be thereof duly convicted by indictment, information, or any other lawful way or means, that such person so convicted shall be from thenceforth disabled, and become by virtue of this act incapable *ipso facto*, to bear his and their said office and offices respectively : (4) and shall be likewise disabled to make any gift, grant, conveyance, or other disposition of any of his lands, tenements, hereditaments, goods or chattels, or to take any benefit of any gift, conveyance or legacy to his own use.

VII. And every person so offending shall likewise forfeit and lose unto the part grieved, by any thing done contrary to the true intent and meaning of this law, his treble damages which he shall sustain and be put unto by means or occasion of any such act or thing done, the same to be recovered in any of his Majesty's courts of record at Westminster, by action of debt, bill, plaint or information, wherein no ession, protection, wager of law, aid prayer, privilege, injunction or order of restraint, shall be in any wise prayed, granted or allowed, nor any more than one imparlance.

VIII. And be it also provided and enacted, That if any person shall hereafter be committed, restrained of his liberty, or suffer imprisonment, by the order or decree of any such court of star-chamber, or other court aforesaid, now or at any time hereafter, having or pretending to have the same or like jurisdiction, power or authority to commit or imprison as aforesaid: (2) or by the command or warrant of the King's majesty, his heirs or successors, in their own person, or by the command or warrant of the council board, or of any of the lords or others of his Majesty's privy council : (3) that in every such case every person so committed, restrained of his liberty, or suffering imprisonment, upon demand or motion made by his counsel, or other employed by him for that purpose, unto the judges of the court of King's bench or common pleas, in open court, shall without delay, upon any pretence whatsoever, for the ordinary fees usually paid for the same, have forthwith granted unto him a writ of *habeas corpus*, to be directed generally unto all and every sheriff, gaoler, minister, officer or other person in whose custody the party

committed

committed or restrained shall be : (4) and the sheriff, gaoler, minister, officer or other person in whose custody the part so committed or restrained shall be, shall at the return of the said writ, and according to the command thereof, upon due and convenient notice thereof given unto him, at the charge of the party who requireth or procureth such writ, and upon security by his own bond given, to pay the charge of carrying back the prisoner, if he shall be remanded by the court to which he shall be brought, as in like cases that been used, such charges of bringing up and carrying back the prisoner to be always ordered by the court, if any difference shall arise thereabout, bring or cause to be brought the body of the said party so committed or restrained unto and before the judges or justices of the said court from whence the same writ shall issue, in open court: (5) and shall then likewise certify the true cause of such his detainer or imprisonment, and thereupon the court, within three court days after such return made and delivered in open court, shall proceed to examine and determine whether the cause of such commitment appearing upon the said return be just and legal, or not, and shall thereupon do what to justice shall apertain, either be delivering, bailing or remanding the prisoner : (6) and if any thing shall be otherwise wilfully done or omitted to be done by any judge, justice, officer or other person afore-mentioned, contrary to the direction and true meaning hereof, that then such persons so offending shall forfeit to the party grieved his treble damages, to be recovered by such means, and in such manner as is formerly in this act limited and appointed for the like penalty to be sued for and recovered.

IX. Provided always, and be it enacted, That this act and the several clauses therein contained shall be taken and expounded to extend only to the court of star-chamber: (2) and to the said courts holden before the president and council in the marches of Wales: (3) and before the president and council in the northern parts: (4) and also to the court commonly called the court of the duchy of Lancaster, holden before the chancellor and council of that court: (5) and also in the court of exchequer of the county palatine of Chester, held before the chamberlain and council of that court: (6) and to all courts of like jurisdiction to be hereafter erected, ordained, constituted or appointed as aforesaid, and to the warrants and directions of the council board, and to the commitments, restraints and imprisonment of any person or persons made, commanded or awarded by the King's majesty, his heirs or successors, in their own person, or by the lords and others of the privy council, and every one of them.

X. And lastly, provided, and be it enacted, That no person or persons shall be sued, impleaded, molested or troubled for any offence against this present act, unless the party supposed to have so offended shall be sued or impleaded for the same within two years at the most after such time wherein the said offence shall be committed.

(1679) 31 CHARLES II. c. II. ss. 1-9, 11-13, 15-20.

An Act for the better securing the Liberty of the Subject and for Prevention of Imprisonments beyond the Seas.

Recital that delays had been used by sheriffs in making returns of writs of habeas corpus, &c.

Sheriff, &c. within three days after service of habeas corpus, with the exception of treason and felony, as and under the regulations herein mentioned, to bring up the body before the court to which the writ is returnable ;

and certify the true causes of imprisonment.

Exceptions in respect of distance.

