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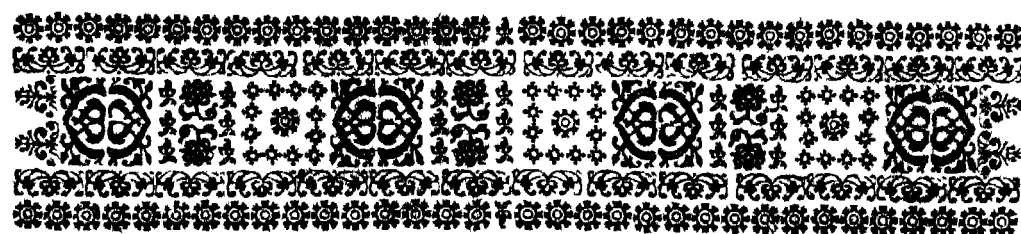
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THE



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P U B L I C K L A W;
 B E I N G A
 S U P P L E M E N T
 T O T H E
 C I V I L L A W
 I N I T S
 N A T U R A L O R D E R.



B O O K I.

Of the Government and General Policy of a State.



HERE is no Body who is not thoroughly persuaded of the Consequence of good Order in a State, and who does not sincerely wish to see that State well regulated in which he is obliged to pass his Life. For every one comprehends and feels within himself by Experience and by Reason, that the said Order concerns and regards him in several Manners. So that Self-Love is sufficient to inspire this Sentiment into all those who are not of seditious or rebellious Tempers, or engaged in other irregular Courses which Order and Justice do not allow of. But altho there be nothing more natural to every Man than to consider in the Publick Good the Share which

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he himself has in it, and that this Consideration ought to have the Effect of engaging all sorts of Persons without Exception, to contribute on their part to the Support of it; yet we see on the contrary that nothing is more frequent than to find even some of those who by their Employments are engag'd to apply themselves to this Publick Good, who shew by their Conduct that they are either very little influenced by, or very little instructed in the Principles which ought to engage them to such a Duty.

Every Body knows that the Society of Mankind forms a Body of which every one is a Member: and this Truth which the Scripture teacheth us, and which the Light of Reason makes clear

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and

and evident *a*, is the Foundation of all the Duties which respect the Conduct of every Member towards all the other Members in particular, and towards the Body in general. For these sorts of Duties are nothing else but the Functions which are proper to the Engagements under which every one happens to be by the Rank which he holds in this Body.

It is from this Principle that we are to draw, as from the Fountain, all the Rules of the Duties both of those who govern, and of those who are subject to the Government. For it is by the Situation every one holds in the Body of the Society, that God, of whom he holds his Place, prescribes to him, by calling him to that Station, all his Functions and all his Duties. And as he enjoins to all the exact Observance of the Precepts contained in his Law, and which are the common Duties of all sorts of Persons, so he prescribes to every one in particular the Duties which are peculiar to his State and Condition, by the Rank which he holds in the Body of which he is a Member, which implies the Functions and Duties of every one of the Members towards all the others, and towards the Body.

If we examine upon this Principle which is so certain, so plain and so natural, the Conduct of particular Persons, as to what concerns their Duties towards the Publick, and the Conduct of those whose Profession obliges them to promote the publick Good, and to maintain Order in the State; we shall find that all the said Members are so far from considering themselves under this Obligation, and from directing to this end the Functions which their Rank demands of them, that the greater part consider only themselves, without any regard to the Body of which they are Members, and regulate all their Conduct without any View of the Order or Publick Good of the said Body. But every one places his All in himself, and his Self-Love directing the whole Conduct of his Life to his own particular Advantage, he consecrates to it the entire use of the Rights, the Duties, and the Functions which he ought to exercise only as being a Member of the common Body, and he turns them even against the Good of the said Body, if he thinks that his own particular Good requires that he should make this bad

use of them, or he quite abandons if he finds that he cannot draw them some Profit or Advantage to self. Thus, we see an infinite number of Persons, who instead of giving to the Dignity annexed to the publick Charges in which they are placed, its natural Use, which is to give Authority to their Ministry, by procuring Respect and Obedience from those who are subject to their Jurisdiction, use their Authority to no other purpose than to display their Ambition, and to draw to their Persons the Honour and Respect which is due only to the Rank which they hold. Thus, we see some who make no other use of the Authority of their Offices, which are destined for the Support of Justice, than as a Handle to exercise Injustice and Violence, and to oppress those who ought to be protected by that Authority. Thus, the greater part exercising their Ministerial Functions only with a view to the Honour, Profits, and other Advantages which accrue to them thereby, they act and are in effect only as dead Members, when their Self-Love discovers no other Advantage to be reaped from their Functions besides the Publick Good.

It appears sufficiently by this first Reflection, what is the Foundation of all the Duties of those who ought to contribute to the Publick Order; and that since this Order cannot subsist but by the Concurrence of the Functions of all the Members who compose the Body of the Society, the Depravation or Corruption in the Discharge of the said Functions by the Members, or their bare ceasing to perform them, produces in the Society as it were a Distemper which troubles and disturbs the Order of it. Seeing therefore it is upon the Foundation of this Truth, *That the Society forms a Body of which every one is a Member*, that the different Rules concerning the Duties of those who compose this Society are built, and that the said Duties are the most essential Part of the Matters of the Publick Law; we have been obliged to begin the particular detail of these Matters by this Reflection on the said Foundation, which will be of use in all the subsequent Parts of this Book, where we shall explain the Functions and Duties of the several sorts of Persons whose Employments may have any manner of relation to the Publick Order.

a Dominus membrorum horum non videtur. 1. 12. 2. 24. 25. 26. But now hath God for the Members every one of them in the Body, as it hath pleased him. 1 Cor. 12. 28.



TITLE I.

Of the Government and General Policy of a State.

*Divers
sorts of
Govern-
ments.*

ALTHOUGH every State hath its peculiar Manner of Government, and there be in all States some Laws or Usages which distinguish the Names, the Number and the Power of those who are placed in the highest Stations; yet there is this common to all of them, that the general Order is maintained in them by a superior and sovereign Power, whether it reside in one or in many Persons.

They call those Monarchies, or Monarchical States, where the Sovereignty resides in one Person alone, to whom they give in general the Name of Prince: and they give the Name of Republicks to those States where the Sovereignty resides in many Persons.

The Monarchical States are of several sorts, Empires, Kingdoms, and others under divers Names: Many of them are Hereditary, and others are Elective. Among the Hereditary Monarchies there are some which descend only to the Heirs Male; and in others the Daughters succeed for want of Male-Issue. We may reckon among the Monarchical States, divers States which under the Names of Dutchies, Counties, Marquissdoms, and other the like Names, form Principalities of which the Dukes, the Counts, the Marquisses, are Sovereigns; and altho they hold their Sovereignities and Principalities as Fiefs of other Princes to whom they are Vassals, yet they have nevertheless a Sovereign Empire over their Subjects. There are even some Kingdoms which are held in Fee. There are likewise Principalities annexed to Bishopricks, and which go to the Bishop by virtue of his Election to the Bishoprick.

Republicks are also of divers sorts: For there are some of them which are called Aristocracies, where the Government is in the hands of Persons of the first Rank: And there are others which are called Democracies, in which Persons of the meaner sort of the People may be called to the Government. They give likewise the Name of Oli-

garchy to some Republicks, where the Government is in the hands of a few Persons, to distinguish them from the others where the Government is in the hands of a greater Number. Thus these several Manners of Government in Republicks distinguish them from one another; but they have all of them this in common, that it is by Election that the highest Places in them are filled, whether this Election be made by a certain Body which has the Right of electing, or by Deputies of divers Orders, or by other Ways.

Of these two general Kinds of Government, Monarchical and Republican, the Monarchical is the most universal and the most ancient. It is the most universal, because we see that at this Day the whole World is divided into Monarchies, excepting a small number of Republicks; and because we know from the Histories of all Ages, and of all Places, that this sort of Government hath always been most in use. And it may be observed that all the Republicks which are now extant in Europe, where is the greatest number of them, have all of them put together only a very small Extent of Territory, and that there is not one of them but what has been taken out of a Monarchical Government which went before it. For they have all of them been taken off either from the Roman Empire, or from other Monarchical States. And if we look back to the Republick of Rome, the most flourishing Commonwealth that ever was, we know that it was preceded also by a Monarchy.

As to the Antiquity of these two Forms of Government, that of Monarchy hath its Origin from the Creation of the World, when it was altogether natural, that one single Family becoming one People, the Paternal Power of the first Head of the Family, whose Children and Descendants composed the said People, should be in his Person a Right of Government, and that this Unity of Government which was natural in the first Beginning of the Society of Mankind should continue in it. Thus we see that after the Deluge, which put Mankind into the same Condition they were in at the Creation, one only Person was the Head of the first Society; and when it divided and dispersed itself in order to form many Societies in divers Countries, each Society retained this Manner of Government. We may likewise observe, that in the Holy Scriptures, which are the only Writings wherein

*Which of
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ments
ought to be
preferred,
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chy or a
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wealth.*

wherein we have the History of many Ages from the Creation of the World, before those other Ages of which we have some Vestiges in the other Books, there is not the least mention made of Republicks. But we see there, that Monarchical States were every where in use, and so multiplied, that in the small Extent of Territory which envisioned the State of the *Jews*, there was reckoned a great number of Kings, every one of which could have but very narrow Dominions. And in the succeeding Ages, we see from the same Holy Writings, and from other Books, that almost all the Governments of the Universe have been Monarchical.

It would seem that we might gather from this Antiquity of the Monarchical Government, from its Origin, which it derives from the Paternal Government, and from its Duration in all Ages over the whole World, that it is the most natural Government, and that it is the Government which the Generality of People have judged to be the most useful. And altho it be true, that the Multitude is not always of the most reasonable Opinion, yet this Truth is restrained to two sorts of Opinions and Sentiments, in which the Plurality is often subject to Error. One sort is of the Opinions in Matters the Knowledge whereof depends on the Principles of Sciences, that are known but to a few Persons, and of which the Truths are hidden, and often contrary to what appears to the Senses, which the greater part of Mankind make the Rule of their Judgments. And the other sort is of the Sentiments which are inspired into us by the Corruption of our Hearts, the Bias of Self-Love, and the Impressions of the Passions; for seeing we are all born with an Inclination to Evil, and that but few Persons attain to that degree of Perfection as to govern their Actions by the Views of Truth and of Justice; the Multitude goes astray and wanders in the Sentiments which proceed from the Heart: and we should judge almost always very imprudently, very falsely, and even criminally, if we should judge of the Sentiments and Motions of the Heart according to the Taste of the Multitude. Thus, for example, we should make a wrong Judgement if we should think that the Love and Pursuit of Measures, of Riches and Honours, were the best Course, because it is that which the Multitude follows. But in Matters in which the Knowledge of Justice and Truth does not depend ei-

ther on the Study of Sciences, the Purity and Uprightness of Heart, and where the Diversity of Opinions is no ways contrary to Reason nor to good Manners, the Multitude judges almost always better than those Persons who have a mind to distinguish themselves from the Croud, and who pursue other Views than those to which natural Inclination leads the Generality of Mankind. For that Inclination is nothing else but a Propensity to follow the Lights which God gives us naturally; and Reason is the Principle which he has given us for the Use of the said Lights. We see likewise sometimes that this Bent of the Multitude to an Opinion, is founded on natural Principles which are not so easily discovered, and which those who lean to the contrary Opinions have not enquired into. The Reader may meet with an Instance of this in the Preamble of the third Section of the ninth Title of this first Book.

We may add to all these Considerations, which prove that the Monarchical State being the most universal and the most antient, is the most natural and most useful, that it is likewise the most conformable to the Spirit of the Divine Law, and to the Government of God himself over Mankind. For it was this sort of Government that God made choice of, when he set about forming a People over whom he was to display his Almighty Providence, that he might represent another People which he was to gather out of all the Nations of the World, and which was likewise to have one only Sovereign, whose Reign should reach over all the World, and to all Ages. He began with chusing and distinguishing one Family, and establishing therein the Person who was the Head of the Family as the first Sovereign Prince, allowing him likewise the Use of Arms: the Descendants of this first Head who composed this elect People having been in a Captivity of four hundred Years under the Tyranny of a neighbouring People, where they multiplied to such a degree as to make up more than six hundred thousand Men able to bear Arms. When it was the Will of God to deliver them out of that Captivity, he raised up unto them a Deliverer who set them free, and who exercised over this People all his Life-time the Functions of a Prince under the

a Know of a Surety, that thy Seed shall be a Stranger in a Land that is not theirs, and shall serve them, and they shall afflict them four hundred Years. Gen. 15. 23. Acts 7. 6.

visible

ible Direction of God, who employ-
 that Man alone to execute his Or-
 ders in every thing relating to the Go-
 vernment. And ever after, this People
 had always Leaders, who governed
 them under the Name of Judges, that
 is to say, according to the Stile of the
 Holy Scriptures, Princes who had the
 Government. Thus, during the Life-
 time of *Moses*, and of the Princes his
 Successors, the Government of the
Jewish Nation was always Monarchi-
 cal, that is to say, in the Person of one
 Man alone; so that when *Moses*, find-
 ing it impossible for him of himself
 alone to regulate all the Controversies
 of the People, chose out among the
 Elders the wisest and most skilful Per-
 sons to ease him in his Function, he re-
 served to himself the Cognizance of
 such Difficulties as might be too hard
 for the ordinary Judges, and might de-
 serve that he himself should hear and
 determine them *b*. From the begin-
 ning of the Government of *Joshua* his
 Successor, God told him that he should
 be with him as he had been with *Moses*;
 and he began to act as Chief, he alone
 having the Government, giving out his
 Orders to the first among the People
 who were to command under him, and
 who promised him all of them a faith-
 ful Obedience, they declaring to him
 at the same time, that the first who
 should fail to obey him in every thing
 which he should command, should be
 put to death *c*.

The Government of the Judges was suc-
 ceeded by that of the Kings, by a Change
 which it is not necessary to explain here.
 For the Question here is not concern-
 ing the different Manners in which one
 Person alone may have the Govern-
 ment; but only in general about the
 Preference of the Government of one
 Person alone to that of a Common-
 wealth, as being the most natural and
 the most conformable to the Govern-
 ment which God himself exercised over
 his chosen People. And in effect, after
 that God had given to this People a
 King which they had desired of him,
 and that he had punished both the Peo-
 ple for having desired a Government
 different from that which he himself
 had directed, and also the King for not
 having followed all his Orders; yet ne-

vertheless he gave unto them a second
 King, and he himself chose for that
 Office a Person who deserved that sin-
 gular Commendation of being a Man
 according to God's own Heart *d*, and
 whom he render'd worthy to represent by
 his Reign that of the Prince who was
 to be born of him, and who was to
 form that heavenly Kingdom, of which
 the Kingdom of that chosen People was
 a Type and Figure. And he gave to this
 second King many Successors of his own
 Descendants, who reigned over the
 People.

We see by this Succession of Monar-
 chies over all the World, and through-
 out all Ages, and by the Conduct of
 God towards the *Jewish* Nation, that
 the Monarchical State is the most na-
 tural and the most conformable to that
 which God himself exercised over his
 own People. And it is by this same
 Conduct that God having formed the
 Society of every State, as a Body of
 which the Persons who compose it are
 so many Members, he has established
 in every State a Head *e* to govern it,
 and to be in his stead, as a Father in a
 Family, and who by the Unity of the
 Government imitates and represents the
 Government of his Providence, and
 contains the Members of that Body of
 which he is Head within the Bonds and
 Ties which ought to form the Order of
 the Society which unites them.