1. Whereas great delays have been used by sheriffs gaolers and other officers to whose custody any of the King's subjects have been committed for criminal or supposed criminal matters in making returns writs of habeas corpus to them directed by standing out an alias and pluries habeas corpus and sometimes more and by other shifts to avoid their yielding obedience to such writs contrary to their duty and the known laws of the land whereby many of the King's subjects have been and hereafter may be long detained in prison in such cases where by law they are baylable to their great charge and vexation. For the prevention whereof and the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters 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 thereof that whensoever any person or persons shall bring any habeas corpus directed unto any sheriff or sheriffs gaoler or other person whatsoever for any person in his or their custody and the said writt shall be served upon the said officer or left at the goal or prison with any of the under-officers under-keepers or deputy of the said officers or keepers that the said officer or officers his or their under-officers under-keepers or deputies shall within three days after the service thereof as aforesaid (unless the committment aforesaid were for treason or felony plainly and specially expressed in the warrant of committment) upon payment or tender of the charges of bringing the said prisoner to be ascertained by the judge or court that awarded the same and endorsed upon the said writt not exceeding twelve pence per mile and upon security given by his own bond to pay the charges of carrying backe the prisoner if he shall be remanded by the court or judge to which he shall be brought according to the true intent of this present Act and that he will not make any escape by the way make returne of such writt or bring or cause to be brought the body of the partie soe committed or restrained unto or before the lord chauncellor or lord keeper of the great seale of England for the time being or the judges or barons of the said court from whence the said writt shall issue or unto and before such other person and persons before whome the said writt is made returnable according to the command thereof, and shall likewise then certifye the true causes of his detainer or imprisonment unless the committment of the said partie be in any place beyond the distance of twenty miles from the place or places where such court or person is or shall be residing and if beyond the distance of twenty miles and not above one hundred miles then within the space of ten

dayes

dayes and if beyond the distance of one hundred miles then within the space of twenty dayes after such delivery aforesaid and not longer.

2. And to the intent that noe sheriffe goaler or other officer may pretend ignorance of the import of any such writt bee it enacted by the authoritie aforesaid that all such writts shall be marked in this manner Per statutum tricesimo primo Caroli Secundi Regis and shall be signed by the person that awards the same. And if any person or persons shall be or stand committed or detained asaforesaid for any crime unlesse for treason or felony plainly expressed in the warrant of committment in the vacation time and out of terme it shall and may be lawfull to and for the person or persons soe committed or detained (other then persons convict or in execution) by legall processe or any one on his or their behalfe to appeale or complaine to the lord chauncellour or lord keeper or any one of his Majestyes justices either of the one bench or of the other or the barons of the Exchequer of the degree of the coife and the said lord chauncellor lord keeper justices or barons or any of them upon view of the copy or copies of the warrant or warrants of committment and detainer or otherwise upon oath made that such copy or copyes were denyed to be given by such person or persons in whose custody the prisoner or prisoners is or are detained are hereby authorized and required upon request made in writeing by such person or persons or any on his her or their behalfe attested and subscribed by two witnesses that were present at the delivery of the same to award and grant an habeas corpus under the seale of such court whereof he shall then be one of the judges to be directed to the officer or officers in whose custodie the party soe committed or detained shall be returnable immediate before the said lord chauncellor or lord keeper or such justice baron or any other justice or baron of the degree of the coife of any of the said courts and upon service thereof as aforesaid the officer or officers his or their under-officer or under-officers under-keeper or under-keepers or their deputy in whose custodie the partie is soe committed or detained shall within the times respectively before limitted bring such prisoner or prisoners before the said lord chauncellor or lord keeper or such justices barons or one of them before whome the said writt is made returnable and in case of his absence before any other of them with the returne of such writt and the true causes of the committment and detainer and thereupon within two dayes after the partie shall be brought before them the said lord chauncellor or lord keeper or such justice or baron before whome the prisoner shall be brought as aforesaid shall discharge the said prisoner from his imprisonment takeing his or their recognizance with one or more suretie or sureties in any summe according to their discretions haveing regard to the quality of the prisoner and nature of the offence for his or their

How writs to be marked. Persons committed, except for treason and felony, &c. may appeal to the lord chancellor, &c.

Proceedings thereof.

Habeas corpus may be awarded;

and upon service thereof the officer to bring up the prisoners as before mentioned ;

and thereupon within two days lord chancellor, &c. may discharge upon recognizance ;

and certify the writ with the return and recognizance ;

appearance

Proviso for
process not
bailable.

appearance in the Court of Kings Bench the terme following or at the next assizes sessions or generall goale-delivery of and for such county city or place where the committment was or where the offence was committed or in such other court where the said offence is properly cognizable as the case shall require and then shall certify the said writt with the returne thereof and the said recognizance or recognizances into the said court where such appearance is to be made unlesse it shall appeare unto the said lord chauncellor or lord keeper or justice or justices or baron or barons that the partie soe committed is detained upon a legall processe order or warrant out of some court that hath jurisdiction of criminall matters or by some warrant signed and sealed with the hand and seale of any of the said justices or barons or some justice or justices of the peace for such matters or offences for the which by the law the prisoner is not baileable.

Habeas corpus
not granted in
vacation to
prisoners who
have neglected
to pray the
same.

3. Provided alwayes and bee it enacted that if any person shall have wilfully neglected by the space of two whole termes after his imprisonment to pray a habeas corpus for his enlargement such person soe wilfully neglecting shall not have any habeas corpus to be granted in vacation time in pursuance of this Act.

Officer
neglecting, &c.
to make the
said returns,
&c. ;

or upon demand
to deliver a
copy of
warrant of
commitment ;

first offence,
penalty £100.
second offence,
£200 and
incapacity.