It seems to follow from these Truths,
 that the Monarchical State is the most
 natural, and the most useful. And like-
 wise we see, that the Inconveniencies
 which cannot fail to arise in all Things
 wherein the Conduct of Men has any
 share, are naturally less in Monarchies
 than in Commonwealths. Thus, in a
 Monarchy the Subjects do not dream of
 aspiring to the Dignity of Sovereign;
 and we find there much fewer Cabals
 and Factions. For the Ambition of
 particular Persons having for its Bounds
 the Rank of a Subject, it never goes
 the Length of an Attempt in any one
 to raise himself to the Dignity of So-
 vereign, and to disturb the State by Se-

d He raised up unto them David to be their
 King, to whom also he gave Testimony, and said,
 I have found David the Son of Jesse, a Man after
 mine own Heart, which shall fulfil all my Will,
 Acts 13. 22.

e The Lord hath sought him a Man after his own
 Heart, and the Lord hath commanded him to be a
 Captain over his People, because thou hast not kept
 that which the Lord commanded thee, 1 Sam. 13.
 14.

f Over every Nation hath he set a Ruler, Ec-
 cl. 10. 17. 14.

b And the Cause that is too hard for you, bring
 it unto me, and I will hear it, Deut. 1. 17.

c Whosoever he be that doth rebel against thy
 Commandment, and will not hearken unto thy
 Words in all that thou commandest him, he shall
 be put to death, Joshua 1. 28.

ditions and Civil Wars. But in a Commonwealth many Persons being capable of pretending to the highest Stations, and the Way being open to them by Election, Cabal and Party have often times a greater Share in the Elections than Merit. And those who aim at the first Places, never fail to make Cabals that they may succeed in their Design. And if they want Occasions and Conjunctions for employing Force, they endeavour to gain Voices by Bribes, by Promises, by Threatenings as to those whom they think they can influence by such means, and by other ways, which cause Divisions in Families, corrupt those who have the Right of electing, and raise to the Government the worst of Subjects. Thus these unjust Elections are likewise attended with the Inconvenience of Envy, Jealousies, Divisions, Enmities, and make that Submission to those who get into the Places of the Government by these unfair ways more unskome, and sometimes more odious. The Elections that are made even in the fairest manner, do not hinder those who think they have more Merit than the Persons raised over their Heads to the Government, from looking on them with a jealous Eye, and do not prevent divers bad Consequences which attend Popular Elections, and which are directly opposite to the publick Good, which ought to be the Fruit of Government. We see likewise in Commonwealths, that those who are in the highest Stations having their own proper Interest, and that of their Families, separate and distinct from the Interest of the State, the publick Good is in danger of being postponed to their own private Advantage, on all Occasions where their Preferments may be useful to promote their particular Interests. Whereas in a Monarchy the Sovereign Power being in the hands of one only Person, who ought to have one only View, and one only Interest, that of the Good of the State, which he ought to look upon as his own proper Interest, nothing divides it. And this Unity, which doth not hinder the Use of good Counsels, makes the Resolutions more steady, more secret, and more adapted to the Good of the State, and facilitates the Execution of them, rendering it more expeditious, more powerful, and more absolute by the Union of all the Forces, and of every thing which belongs to the Execution in the Person of the Sovereign, in whom resides the Fidelity and Unity of the Government.

Besides these Advantages which are natural to Monarchical Government, we may take notice of one more that is common to almost all the Monarchies that are in being, and which is not to be met with in the greatest part of Commonwealths. Every body knows that in order to procure and to preserve the Good of a State, it is necessary that due Care should be taken that it may abound with all Things which may contribute to the Necessities and Conveniences of Life for all sorts of Persons who are Members of it; that the People may live there in Peace, and in Safety against all Attempts from Neighbours and Enemies; that Justice may reign in it absolutely, and without controul; that the Art of War, Sciences, Arts, Trade may flourish there by the Multitude of Persons who cultivate them, and by distributing Rewards to the Trades and Professions of such Persons as have done singular Services to the Publick; that the publick Revenue be so regulated as that it may be sufficient for the Expences which all those Things demand, which are necessary for the common Good of the State. From whence it follows, that the larger a State is, the more it has all these Advantages, and it hath them in a less Degree, in proportion to the Narrowness of its Bounds. For in a small Territory all sorts of Things are in less plenty, and the Inhabitants have not the Helps necessary for procuring them elsewhere: Skilful and able Persons are to be found there in a much smaller Number: There is but little Assistance to be had from the publick Revenue: The Inhabitants are greatly exposed to the Insults of Strangers, and the most considerable Attempts against them are enough to overturn the State. Seeing therefore it is for the Good of a State that it flourish and support it self by its Wealth and by its Strength, which cannot be done without an Extent of Territory that may be able to supply it with every thing that is necessary, we may venture to say that these Advantages have always been, and are still naturally peculiar to all the great Monarchical States, such as we see at this Day in the far greatest part of the World; and that they are wanting in almost all the Commonwealths that are now in being, for they are confined to a narrow Extent of Territory, and their small Force exposes them to the Insults of their Neighbours, and obliges them to im-
plore

fore the Protection of other Princes, which may some time or other bring them under the Subjection of a foreign Dominion, and be attended with troublesome Consequences. And that which causes this small Extent of Territory in Republicks, and deprives them of the Advantages which great States have, is because the Government of Republicks is natural only to a small People, who separate and distinguish themselves from others by their peculiar Manners, that they may reunite themselves by Ties which link those who are Members of their Society more closely together, and be associated under a Government which is more agreeable to their Inclinations; so that this Union is not so easily formed among many People. But the great States have been formed either by the Increase of the first People who got first possession of a Country, or by Conquests which have enlarged its first Boundaries; and some States, especially those of *Europe*, were large Portions taken out of the *Roman Empire*, when it was dismember'd. And all these Ways, and the others which may have given Birth and Increase to all the great Monarchies, have had this Consequence of putting them in a Condition not to fear the Attempts of one another, and of procuring in every one of them plenty of every thing that may be for the Good and Support of a State.

We must not urge as an Instance against these Remarks on the Advantages of Monarchical Government, the Grandure of the Commonwealth of *Rome*; for we are to consider as the Body of that Commonwealth only *Rome* it self, or the People of *Rome*, who, having made themselves Masters of other Nations, did not look upon them to be Parts of their Commonwealth, but only as States subject to their Dominion. And as for the Inconveniences which Commonwealths are liable to, the Commonwealth of *Rome* fell in a few Ages into the greatest of those that have been taken notice of, having been brought to its end by the Ambition of the Authors of the last Civil Wars, in which the Conqueror made himself Master of the Commonwealth, and converted it into a Monarchy.

We may add to these Reflexions on the Advantages of Monarchies, those of *France*, which, of all the States of the World, is that wherein the said

f *Even si neceſſe eſſet Republicam per annum conſuli. L. 11. ff. de orig.*

Advantages do most abound, by its extent into several large Provinces, by its Situation in the most temperate Climate, and bordering on the two Seas; by its producing every thing that is either good or necessary for human Life; by the Multitude of its Springs, Rivulets, and Rivers proper for Navigation, in order to have an easy Communication between the several Provinces; by its lying near several neighbouring States; by the Politeness of the Nation, which produces many great Genius's and Great Men in all sorts of Professions; by its Riches, and its great Forces. And likewise there never was known a State which had so long and firm a Duration with so many Advantages over and above others.