4. And bee it further enacted by the authoritie aforesaid that if any officer or officers his or their under-officer or under-officers under-keeper or under-keepers or deputy shall neglect or refuse to make the returnes aforesaid or to bring the body or bodies of the prisoner or prisoners according to the command of the said writt within the respective times aforesaid or upon demand made by the prisoner or person in his behalfe shall refuse to deliver or within the space of six houres after demand shall not deliver to the person soe demanding a true copy of the warrant or warrants of committment and detayner of such prisoner, which he and they are hereby required to deliver accordingly all and every the head goalers and keepers of such prisons and such other person in whose custodie the prisoner shall be detained shall for the first offence forfeite to the prisoner or partie grieved the summe of one hundred pounds and for the second offence the summe of two hundred pounds and shall and is hereby made incapeable to hold or execute his said office, the said penalties to be recovered by the prisoner or partie grieved his executors or administrators against such offender his executors or administrators by any action of debt suite bill plaint or information in any of the King's courts at Westminster wherein noe essoigne protection priviledge injunction waver of law or stay of prosecution by non vult ulterius sequi or otherwise shall bee admitted or allowed or any more than one imparlance, and any recovery or judgement at the suite of any partie grieved shall be a sufficient conviction for the first offence

and

and any after recovery or judgement at the suite of a partie grieved for any offence after the first judgement shall bee a sufficient conviction to bring the officers or person within the said penaltie for the second offence.

Judgement at suit of party sufficient conviction.

5. And for the prevention of unjust vexation by reiterated committments for the same offence bee it enacted by the authoritie aforesaid that noe person or persons which shall be delivered or sett at large upon any habeas corpus shall at any time hereafter bee againe imprisoned or committed for the same offence by any person or persons whatsoever other then by the legall order and processe of such court wherein he or they shall be bound by recognizance to appeare or other court having jurisdiction of the cause and if any other person or persons shall knowingly contrary to this Act recommit or imprison or knowingly procure or cause to be recommitted or imprisoned for the same offence or pretended offence any person or persons delivered or sett at large as aforesaid or be knowingly aiding or assisting therein then he or they shall forfeite to the prisoner or party grieved the summe of five hundred pounds any colourable pretence or variation in the warrant or warrants of commitment notwithstanding to be recovered as aforesaid.

Proviso as to imprisonment of party after having been set at large upon habeas corpus.

Unduly recommitting such discharged persons or assisting therein ; penalty to the party £500.

6. Provided alwayes and bee it further enacted that if any person or persons shall be committed for high treason or felony plainly and specially expressed in the warrant of committment upon his prayer or petition in open court the first weeke of the terme or first daye of the sessions of oyer and terminer or generall goale delivery to be brought to his tryall shall not be indicted sometime in the next terme sessions of oyer and terminer or generall goale delivery after such committment it shall and may be lawfull to and for the judges of the Court of Kings Bench and justices of oyer and terminer or generall goale delivery and they are hereby required upon motion to them made in open court the last daye of the terme sessions or goale-delivery either by the prisoner or any one in his behalfe to sett at liberty the prisoner upon baile unlesse it appeare to the judges and justices upon oath made that the witnesses for the King could not be produced the same terme sessions or generall goale-delivery. And if any person or persons committed as aforesaid upon his prayer or petition in open court the first weeke of the terme or first daye of the sessions of oyer and terminer or generall goale delivery to be brought to his tryall shall not be indicted and tried the second terme sessions of oyer and terminer or generall goale delivery after his committment or upon his tryall shall be acquitted he shall be discharged from his imprisonment.

If persons committed for high treason or felony plainly expressed in warrant shall not on petition be indicated as herein-mentioned, judges, &c. may discharge upon bail ; proviso :

and if not indicted and tried as herein mentioned then to be discharged.

7. Provided

Proviso respecting persons charged in debt, &c.

7. Provided alwayes that nothing in this Act shall extend to discharge out of prison any person charged in debt or other action or with processe in any civill cause but that after he shall be discharged of his imprisonment for such his criminall offence he shall be kept in custodie according to law for such other suite.

Persons committed for criminal matter not to be removed but by habeas corpus or other legal writ.

8. Provided alwaies and bee it enacted by the authoritie aforesaid that if any person or persons subject of this realme shall be committed to any prison or in custodie of any officer or officers whatsoever for any criminall or supposed criminall matter that the said person shall not be removed from the said prison and custody into the custody of any other officer or officers unlesse it be by habeas corpus or some other legall writt or where the prisoner is delivered to the constable or other inferiour officer to carry such prisoner to some common goale or where any person is sent by-order of any judge of assize or justice of the peace to any common worke-house or house of correction or where the prisoner is removed from one prison or place to another within the same county in order to his or her tryall or discharge in due course of law or in case of suddaine fire or infection or other necessity and if any person or persons shall after such committment aforesaid make out and signe or countersigne any warrant or warrants for such removeall aforesaid contrary to this Act as well he that makes or signes or countersignes such warrant or warrants as the officer or officers that obey or execute the same shall suffer and incurr the paines and forfeitures in this Act before-mentioned both for the first and second offence respectively to be recovered in manner aforesaid by the partie grieved.

Unduly making out, &c. warrant for removal ;

penalty.

Proviso for application for and granting habeas corpus in vacation-time.

9. Provided alsoe and bee it further enacted by the authoritie aforesaid that it shall and may be lawfull to and for any prisoner and prisoners as aforesaid to move and obtaine his or their habeas corpus as well out of the High Court of Chauncery or Court of Exchequer as out of the courts of Kings Bench or Common Pleas or either of them and if the said lord chauncellor or lord keeper or any judge or judges baron or barons for the time being of the degree of the coife of any of the courts aforesaid in the vacation time upon view of the copy or copyes of the warrant or warrants of committment or detainer or upon oath made that such copy or copyes were denied as aforesaid shall deny any writt of habeas corpus by this Act required to be granted being moved for as aforesaid they shall severally forfeite to the prisoner or partie grieved the summe of five hundred pounds to be recovered in manner aforesaid.