It seems that we may gather from all these Reflexions, that Monarchical Government ought to be preferred to that of a Republick; and that it follows from some of the Reasons of the said Preference, that among Monarchies the Government of those which are Hereditary is more natural, more useful, and attended with fewer Inconveniences than that of Elective Monarchies. For whereas in Hereditary Monarchies it is God himself who seems to dispose more visibly of the Government, by calling to it Princes by their Birth; Elections are liable to great Inconveniences, whether it be by the Choice of the Persons, in which it is easy to be deceived, or by Cabals and Factions. And the Reign of Elective Princes, even those whose Election has been carried on in the fairest way, has its Inconveniences of Divisions in the Election, of long Interreigns which expose the Country to Factions and to other bad Consequences, of want of Obedience to an Authority that is not so absolute, of Slowness in the Dispatch of the publick Affairs, and other bad Consequences. So that of all the States, the most natural, and the most perfect, is that of Hereditary Monarchies, which descend only to the Male Issue.

It is not necessary that we should answer here the Objections of the Inconveniences which happen in Monarchies, when the Sovereigns chance to be incapable of supporting the Weight of the Government, whether it be because of their Minority, or because of some Defects they may labour under, or even because of Vices which may incline them to make a bad Use of their Power. We all know that there is in every thing divers sorts of Inconveniences, that

that there is nothing upon Earth so good and so perfect as to be quite free from all manner of Inconvenience, and that the best Establishments have their Imperfections; so that these Objections prove nothing at all. For besides that the Inconveniencies of Republican Governments are more frequent, and as great, or rather greater than those of Monarchies, when the matter is to judge of the Usefulness of a Government, and of all other sorts of Things, we ought to consider the Nature thereof in it self, and to judge that to be the best which hath naturally the Characters of the greatest Good. And as for the Inconveniencies which may happen in Monarchies by reason of any Vice or Defect in the Prince, they are an Effect of the Providence of God, which we ought to bear patiently, in the same manner as the bad Successes of the justest Wars, and the other Chastisements which come from the Hand of God. For it is to him alone that the Events of Things are reserved, and no human Prudence is able to ascertain them to be good: and it is in his Hand that Governments are, and the Wills of those who govern. And even in States where the Governors have the greatest Wisdom and Application, whether it be in Monarchies or Commonwealths, there is no preventing an infinite number of Injustices committed by those to whom the Sovereign or the Republick are obliged to intrust that which those who are in the highest Stations of the Government are not able to do by themselves. And these Injustices are often more criminal than those which might proceed from the Sovereign himself. And in a word, God himself hath forewarned us, not to be surprized if we see Iniquity seated in the Throne of Justice. For if those who are set over others do not take care to maintain Justice in their Dominions, God has reserved it to himself to manifest his Power in the Severity of the Punishment which he prepares for the Injustices of those Princes who shall not have taken his Law for their Rule, and who shall not have reigned according to his Spirit.

g The King's Heart is in the hand of the Lord, as the Towers of Water: He turneth it whithersoever he will, Prov. 21. 1.

h If thou seest the Oppression of the Poor, and violent perverting of Judgment and Justice in a Province, mark not at the matter: For that is higher than the highest regardeth, and there is higher than they: Moreover, the Profit of the Earth is for all: The King himself is serving the Field, Eccles. 5. 8, 9.

For Power is given you of the Lord, and Sovereignty from the Highest, who shall try your Works, and search out your Counsels. Because being Ministers of his Kingdom, you have not judged aright, nor kept the Law, nor walked after the Counsel of God, horribly and speedily shall he come upon you, for a sharp Judgment shall be to them that be in high Places. For Mercy will soon pardon the meanest, but mighty Men shall be mightily tormented. Wils. of Sol. 6. 3, 4, 5, 6.

Be wise now therefore, O ye Kings; be instructed, ye Judges of the Earth. Serve the Lord with Fear, and rejoice with Trembling. Kiss the Son, lest he be angry, and ye perish from the Way, when his Wrath is kindled but a little: Blessed are all they that put their Trust in him, Psal. 2. 10, 11, 12.

What has been said hitherto of the Advantages of Monarchical Government, and of that among the rest of its Conformity to the Government which God himself exercised over the Jewish Nation, ought not to have this effect, That because all these Considerations seem to prove that the Monarchical Government is the most natural, the most useful, and the most conformable to the Conduct of God, we ought from thence to conclude that the Government of Commonwealths is contrary to the Order of Nature, and opposite to the Spirit of God; since not only hath he not made a general Law ordaining this only kind of Monarchical Government to be established in all Countries; but he has even approved the Government of Republicks, having made no manner of Alteration in those Republicks which he has enlighten'd with the Light of his Gospel. For his Apostles and their Successors lived peaceably in all States, under the Government which they found established in them, and without meddling with their Form of Government, whether it was Monarchical or Republican, they taught the reciprocal Duties both of those who govern, and of those who are subject to the Government; having looked upon all the rest which concerns the Quality and the Title of those who govern, whether they be Princes, or others, as a Temporal Matter, subject to divers sorts of Temporal Policies, every one whereof may suit with the Gospel, especially seeing that even in the Matters of the Spiritual Policy of the Church, its Discipline is different in divers Places, and even in the same Places it hath been subject to Changes.

We could not forbear before we should proceed to the Detail of this Matter of Government, to consider this Question, Which of the two Governments is the most useful. For al-

The Reason why we have thought fit to examine this Question tho here.

tho it may seem that every Nation is prepossessed as to this Question, and gives it in favour of the Government to which they themselves are subject, and that this Question may appear to be a mere Curiosity; yet it is of Importance on one part to know the Truth in this matter, and on the other part to know what are the Duties of those who happen to live under one of these two sorts of Government, which is, or which they believe to be the least advantageous; for there are many Persons who would prefer to the Government under which they themselves live that of the other kind. And we may be able to judge by all the Reflexions which have been made, both on the one and the other Form of Government, that altho it appear that Monarchy is the best of Governments, yet seeing both the Forms agree with Religion, and are consequently agreeable to the Order of God, that we may perform under either of them all our Duties; and that we ought for this Reason to live peaceably under that Form of Government where our Lot has cast us, it was necessary to examine this Question; that whilst we gave the Preference to Monarchy before a Commonwealth, we might declare at the same time, what is very true, that the Reasons of this Preference are of no other use than to satisfy those who shall relish them; and to inform others, that the Liberty of their Sentiments on this Question, which no body can take from them, does not free them from the Necessity of obeying sincerely the Government under which it is their Lot to live, be it Monarchy or a Commonwealth; and that every Attempt to disturb the Peace and common Good of either the one or the other Form of Government, is a Crime whose Heinousness cannot be sufficiently punished. These Truths agree perfectly well with all that has been said on this Question: So that the natural Conclusion to be gathered from thence is, That they who live in a Monarchical State may very justly believe that theirs is the best Form of Government; and that those who live in a Commonwealth, and who would prefer Monarchy to their Republican Government, are nevertheless bound to yield perfect Obedience to the Commonwealth; and that all of them without distinction, whether they reason on this Question, or whether they do not think at all of it, and whatever Opinion they may be of, are equally obli-

ged to pay Obedience to the Government under which they live, pursuant to the Rules which shall be explained under this Title; which we shall divide into two Sections, which shall comprehend all that we thought could well be digested into Rules on this Subject: One Section shall be of the Necessity and Use of Government; and the other of the Obedience due to Governors.

S E C T. I.

Of the Necessity and Use of Government.

The CONTENTS.

1. *Causes of the Necessity of a Government.*
2. *Paternal Authority the first kind of Government.*
3. *The Distinction of Employments demands a Government.*
4. *The Multitude of Families, which is necessary in a State, requires also a Government.*
5. *Another Cause of the Necessity of Government, for the punishing those who disturb the publick Order.*
6. *It is from God that Sovereigns derive their Authority.*
7. *The Use of Government.*

I.