Lord chancellor, &c. unduly denying writ;

penalty to party £500.



11. And for preventing illegall imprisonments in prisons beyond the seas bee it further enacted by the authoritie aforesaid that noe subject of this realme that now is or hereafter shall be an inhabitant or resiant of this Kingdome of England shall or may be sent prisoner into any places beyond the seas which are or at any time hereafter shall be within or without the dominions of his Majestie his heires or successors and that every such imprisonment is hereby enacted and adjudged to be illegall and that if any of the said subjects now is or hereafter shall bee soe imprisoned every such person and persons soe imprisoned shall and may for every such imprisonment maintaine by vertue of this Act an action or actions of false imprisonment in any of His Majesteyes courts of record against the person or persons by whome he or she shall be soe committed detained imprisoned sent prisoner or transported contrary to the true meaning of this Act and against all or any person or persons that shall frame contrive write seale of countersigne any warrant or writeing for such committment detainer imprisonment or transportation or shall be advising aiding or assisting in the same or any of them and the plaintiffe in every such action shall have judgement to recover his . . . costs besides damages which damages soe to be given shall not be lesse then five hundred pounds in which action noe delay stay or stopp of proceeding by rule order or command nor noe injunction protection or priviledge whatsoever . . . shall be allowed excepting such rule of the court wherein the action shall depend made in open court as shall bee thought in justice necessary for speciall cause to be expressed in the said rule and the person or persons who shall knowingly frame contrive write seale or countersigne any warrant for such committment detainer or transportation or shall soe committ detaine imprison or transport any person or persons contrary to this Act or be any wayes advising aiding or assisting therein being lawfully convicted thereof shall be disabled from thence-forth to beare any office of trust or proffitt within the said realme of England or any of the islands territories or dominions thereunto belonging and shall incurr and sustaine the paines penalties and forfeitures limited ordained and provided in the Statute of provision and premunire made in the sixteenth yeare of King Richard the Second and be incapeable of any pardon from the King his heires or successors of the said forfeitures losses or disabilities or any of them.

No subject to be sent prisoner into any part beyond the seas.

Action for false imprisonment.

And the persons so &c. committing, disabled from office and incurred premunire.

12. Provided alwayes that nothing in this Act shall extend to give benefit to any person who shall by contract in writeing agree with any merchant or owner of any plantation or other person whatsoever to be transported to any parts beyond seas and receive earnest upon such agreement although that afterwards such person shall renounce such contract.

Proviso for contracts for transportation.

13. Provided

Proviso for transportation of persons convicted of felony and praying to be transported.

13. Provided always and be it enacted that if any person or persons lawfully convicted of any felony shall in open court pray to be transported beyond the seas and the court shall thinke fitt to leave him or them in prison for that purpose such person or persons may be transported into any parts beyond the seas this Act or any thing contained therein to the contrary notwithstanding.

* * * * *

Proviso for sending persons to be tried in places where capital offence committed.

15. Provided alsoe that if any person or persons at any time resiant in this realme shall have committed any capitall offence in Scotland or Ireland or any of the islands or forreigne plantations of the King his heires or successors where he or she ought to be tryed for such offence such person or persons may be sent to such place there to receive such tryall in such manner as the same might have beene used before the making of this Act anything herein contained to the contrary notwithstanding.

Limitation of prosecution for offences against this Act.

16. Provided alsoe and bee it enacted that noe person or persons shall be sued impleaded molested or troubled for any offence against this Act unlesse the partie offending be sued or impleaded for the same within two yeares at the most after such time wherein the offence shall be committed in case the partie grieved shall not be then in prison and if he shall be in prison then within the space of two yeares after the decease of the person imprisoned or his or her delivery out of prison which shall first happen.

After assizes proclaimed, no person to be removed from common gaol upon habeas corpus, but brought before judge of assize.

17. And to the intent noe person may avoid his tryall at the assizes or generall goale-delivery by procureing his removeall before the assizes at such time as he cannot be brought backe to receive his tryall there bee it enacted that after the assizes proclaimed for that country where the prisoner is detained noe person shall be removed from the common goale upon any habeas corpus granted in persuance of this Act but upon any such habeas corpus shall be brought before the judge of assize in open court who is thereupon to doe what to justice shall appertaine.

After assizes persons detained may have habeas corpus.

18. Provided neverthelesse that after the assizes are ended any person or persons detained may have his or her habeas corpus according to the direction and intention of this Act.

In informations, &c. brought for offence against this law ;

general issue.

19. And bee it also enacted by the authoritie aforesaid that if any information suite or action shall be brought or exhibited against any person or persons for any offence committed or to be committed against the forme of this law it shall be lawfull for such defendants to pleade the generall issue that they are not guilty or that they owe nothing and to give such speciall matter in evidence to the jury that shall try the same which matter being pleaded had beene good and sufficient matter in law to have discharged the said defendant or defendants against the said information suite or action and the

said

said matter shall be then as available to him or them to all intents and purposes as if he or they had sufficiently pleaded sett forth or alledged the same matter in barr or discharge of such information suite or action.