ALL Men being equal by their Nature, that is to say, by Humanity which makes their Essence, it does not make any one of them dependant on the others *a*. But in this Equality of Nature they are distinguished by other Principles which render their Conditions unequal, and form among them Relations and Dependencies which regulate the different Duties of every one toward the others, and render the Use of a Government necessary to them; as will appear by the Articles which follow.

a I my self am a mortal Man, like to all, and the Offspring of him that was first made of the Earth. And when I was born, I drew in the common Air, and fell upon the Earth, which is of like nature; and the first Voice which I uttered was crying, as all others do. For there is no King that had any other Beginning of Birth. For all Men have one Entrance into Life, and the like going out. Wild. of Solomon. Chap. 7. ver. 1, 3, 5, 6.

Quod ad jus naturale attinet, omnes homines aequales sunt. l. 32. ff. de reg. jur.

1. *Causes of the Necessity of a Government.*

II.

2. *Paternal Authority the first kind of Government.*

The first Distinction which subjects some Persons to others, is that which is made by Birth, between Parents and Children. And this Distinction makes a first kind of Government in Families, where the Children owe Obedience to their Parents who are the Heads of the Families *b*.

b Honour thy Father with thy whole Heart, and forget not the Sorrows of thy Mother. Remember that thou wast begot of them; and how canst thou recompense them the Things that they have done for thee? Ecclus. 7. 27, 28.

Children obey your Parents in all Things. Colos. 3. 20.

III.

3. *The Distinction of Employments demands a Government.*

The second Distinctions of Persons, is that which is made among all Men by the Necessity of the divers Employments that are necessary to form the Society, and to unite them all in a Body, of which every one is a Member *c*. For as God has render'd necessary to every Man the Assistance of many others for several Wants, so he has distinguished their Conditions and Employments for the respective Uses of all these Wants, assigning to every one of them their Place where they ought to apply themselves to their Functions. And it is by these Differences of Employments and Conditions, depending the one upon the others, that are formed the Ties which compose the Society of Men, as the Conjunctions of the several Members compose the Body. And this renders the Use of a Head necessary for uniting and governing the Body of the Society, which these several Employments ought to form, and for maintaining the Order of the Correspondencies which are to supply the Publick with the Use of the different Functions due from every one according to his Situation, which makes his Engagement *d*.

c But now hath God set the Members, every one of them in the Body, as it hath pleased him. And if they were all one Member, where were the Body? But now are they many Members, yet but one Body. 1 Cor. 12. 18, 19, 20.

For he hath made the Small and Great. Wild. of Sol. 6. 7.

d Abide in thy Labour. Ecclus. 11. 21.

IV.

4. *The Multitude of Families demands a Government.*

The same Cause which demands this Variety of Professions for composing the Order of a State, demands also the

associating of many Families together that they may increase and multiply and bring up Persons fit for all employments, and perpetuate the Duration of them. And the Wants of the Families, which imply the Use of those very Employments, depend on infinite Detail of Ties and Engagements of the one to the other, which render the Order of a Government necessary *e*.

e By these were the Isles of the Gentiles divided in their Lands, every one after his Tongue, after their Families, in their Nations. Gen. 10. 5.

V.

This is likewise a Consequence from all these Principles, that seeing all Men are not inclined to perform all their Duties, and that on the contrary many are prone to Wickedness; it was necessary, for maintaining the Order of their Society, that Injustices and all Attempts to disturb the said Order should be repressed; which could not be done but by an Authority given to some Persons over the others, and which made the Use of a Government necessary *f*.

f But if thou do that which is evil, be afraid; for he beareth not the Sword in vain: For he is the Minister of God, a Revenger to execute Wrath upon him that doth evil. Rom. 13. 4.

VI.

This Necessity of a Government over Men whom their Nature makes all equal, and who are not distinguished one from the other but by the Differences which God puts between them by their Conditions, and by their Professions, shews that it is on the Divine Order that Government depends; and as there is none but God alone that is the Natural Sovereign of Men *g*, so it is likewise from him that they who govern derive all their Power and Authority, and it is God himself whom they represent in their Functions *h*.

g For the Lord is our Judge, the Lord is our Lawgiver, the Lord is our King, he will save us. Isa. 33. 22.

h He set a Ruler over every People. Ecclus. 17. 17.

For Power is given you of the Lord, and Sovereignty from the Highest. Wild. of Sol. 6. 3.

By-me Kings reign, and Princes decree Justice. Prov. 8. 15.

I will not rule over you, neither shall my Son rule over you: The Lord shall rule over you. Judges 8. 23.

Thine is the Kingdom, O Lord, and thou art exalted as Head above all. 1 Chron. 29. 11. In thine hand is Power and Might, and in thine hand it is to make Great, and to give Strength unto all. Ibid. 12.

It may be remarked on what is said in this Article, that it is from God that Sovereigns derive their Power, that it is one of the Ceremonies in the Coronation of the Kings of France, for them to take the Sword from off the Altar, thereby to denote that it is immediately from the Hand of God that they derive the Sovereign Power, of which the Sword is the principal Emblem.

See on the same Subject the Preamble of the following Title.

VII.

7. The Use of Government.

We see clearly enough by these Causes of the Necessity of a Government, what the Use of it is; and that in general it is to maintain the publick Order in the whole Extent of the several Parts whereof it consists, to keep the particular Subjects in peace, and to punish the Attempts of those who disturb the Peace and Tranquillity of the State, to procure that Justice be administer'd to all who are under a necessity of suing for it, and to take care of every thing that may be necessary for the common Good of a State *i*.

i That we may lead a quiet and peaceable Life. 1 Tim. 2. 2.

S E C T. II.

Of the Obedience due to Governors.

The CONTENTS.

1. Obedience due to Governors.
2. Obedience to the supreme Head.
3. This Obedience is a Duty of Conscience.
4. Obedience to the Ministers of the Sovereign.
5. Wherein consists the Obedience to Government.
6. The Extent and Limits of this Obedience.

I.

1. Obedience due to Governors.

SEEING Government is necessary for the publick Good, and that it is God himself who hath established it, it is consequently necessary also that those who live under its Jurisdiction, be subject and obedient to it. For otherwise it would be God whom they would resist; and Government, which ought to be the Band of Peace and Union, from whence the publick Good of a State is to arise, would be an Occasion of Division and Troubles, which would end in the Ruine of the State *a*.

a Let every Soul be subject unto the higher Powers. For there is no Power but of God: The Powers that be, are ordained of God. Whosoever therefore resisteth the Power, resisteth the Ordinance of God. Rom. 13. 1, 2.

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II.

The first Duty of Obedience to Government, is that of obeying those who are placed in the highest Station, whether they be Monarchs, or others who are Heads of the Body that is formed by the Society, and to obey them in the same manner as the Members of the natural Body obey the Head to which they are united *b*.

2. Obedience to the supreme Head.

b Submit your selves to every Ordinance of Man for the Lord's sake, whether it be to the King, as Supreme. 1 Pet. 2. 13.

III.

This Obedience ought to be considered, with respect to him who is vested with the Government, as the Power of God himself, who hath established him as his Vicegerent here on Earth. Thus, it is not out of fear of the Weight of the Authority wherewith the supreme Governor is clothed, and of the Punishments due to Disobedience, nor in consideration of the Advantage which we may reap by our Obedience, that we ought to obey, but out of a sincere Will to perform an essential Duty. For altho the Meanness of the Motives of fear of Punishment, and of Self-Interest, does not destroy the publick Order, provided the Obedience be otherwise entire, yet it is nevertheless imperfect for accomplishing the Duty of him who ought to obey; because this Duty is in him an Engagement which binds his Conscience, without any regard to his particular Interest, which Self-Love may suggest as a Motive for his Actions.

3. This Obedience is a Duty of Conscience.

c For Rulers are not a Terror to good Works, but to the Evil: Wilt thou then not be afraid of the Power? Do that which is good, and thou shalt have Praise for the same. For he is the Minister of God to thee for good: But if thou do that which is evil, be afraid, for he beareth not the Sword in vain; for he is the Minister of God, a Revenger to execute Wrath upon him that doeth evil. Wherefore ye must needs be subject, not only for Wrath, but also for Conscience sake. Rom. 13. 3, 4, 5.

IV.

Seeing the Government implies a great many particular Functions, which the Sovereign alone is not able to perform; and besides those which are peculiar to himself, and which he does not intrust to other Persons, there are many Functions which he commits to divers sorts of Officers, Ministers, or others who have a share in the Government; the same Duty of Obedience to

4. Obedience to the Ministers of the Sovereign.

Qq 2

the

the Sovereign obliges us likewise to pay obedience to those Persons to whom he commits the said Functions *d.*

d Submit yourselves to every Ordinance of Man for the Lord's sake, whether it be to the King as supreme, or unto Governours, as unto them that are sent by him for the Punishment of evil Doers, and for the Praise of them that do well. 1 Peter 2. 13, 14.

V.

5. Where in consists the Obedience to Government.

The Obedience to Government comprehends the Duties of observing the Laws, of doing nothing that may be contrary to them, of executing what is commanded, of abstaining from what is forbidden, of bearing the publick Charges, whether they oblige the Subjects to the Performance of some Functions, or to some Contributions: and in general every one is obliged not only not to transgress in any thing against the publick Order; but to contribute towards it every thing that may particularly be incumbent on him *e.*

e Let every Soul be subject unto the higher Powers. Rom. 13. 1.

Render therefore to all their Dues; Tribute to whom Tribute is due, Custom to whom Custom, Fear to whom Fear, Honour to whom Honour. Rom. 13. 7.

This is a Consequence of the preceding Articles.

VI.

6. The Extent and Limits of this Obedience.

Since this Obedience is necessary for maintaining the Order and Peace which ought to be formed by the Union of the Head and Members who compose the Body of the State, it makes it an universal Duty to all the Subjects in general, and in all Cases, to obey the Orders of the Sovereign, without leaving any Person at liberty to make himself Judge of the Order he is commanded to obey. For otherwise every one would be Master, by having a right to examine what is just, and what is not: and this Liberty would encourage Seditions. Thus, every particular Subject owes Obedience even to Laws and Orders that may perhaps be in themselves unjust, provided that on his part he can execute and obey them without Injustice *f.* And the only Exception

f Put them in mind to be subject to Principalities and Powers, to obey Magistrates, to be ready to every good Work. Tit. 2. 1.

Fear God, honour the King. Servants, be subject to your Masters with all Fear, not only to the Good and Gentle, but also to the Proud. For this is thank-worthy, if a Man for Conscience toward God suffers Grief, suffering wrongfully. 1 Pet. 2. 17, 18, 19.

Altho these last Words respect only the Obedience of Slaves to their Masters, yet they are ap-

which can dispense with a punctual and exact Obedience, is limited to the Cases where one cannot obey without disobeying the Divine Law *g.*

aplicable to the Obedience due to Princes, and they are commonly applied to it. For, as it is said in the Article, we must obey even unjust Orders, if we can do it without partaking in the Injustice.

g We ought to obey God rather than Man. Acts 5. 29.



TITLE II.

Of the Power, Rights, and Duties of those who have the supreme Authority.

THE Power of the Sovereign Authority ought to be proportioned to the Ministerial Function, and to the Rank which is held in the Body of the Society of Men who compose a State, by him who being the Head of it, ought there to supply the Place of God. For seeing it is God who is the sole natural Governour of Men, their Judge, their Lawgiver, their King *a;* there can be no lawful Authority of one Man over others, but what he derives from the Hand of God. Thus the Power of Sovereigns being a Branch of the Power of God, it is as it were the Arm and the Force of Justice, which ought to be the Soul of the Government, and which alone hath the natural Use of all Authority over the Minds and Hearts of Men; for it is over these two Faculties of Man that Justice ought to have its Empire.

The Authority of Justice over the Mind of Man, is nothing else but the Force of Truth over Reason and over good Sense; and the Authority of Justice over the Heart of Man is nothing else but the Force of its attractive Power which begets a Love thereof in the Heart. But because all Minds and all Hearts do not suffer themselves to be guided by the Light and Charms of Truth and Justice, and that many reject them, and give themselves up to commit Injustice, the Divine Providence has thought fit to order, that Justice should have other Arms besides Light to lighten the Mind, and Charms to touch the Heart, and that it should reign in another manner over those who

a The Lord is our Judge, the Lord is our Lawgiver, the Lord is our King. Isaiah 33. 22.

refist.

resist its natural Empire, which ought to regulate the Conduct of every Person.

It is in this manner that God, who is Justice and Truth itself, reigns over Men; and it is after this manner that he would have those to whom he entrusts the Reins of Government to use the Power which he gives them, that they may render their Government amiable to those who love Justice, and terrible to those who not being Lovers of Justice attempt to resist it.

According to these Principles, which are the natural Foundation of the Authority of those who govern, their Power ought to have two essential Characters: One is to support Justice, to which the said Power owes entirely its being; and the other is to be as absolute as the Empire of Justice ought to be, that is to say, the Empire of God himself, who is Justice, and who will reign by them, as he will have them to reign by him *b*; which is the reason why the Scripture gives the Name of Gods to those to whom God commits the Right of judging, which is the first and the most essential of all the Functions of Government *c*. For since this Right is natural only to God, it is him whom we ought to consider in the Person of those to whom he commits the Divine Function of governing and judging Men. And it is indeed the Judgment of God which they ought to render *d*, seeing it is his Place which they supply, and his Power which he has given them by advancing them to the Government, which they can hold of none else but him. And this he shewed in a particular manner in his Government of the Jewish Nation under Moses, under the Judges, and under the Kings, he himself having chosen Moses, the Judges, and their first Kings. And altho the Choice which God makes always of the Persons whom he intends to put into the first Place of the Government, be not manifested by an express Order, as it was in the Government of the Jewish People during those first times; yet it appears by these Examples, that it is God who in all sorts of States disposes of the Government. And no body can be ignorant, how that as God is the Master of all Events,

b By me Kings reign, and Princes decree Justice. Prov. 8.15.

c Psal. 81. 4, 6. John 10. 24, 25. Exod. 22. 8.

d Ye shall not respect Persons in Judgment, for the Judgment is God's. Deut. 1. 17. Take heed what ye do; for ye judge not for Adam, but for the Lord. 2 Chron. 19. 6.

so he has in his hands the Direction of those which make the Sovereign Power to pass from one hand to another, whether it be by Succession, Election, or other ways. So that it is from him that even the Princes who are Infidels derive their Power *e*.

Since therefore Princes derive their Power from God, and that he puts it into their hands only as an Instrument of his Providence and of his Conduct over those States, whose Government he commits to them; it is evident they ought to make such an use of this Power as may answer the Ends which the said Divine Providence intends they should propose to themselves, and that the sensible and visible manner in which their Authority is to be exercised, ought to be only the Work of the Will of God, who hiding from our Eyes his own universal Government of the World, is pleased to manifest by the Ministry of Princes that part of it which he delegates to them over the People who are their Subjects. It is this Will of God, the Government of which they ought to render visible by the means of this Power committed to them, which ought to be the Principle and Rule of the Use they should make of the said Power, seeing it is an Instrument of the divine Will, and is entrusted to them only for this end.

This is without doubt the Foundation and the first Principle of all the Duties of Sovereign Princes, which consists in setting up the Kingdom of God, that is to say, in governing all things according to his Will, which is no other than Justice. Thus, it is the Reign of Justice which ought to be the Glory of the Reign of Princes.