20. And because many times persons charged with petty treason or felony or as accessaries thereunto are committed upon suspicion onely whereupon they are baileable or not according as the circumstances makeing out the suspicion are more or lesse weighty which are best knowne to the justices of peace that committed the persons and have the examinations before them or to other justices of the peace in the county : Bee it therefore enacted that where any person shall appear to be committed by any judge or justice of the peace and charged as accessory before the fact to any petty treason or felony or upon suspicion thereof or with suspicion of petty treason or felony shall be plainly and specially expressed in the warrant of committment that such person shall not be removed or bailed by vertue of this Act or in any other manner then they might have beene before the makeing of this Act.

Proviso as to removal or bail of persons charged as accessories before the fact to petty treason or felony.

[1816] 56 George III. c.C.

An Act for more effectually securing the Liberty of the Subject.

1. Whereas the writ of habeas corpus hath been found by experience to be an expeditious and effectual method of restoring any person to his liberty, who hath been unjustly deprived thereof : And whereas extending the remedy of such writ, and enforcing obedience thereunto, and preventing delays in the execution thereof, will be advantageous to the public : And whereas the provisions made by an Act passed in England in the thirty-first year of King Charles the Second, intituled " An Act for the better securing the liberty of the subject, and for prevention of imprisonment beyond the seas " only extend to cases of commitment or detainer for criminal or supposed criminal matter : Be it therefore enacted that where any person shall be confined or restrained of his or her liberty (otherwise than for some criminal or supposed criminal matter, and exept persons imprisoned for debt or by process in any civil suit) within that part of Great Britain called England, it shall and may be lawful for any one of the barons of the Exchequer, of the degree of the coif, as well as for any one of the justices of one bench or the other, and they are hereby required, upon complaint made to them by or on the behalf of the person so confined or restrained, if it shall appear by affidavit or affirmation (in cases where by law an affirmation is allowed) that there is a probable and reasonable ground for such complaint, to award in vacation time a writ of habeas corpus ad subjiciendum, under the seal of such court, whereof he or they shall then be judges or one of the judges, to be directed to the person or

31 Cha. 2. c. 2.

Judge to issue, in vacation, writs of habeas corpus returnable immediately, in cases other than for criminal matter, or for debt, or on civil process

persons

persons in whose custody or power the party so confined or restrained shall be, returnable immediately before the person so awarding the same, or before any other judge of the court under the seal of which the said writ issued.

Non-obedience to such writ to be a contempt of court, and punishable accordingly.

2. And be it further enacted by the authority aforesaid, that if the person or persons to whom any writ of habeas corpus shall be directed according to the provision of this Act, upon service of such writ, either by the actual delivery thereof to him, her, or them, or by leaving the same at the place where the party shall be confined or restrained with any servant or agent of the person or persons so confining or restraining shall wilfully neglect or refuse to make a return to pay obedience thereto, he, she, or they shall be deemed guilty of a contempt of the court, under the seal whereof such writ shall have issued ; and it shall be lawful to and for the said justice or baron, before whom such writ shall be returnable, upon proof made by affidavit of wilful disobedience of the said writ, to issue a warrant under his hand and seal for the apprehending and bring in before him, or before some other justice or baron of the same court, the person or persons so wilfully disobeying the said writ, in order to his, her, or their being bound to the King's Majesty with two sufficient sureties, in such sum as in the warrant shall be expressed, with condition to appear in the court of which the said justice or baron is a judge, at a day in the ensuing term to be mentioned in the said warrant, to answer the matter of contempt with which he, she or they are charged ; and in case of neglect or refusal to become bound as aforesaid, it shall be lawful for such justice or baron to commit such person or persons so neglecting or refusing to the jail or prison of the court of which such justice or baron shall be a judge thereto remain until he, she, or they shall have become bound as aforesaid, or shall be discharged by order of the court in term time, or by order of one of the justices or barons of the court in vacation ; and the recognizance or recognizance to be taken thereupon shall be returned and filed in the same court, and shall continue in force until the matter of such contempt shall have been heard and determined, unless sooner ordered by the court to be discharged : Provided, that if such writ shall be awarded so late in the vacation by any one of the said justices or barons, that, in his opinion, obedience thereto cannot be conveniently paid during such vacation the same shall and may, at his discretion, be made returnable in the court of which the said justice or baron shall be a justice or baron, at a day certain in the next term ; and the said court shall and may proceed thereupon, and award process of contempt in case of disobedience thereto, in like manner as upon disobedience to any writ originally awarded by the said court : Provided also, that if such writ shall be awarded by the Court of King's Bench or the Court of Common Pleas, or Court of Exchequer which last-mentioned court shall have like power to award such writs as the respective

Judges to make writs of habeas corpus, issued late in vacation, returnable in court in the next term.

Courts to make writs issued late in term returnable in vacation.

courts

courts of King's Bench and Common Pleas now have, in term, but so late that, in the judgement of the court, obedience thereto cannot be conveniently paid during such term the same shall and may, at the discretion of the said court, be made returnable at a day certain in the then next vacation, before any justice or baron of the degree of the coif who shall and may proceed thereupon, in such manner as by this Act is directed concerning writs issuing in and made returnable during the vacation.