It follows from this first Principle, that all the several Steps of the Government of Princes ought to have the essential Character of Justice which they are obliged to support and maintain, and that having for this end a coercive Power put into their hands throughout the whole Extent of their Dominions, the Body of the State ought to feel that its Head is animated with the Love of Justice, the Empire of which he is bound to establish: And the Head himself, who should animate and govern this Body, ought not to propose to himself any other View in this divine Ministry, besides that of employing his Authority to reduce to a dutiful Submission to this Empire of

e They couldst have no power at all against me, except it were given thee from above. John 19. 11.

Justice such of his Subjects as refuse to submit to it willingly, and to render it absolute as much as in him lies, that his People enjoy Peace and Tranquillity, which are the Fruits of it.

It is by this Love of Justice, that Princes render themselves amiable to their People, whom they govern with an Authority so much the more absolute the more natural it is, and when it is the divine Order which is the Principle of their Authority, and which regulates the use of it. It is the good use of this Ministry that gains Princes the Love and Veneration of their Subjects who delight in Peace and Tranquillity, and which makes them to be dreaded by those who are of restless and turbulent Spirits. It is this good Use of the Ministry which makes Princes, seeing they are not able of themselves, how good and wise soever they may be, to administer Justice to their Subjects on all the particular Occasions which occur, to apply themselves to the finding out all possible Ways of filling the Offices with Persons who are most likely to use the Authority which they are obliged to delegate to them, in the manner and way that they themselves ought to use their own Authority, and who for a right discharge of the Trust committed to them have both the Capacity and Probity that their Functions may demand.

It is also by the means of this Love of Justice that Princes ought to be sensible, that their Power should be absolute over their Subjects, only in order to procure an universal Obedience, which may contain them all in Order and Peace, and their Power ought to be employed only for this end. Thus those whom God raises to this Dignity have the Power to make Laws and Regulations that are necessary for the publick Good; to nominate and appoint Officers necessary for the Administration of Justice, and for all the other Uses which the publick Good may demand.

The Dominion therefore of Sovereigns whom God exalts to this Rank being founded on God's own Dominion, which he delegates to them for the Functions of the Government which he puts into their hands; it is by him that they reign, and consequently it is according to his Law that they ought to reign.

It appears sufficiently by this Account of the Origin of the Power of those

who have the Sovereign Authority, and by the essential Characters of the said Power, what the Use is which they ought to make of it, what are their Rights, and what are their Duties. For it is upon these Foundations, and by these Principles that we are to judge thereof; and this shall be the Subject Matter of three Sections. The first shall be of the Use of this Power; the second of the Rights which are the Consequences thereof; and the third of the Duties of those who exercise it.

S E C T. I.

Of the Power of the Sovereign, and what ought to be the use of it.

The C O N T E N T S.

1. *The Conjunction of Authority with Force, makes the Power of the Prince.*
2. *Obedience due to Authority, without the use of Force*
3. *Two Uses of Forces, one within the Kingdom, and the other without.*
4. *Forces necessary within the Kingdom.*
5. *Forces necessary in case of Danger from without*
6. *The Forces ought to be proportioned to the Wants of a State*
7. *Wherein consists the good use of Forces.*

I.

THE Power of the Sovereign implies an Authority to exercise the Functions of the Government, and to make use of the Force that is necessary for the said Ministry *a*. For Authority without Force would be despised, and almost useless: and Force without a lawful Authority, would be no other than Tyranny; as it happens when an Usurper occupies the Throne *b*, or when a lawful Prince attempts to make Conquests on his Neighbour without ground for a just War. But when the Force accompanies the good Use of Authority, the Reign of the Prince is the Reign of Justice, and he dispels all Injustices by his bare Presence *c*.

1. *The Conjunction of Authority with Force, makes the Power of the Prince.*

a For he beareth not the Sword in vain: for he is the Minister of God, a Revenger to execute Wrath upon him that doth Evil. Rom. 13. 4.

b Many Kings have sat down on the Ground, and one who was never thought of hath worn the Crown. Ecclesi. ix. 5.

c A King that sitteth on the Throne of Judgment, scattereth away all Evil with his Eyes. Prov. 20. 8.

II. Au-

II.

Authority alone without any other Force, would be sufficient to govern those who know their Duty, and are willing to perform it. For altho it could happen to be separated from its Force, yet the Subjects are bound nevertheless to submit to it, and to pay Respect and Obedience to it; and they incur the Punishment of Rebellion if they are disobedient *d*. Thus the rebellious Insolence of *Shimei* against *David* when he was bereaved of his Forces, was a Crime of High Treason, which the Clemency of that Prince induced him heartily to forgive, in so far as concerned the Injury done to his own Person, altho in that respect he might have punished him; but this Clemency gave way afterwards to the just Severity which so great a Crime deserved. And *David*, who was willing to die without revenging himself, but not without doing Justice in his own Lifetime, commanded his Successor to take care that that Crime might not go unpunished *e*.

d Wherefore ye must needs be subject, not only for Wrath, but also for Conscience sake. Rom. 13. 5.

e See 2 Sam. 16. 5. ch. 19. ver. 18. 1 Kings 2. the 8th, 40th, and following Verses.

III.

3. Two Uses of Forces, one within the Kingdom, and the other without.

As there are two Uses of the Power of the Sovereign, both of them necessary for the publick Tranquillity; one which consists in containing the Subjects in a dutiful Obedience, and in repressing Violences and Injustices; and the other in defending the State against the Attempts of Enemies; so this Power ought to be accompanied with the Forces necessary for these two Uses *f*.

f That we may lead a quiet and peaceable Life. 1 Tim. 2. 2.

IV.

4. Forces necessary within the Kingdom.

The first of these two Uses of Forces for maintaining the publick Tranquillity within the Kingdom, comprehends the Forces that are necessary for the Security of the Sovereign himself against Rebellions, which would be frequent if Force were not joined with Authority; as also the Forces requisite to contain the Subjects in peace among themselves, and to repress the Attempts which any of them may make against their Fellow-Subjects, and likewise against the Publick, and to put in

execution the Orders of the Sovereign, and all the several things that may be necessary for the Administration of Justice. Thus, this first use of Forces being perpetual, as are the occasions that may require it; the Order of Government demands, that the Sovereign have always the Forces that are necessary for the maintenance of Justice; which consists in Officers, and other Ministers set over those Functions, with the Use of Arms, as occasion may require *g*.

g This is a Consequence of the preceding Article.

V.

The Use of Forces for defending the State against the Attempts of Enemies is also perpetual, because the Danger of such Attempts is always to be feared, and the want of Forces may expose the Kingdom to it. And these Forces consist in fortified Places on the Frontiers, in Garisons to defend them, and in Troops either already on foot, or ready to be raised on occasion *h*.

h This is a Consequence of the third Article.

VI.

It follows from these different Uses of the Forces necessary to the Power of the Sovereign, that they ought to be proportioned to the Wants and Abilities of the States. Thus these Forces ought to be greater in time of War than of Peace, and lesser for maintaining Order in a quiet peaceable State, than for suppressing Tumults and Comotions in a time of Sedition *i*.

i As the time shall be appointed. 1 Macc. 8. 25.

VII.

We may reckon among the Forces necessary in a State, the Wisdom of the Prince who regulates the Use of them by a good Counsel, and who makes the Success of his Arms to depend on the Assistance of Heaven, by the Justice of his Undertakings. For the greatest Armies without the hand of God, are but Weakness; and with the Divine Assistance the smallest Armies are victorious *m*.

m Wisdom is better than Strength. Wisdom of Solomon, 6. 1.

Wisdom is better than Weapons of War. Eccles. 9. 18.

For the Victory of Battle standeth not in the multitude of an Host, but Strength cometh from Heaven. 1 Maccab. 3. 19.

5. For as necessary in case of danger from without.

6. The Forces ought to be proportioned to the Wants of a State.

7. Wherein consists the good use of Forces.

S E C T. II.

Of the Rights of those who have the Sovereign Authority.