3. And be it further enacted by the authority aforesaid, that in all cases provided for by this Act, although the return to any writ of habeas corpus shall be good and sufficient in law, it shall be lawful for the justice or baron, before whom such writ may be returnable, to proceed to examine into the truth of the facts set forth in such return by affidavit or by affirmation (in cases where an affirmation is allowed by law), and to do therein as to justice shall apertain ; and if such writ shall be returned before any one of the said justices or barons, and it shall appear doubtful to him on such examination, whether the material facts set forth in the said return or any of them be true or not, in such case it shall and may be lawful for the said justice or baron to let to bail the said person so confined or restrained, upon his or her entering into a recognizance with one or more sureties, or in case of infancy or coverture, or other disability, upon security by recognizance, in a reasonable sum, to appear in the court of which the said justice or baron shall be a justice or baron upon a day certain in the term following, and so from day to day as the court shall require, and to abide such order as the court shall make in and concerning the premises ; and such justice or baron shall transmit into the same court the said writ and return, together with such recognizance, affidavits, and affirmations ; and thereupon it shall be lawful for the said court to proceed to examine into the truth of the facts set forth in the return, in a summary way by affidavit or affirmation (in cases where by law affirmation is allowed), and to order and determine touching the discharging, bailing, or remanding the party.

The judge shall inquire into the truth of facts set forth in return ;

and where it appears doubtful shall bail the person confined on recognizance to appear in term, &c.

4. And be it further enacted by the authority aforesaid, that the like proceeding may be had in the court for controverting the truth of the return to any such writ of habeas corpus awarded as aforesaid, although such writ shall be awarded by the said court itself, or be returnable therein.

The truth of the return may be controverted in that court.

5. And be it declared and enacted by the authority aforesaid, that a writ of habeas corpus, according to the true intent and meaning of this Act, may be directed and run into any port, harbour, road, creek, or bay, upon the coast of England or Wales, although the same should lie out of the body of any country ; any law or usage to the contrary in anywise notwithstanding.

Writ may run into places not in body of county.

6. And

Provisions of this Act to extend to all writs of habeas corpus in cases within 31 Cha. 2. c. 2.

6. And be it further enacted by the authority aforesaid, that the several provisions made in this Act, touching the making writs of habeas corpus issuing in time of vacation returnable into the said courts, or for making such writs awarded in term time returnable in vacation, as the cases may respectively happen, and also for making wilful disobedience thereto a contempt of the court, and for issuing warrants to apprehend and bring before the said justices or barons, or any of them, any person or persons wilfully disobeying any such writ, and in case of neglect or refusal to become bound as aforesaid, for committing the person or persons so neglecting or refusing to jail as aforesaid, respecting the recognizances to be taken as aforesaid, and the proceeding or proceedings thereon, shall extend to all writs of habeas corpus awarded in pursuance of the said Act passed in England in the thirty-first year of the reign of King Charles the Second. and hereinbefore recited, in as ample and beneficial a manner as if such writs and the said cases arising thereon had been herein-before specially named and provided for respectively.

DIVISION 3.—JUSTICE AND LIBERTY

(1297) 25 Edward I. (Magna Carta) c. XXIX.

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 wise destroyed ; nor will we pass upon him, nor condemn him, but by lawful judgement of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice or right.

(1351-2) 25 Edward III. St. V. c. IV.

Item, whereas it is contained in the great charter of the franchises of England that none shall be imprisoned nor put out of his freehold, nor of his franchises nor free custom, unless it be by the law of the land ; it is accorded assented, and stablished, that from henceforth none shall be taken by petition or suggestion made to our Lord the King, or to his council, unless it be by indictment or presentment of good and lawful people of the same neighbourhood where such deeds be done, in due manner, or by process made by writ original at the common law ; nor that none be out of his franchises, nor of his freeholds, unless he be duly brought into answer, and forejudged of the same by the course of the law ; and if any thing be done against the same, it shall be redressed and holden for none.

(1354) 28 Edward III. c. III.

Item, that no man of what estate or condition that he be, shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of the law.

(1368)

(1368) 42 Edward III. c. III.

. . . It is assented and accorded, for the good governance of the commons, that no man be put to answer without presentment before justices, or matter of record, or by due process and writ original, according to the old law of the land ; And if any thing from henceforth be done to the contrary, it shall be void in the law, and holden for error.

(1405-6) 7 Henry IV. c. I.

. . . And that the peace within the realm be holden and kept, so that all the King's liege people and subjects may from henceforth safely and peaceably go, come, and abide, according to the laws and usages of the same realm : And that good justice and equal right be done to every person ; saving to the same our Lord the King his regalty and prerogative.

(1627) 3 Charles I. (Petition of Right) c. I.

The petition is exhibited to his Majesty by the lords spiritual and temporal, and commons, in this present parliament assembled, concerning divers rights and liberties of the subjects, with the King's majesty's royal answer thereunto in full parliament.

To the King's most excellent majesty.

Humbly show unto our sovereign Lord the King, the lords spiritual and temporal, and commons in parliament assembled, That whereas it is declared and enacted by a statute made in the time of the reign of King Edward the First, commonly called *Statutum de tallagio non concedendo*, That no tallage or aid shall be laid or levied by the King or his heirs in this realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other the freemen of the commonalty of this realm ; (2) and by authority of parliament holden in the five and twentieth year of the reign of King Edward the Third, it is declared and enacted, That from thenceforth no person should be compelled to make any loans to the King against his will, because such loans were against reason and the franchise of the land ; (3) and by other laws of this realm it is provided, That none should be charged by any charge or imposition called a benevolence, nor by such like charge ; (4) by which the statutes before-mentioned and other the good laws and statutes of this realm, your subjects have inherited this freedom, That they should not be compelled to contribute to any tax, tallage, aid or other like charge not set by common consent in parliament.

2. Yet nevertheless, of late divers commissions directed to sundry commissioners in several counties, with instructions, have issued ; by means whereof your people have been in divers places assembled, and required to lend certain sums of money unto your Majesty, and many of them upon their refusal so to do, have had

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an oath administered unto them not warrantable by the laws or statutes of this realm, and have been constrained to become bound to make appearance and give attendance before your privy council and in other places, and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted ; (2) and divers other charges have been laid and levied upon your people in several counties by lords lieutenants, deputy lieutenants, commissioners for musters, justices of peace and others, by command or direction from your Majesty, or your privy council, against the laws and free customs of the realm.

3. And where also by the statute called, The great charter of the liberties of England, it is declared and enacted, That no freeman may be taken or imprisoned, or be disseised of his freehold or liberties or his free customs, or be outlawed or exiled, or in manner destroyed, but by the lawful judgement of his peers, or by the law of the land.

4. And in the eight and twentieth year of the reign of King Edward the Third it was declared and enacted by authority of parliament, That no man of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disherited, nor put to death without being brought to answer by due process of law.

5. Nevertheless against the tenor of the said statutes, and other the good laws and statutes of your realm to that end provided, divers of your subjects have of late been imprisoned without any cause showed ; (2) and when for their deliverance they were brought before your justices by your Majesty's writs of *habeas corpus*, there to undergo and receive as the court should order, and their keepers command to certify the causes of their detainer, no cause was certified, but that they were detained by your Majesty's special command, signified by the lords of your privy council, and yet were returned back to several prisons, without being charged with any thing to which they might make answer according to the law.

6. And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn, against the laws and customs of this realm, and to the great grievances and vexation of the people.

7. And whereas so by authority of parliament, in the five and twentieth year of the reign of King Edward the Third, it is declared and enacted, That no man should be forejudged of life or limb against the form of the great charter and the law of the land ; (2) and by the said great charter and other the laws and statutes of this your realm, no man ought to be adjudged to death but by the laws established in this your realm, either by the customs of the

the same realm, or by acts of parliament ; (3) and whereas no offender of what kind soever is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your realm ; nevertheless of late time divers commissions under your Majesty's great seal have issued forth, by which certain persons have been assigned and appointed commissioners with power and authority to proceed within the land, according to the justice of martial law, against such soldiers or mariners, or other dissolute persons joining with them as should commit any murder, robbery, felony, mutiny or other outrage or misdemeanour whatsoever, and by such summary course and order as is agreeable to martial law, and as it sued in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial. By pretext whereof some of your Majesty's subjects have been by some of the said commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been judged and executed. And also sundry grievous offenders, by colour thereof claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborn to proceed against such offenders according to the same laws and statutes, upon pretence that the said offenders were punishable only by martial law, and by authority of such commissions as aforesaid; (2) which commissions, and all other of like nature, are wholly and directly contrary to the said laws and statutes of this your realm.

8. They do therefore humble pray your most excellent Majesty, That no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such-like charge, without common consent by act of parliament ; (2) and that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof ; (3) and that no freeman, in any such manner as is before-mentioned, be imprisoned or detained ; (4) and that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burthened in time to come ; (5) and that the aforesaid commissions, for proceeding by martial law, may be revoked and annulled, and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid left by colour of them any or your Majesty's subjects be destroyed, or put to death contrary to the laws and franchise of the land. All which they most humbly pray of your most excellent Majesty as their rights and liberties, according to the laws and statutes of this realm ; and that your Majesty would also vouch safe to declare. That the awards, doing and proceedings,

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to the prejudice of your people in any of the premises, shall not be drawn hereafter into consequence or example ; (2) and that your Majesty would also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, That in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honour of your Majesty, and the prosperity of this kingdom.

[1688] 1 William and Mary SESS. II. (Bill of Rights) c. II.

An act for 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.

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 this kingdom in time of peace, without consent of parliament, and quartering soldiers contrary to law.

6. By

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 judgement 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 papery 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 have 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 ancient rights and liberties, declare :

1. That

1. That the pretended power of suspending the laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.

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.

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.

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.

5. That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal.

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.

7. That the subjects which are protestants, may have arms for their defence suitable to their conditions, and as allowed by law.

8. That election of members of parliament ought to be free.

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.

10. That excessive bail ought not to be required, nor excessive fines imposed ; nor cruel and unusual punishments inflicted.

11. That jurors ought to be duly impanelled and returned.

12. That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.

13. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently.

And they do claim, demand, and insist upon all and singular the premisses, as their undoubted rights and liberties ; and that no declarations, judgements, doings or proceedings, to the prejudice of the people in any of the said premisses, 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.

1. Having

1. 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.

2. 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 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.

3. 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.

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.

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.

4. 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.

5. And

5. 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.

6. Now in pursuance of the premisses, 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.

7. 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 liege 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 entirely invested and incorporated, united and annexed.

8. 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, tranquility, and safety of this nation doth, under God, wholly consist and depend, The said lords spiritual and temporal,

and

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 premisses 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 entire, 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 premisses 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.

9. 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, and be forever 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.

10. 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,

coronation, before such person or persons who shall minister 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 or 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.

11. 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.

12. 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 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.

13. 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.

DIVISION 4.—MONOPOLIES.

(1623-4) 21 or 21 and 22 James I. c. III. ss. 1, 6

An Act concerning monopolies and dispensations with penal laws and the forfeiture thereof.

Statute of
monopolies.

1. (1) Forasmuch as your most excellent Majesty, in your royal judgment, and of your blessed disposition to the weal and quiet of your subjects, did in the year of our Lord God one thousand six hundred and ten, publish in print to the whole realm, and to all posterity, That all grants and monopolies, and of the benefit of any penal laws or of power to dispense with the law, or to
compound

compound for the forfeiture, are contrary to your Majesty's laws, which your Majesty's declaration is truly consonant and agreeable to the ancient and fundamental laws of this your realm.

(2) And whereas your Majesty was further graciously pleased, expressly to command, that no suitor should presume to move your Majesty for matters of that nature ; (3) yet nevertheless upon misinformations, and untrue pretences of public good, many such grants have been unduly obtained, and unlawfully put in execution, to the great grievance and inconvenience of your Majesty's subjects, contrary to the laws of this your realm, and contrary to your Majesty's most royal and blessed intention to published as aforesaid.

(4) For avoiding whereof, and preventing of the like in time to come, may it please your excellent Majesty, at the humble suit of the lords spiritual and temporal, and the commons, in this present parliament assembled, That it may be declared and enacted ; (5) and be it declared and enacted by authority of the present parliament, That all monopolies, and all commissions, grants, licences, charters and letters patents heretofore made or granted, or hereafter to be made or granted, to any person or persons, bodies politick or corporate whatsoever, of or for the sole buying, selling, making, working or using of any thing within this realm, or the dominion of Wales, (6) or of any other monopolies, or of power, liberty to faculty, to dispense with any others, or to give licence or toleration to do, use or exercise any thing against the tenor or purport of any law or statute ; (7) or to give or make any warrant for any such dispensation, licence or toleration to be had or made ; or to agree or compound with any others for any penalty or forfeitures limited by any statute ; or of any grant or promise of the benefit, profit or commodity of any forfeiture, penalty or sum of money, that is or shall be due by any statute, before judgement thereupon had ; (8) and all proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things whatsoever, any way tending to the instituting, erecting, strengthening, furthering or countenancing of the same or any of them ; (9) are altogether contrary to the laws of this realm, and so are and shall be utterly void and of none effect, and in no wise to be put in use or execution.

6. Provided also, and be it declared and enacted, That any declaration before mentioned shall not extend to any letters patents and grants of privilege for the term of fourteen years or under, hereafter to be made, of the sole working or making of any manner of new manufactures within this realm, to the true and first inventor and inventors of such manufactures, which others at the time of making such letters patents and grants shall not use, so as also they be not contrary to the law, nor mischievous to the state, by raising prices of commodities at home, or hurt of trade,

or

or generally inconvenient : The said fourteen years to be accounted from the date of the first letters patents, or grant of such privilege hereafter to be made, but that the same shall be of such force as they should be, if this act had never been made, and of none other.

DIVISION 5.—ROYAL MARRIAGES

(1772) 12 George III. c. XI.

An Act for the better regulating the future Marriages of the Royal Family.

Whereas your Majesty, from your paternal affection to your own family, and from your royal concern for the future welfare of your people, and the honour and dignity of your crown, was graciously pleased to recommend to your parliament to take into their serious consideration, whether it might not be wise and expedient to supply the defect of the laws now in being ; and, by some new provision, more effectually to guard the descendants of his late majesty King George the Second, (other than the issue of princesses who have married, or may hereafter marry, into foreign families) from marrying without the approbation of your Majesty, your heirs, or successors, first had and obtained ; we have taken this weighty matter into our serious consideration ; and, being sensible that marriages in the royal family are of the highest importance to the state, and that therefore the Kings of this realm have ever been entrusted with the care and approbation thereof ; and, being thoroughly convinced of the wisdom and expediency of what your Majesty has thought fit to recommend, upon this occasion, we, your Majesty's most dutiful and loyal subjects, the lords spiritual and temporal, and commons, in this present parliament assembled, do humbly beseech your Majesty that it may be enacted ; and 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.

1. That no descendant of the body of his late majesty King George the Second, male or female, (other than the issue of princesses who have married, or may hereafter marry, into foreign families) shall be capable of contracting matrimony without the previous consent of his Majesty, his heirs, or successors, signified under the great seal, and declared in council (which consent, to preserve the memory thereof, is hereby directed to be set out in the licence and register of marriage, and to be entered in the books of the privy council) ; and that every marriage, or matrimonial contract, of any such descendant, without such consent first had and obtained, shall be null and void, to all intents and purposes whatsoever.

2. Provided

2. Provided always, and be it enacted by the authority aforesaid, That, in case any such descendant of the body of his late majesty King George the Second, being above the age of twenty-five years, shall persist in his or her resolution to contract a marriage disapproved of, or dissented from, by the King, his heirs or successors ; that then such descendant, upon giving notice to the King's privy council, which notice is hereby directed to be entered in the books thereof, may, at any time from the expiration of twelve calendar months, after such notice given to the privy council as aforesaid, contract such marriage ; and his or her marriage with the person before proposed, and rejected, may be duly solemnized, without the previous consent of his Majesty, his heirs, or successors ; and such marriage shall be good, as if this act had never been made, unless both houses of parliament shall, before the expiration of the said twelve months, expressly declare their disapprobation of such intended marriage.

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[1354] 28 Edward III. c. III.	Justice and Liberty
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[1623-4] 21 or 21 and 22 James I. c. III., ss. 1, 6 . . .	Monopolies
[1627] 3 Charles I. (Petition of Right) c. I.	Justice and Liberty
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[1688] 1 William and Mary ss. II. (Bill of Rights) c. II. . .	Justice and Liberty
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