SINCE the Rights of Sovereigns are derived to them by a Consequence of the Power which they hold of God, as hath been explained in the Preamble of this Title, they can have no other Rights but such as have nothing in them contrary to the Use which God requires them to make of the said Power; and it is for this reason that he enjoins them to study his Law, that they may there learn both their Power and their Duty, of which the Spirit of this Divine Law ought to be the Rule *a*. This shews in what Sense we ought to take that Expression in the Scripture, where Samuel speaking to the People who had demanded a King such as those of other Nations, and giving them to understand, by the Order of God, what would be the Rights of that King; he enumerated the tyrannical Injustices which the King whom they demanded might exercise over them, giving thereunto the Name of the Rights of the King, as if those Injustices were really and truly a Right *b*.

a And it shall be when he sitteth upon the Throne of his Kingdom, that he shall write him a Copy of this Law in a Book, out of that which is before the Priests, the Levites. And it shall be with him, and he shall read therein all the days of his Life; that he may learn to fear the Lord his God, to keep all the Words of this Law, and these Statutes, to do them. That his Heart be not lifted up above his Brethren, and that he turn not aside from the Commandment to the right hand or to the left; so the end that he may prolong his Days in his Kingdom, he and his Children in the midst of Israel. Deuter. 17. 18, 19, 20.

And said unto him, Behold, thou art old, and thy Sons walk not in thy ways: now make us a King to judge us like all the Nations. But the thing displeased Samuel, when they said, Give us a King to judge us: And Samuel prayed unto the Lord. And the Lord said unto Samuel, Hearken unto the Voice of the People in all that they say unto thee; for they have not rejected thee, but they have rejected me, that I should not reign over them.

Shew them the manner of the King who shall reign over them. And Samuel told all the Words of the Lord unto the People that asked of him a King. And he said, This will be the manner of the King that shall reign over you: He will take your Sons, and appoints them for himself, for his Chariots, and to be his Horsemen, and some shall run before his Chariots. And he will appoint him Captains over thousands, and Captains over fifties, and will set them to ear his Ground, and reap his Harvest, and to make his Instruments of War, and Instruments of his Chariots. 1 Sam. 8. 5, 6, &c.

It is evident that this Expression coming from the same Spirit of God, who had commanded that all Kings should study his Law in order to make it the Rule of their whole Conduct, and who had laid down this Injunction with a view to those very Kings whom he had foretold that this People would afterwards demand; he did not grant unto them Rights directly opposite to the Law which he had enjoined them to follow as their Rule. But those Tyrannical Injustices were called the Rights of the King for this reason, because that as the Legal Rights of Sovereigns are exercised by virtue of their Power, so the Injustices which Kings might commit by abusing this Power, would have the Character of a Right by reason of the Necessity under which the Subjects would be of submitting to them, as has been shewn in the last Article of the second Section of the first Title; which would have, with respect to them, the Effect of a lawful Right; since they could not shake off the Yoke of the Princes Power, altho on the part of the Prince this bad Use of his Power would be manifest Tyranny.

c Deuter. 17. 14.

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17. *The Right of coining Money.*
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I.

1. *The first Right of the Sovereign is the Exercise of his Authority for the Publick Good.*

The first Right, and that on which depend all the other Rights of the Persons whom God raises to the Sovereign Authority, is the Power of administering the Government, with the use of the Authority and Forces in which his Power consists, and of employing his said Power for the support of Justice, and for maintaining the publick Tranquillity in the Dominions committed to his Care *a*.

a For he is the Minister of God to thee for Good. Rom. 13. 4.

See the third Article of the third Section.

II.

2. *The Right of making War, Treaties of Peace, and others with Strangers.*

The first Right implies two Rights in general; one is concerning every thing without the Kingdom which may have any relation to the Good of the State; and the other respects every thing within the Kingdom which may tend to the same Good. Thus with respect to things without the Kingdom, the So-

vereign has right to make War against those who make any Attempt, or commit any Injustice, either against the State, or against himself who is Head of it, if the Reparation of the said Injustice demands the use of Arms. And this Right consists likewise in a Power to make Treaties of Peace, or other Treaties, according as Occasion requires, with other Princes and States, either for keeping up Alliances with them for a mutual defence of each other, or Correspondencies for Trade, or other Ties and Engagements for other Purposes; which implies the Right of sending to Foreign Princes Ambassadors or Residents *b*. Thus within the Kingdom the Sovereign has a Right to exercise his Power for the several Purposes explained in the following Articles.

b This is a consequence of the first Article, and of the Motive for the use of Arms for maintaining the State in Safety against any Attempts that might disturb the Peace and Tranquillity thereof. See what has been said in the Preface concerning the Use of War. No body is ignorant of the multitude of Proofs which we have in Scripture of the Power which Princes have to make War, and of the Examples of Princes of the greatest Sanctity who have undertaken and carried on Wars.

III.

Among these Rights of the Sovereign as to things within the Kingdom, the first is that of administering Justice, which ought to be the Foundation of the publick Order, whether he administer the same in Person, on such Occasions as may require his Presence in Judgment, or causes it to be administered by those to whom he delegates this Right. And this Administration of Justice implies the Right of making Laws and Regulations that are necessary for the publick Good *c*, of causing them to be duly observed and executed, as also the other preceding Laws which are not abrogated; of giving to all the Laws their Vigour and just Effect, and of adjusting the Difficulties which may arise in the Interpretation of the Laws and Regulations; when the Difficulties are such as exceed the Bounds of the Power of the Judges, and make it necessary to have recourse to the Authority of the Lawgiver *d*.

3. *The Right to make Laws.*

c By me Kings reign, and Princes decree Justice. By me Princes rule, and Nobles, even all the Judges of the Earth. Prov. 8. 15, 16.

d De his que primo constituntur, aut interpretatione, aut constitutione optimi principis certius Retinendum est. l. 1. f. de legib.

Si enim in presentem leges condere soli imperatori concessum est, & leges interpretari solo dignum imperio esse oportet. *l. ult. C. eod.*

Legis interpretationem culmini tantum principali competere, nemini venit in dubium: cum promulgandæ quoque legis auctoritatem fortunæ sibi vindicet eminentia. *Nov. 143.* Inter æquitatem jusque interpositam interpretationem, nobis solis, & oportet, & licet inspicere. *l. 1. C. eod.* Leges sacratissimæ, quæ constringunt hominum vias, intelligi ab omnibus debent, ut universi præscripto earum manifestus cognito, vel inhibita declinent, vel permissa sententur. Si quid vero in iisdem legibus latum foras obscurus fuerit, oportet id ab imperatoria interpretatione patefieri, duritiamque legum, nostræ humanitati incongruam, emendari. *l. 9. C. de leg. dy. const. pr.*

By the Ordinance of Moulins, Art. 1. and that of 1667. Tit. 1. Art. 3. it is ordained, that the Parliaments, and the other Courts of Justice, shall make their Remonstrances to the King, touching whatever shall be found in the Ordinances contrary to the Good or Convenience of the Publick, or which may require Interpretation, Explanation or Mitigation.

If in the giving Judgment upon Law Suits which shall be depending in any of our Courts of Parliament, or other Courts of Justice, there arises any Doubt or Difficulty touching the Execution of any Articles of our Ordinances, Edicts, Declarations and Letters Patents, we forbid them to interpret the same; but require and enjoin them in such Cases to apply themselves to us, that they may learn from us what our Intention and Meaning is touching the said Matters. Ordinance 67. Title 1. Art. 7.

[In England, when any Doubt or Difficulty arises concerning the Interpretation of a Law, or Constitution of a Statute, which the Judges are not able to resolve and determine, recourse in that case is had to the King in Parliament, where the King, by the Advice and with the Consent of the Lords and Commons in Parliament assembled, exercises the Legislative Power, by enacting new Laws and Statutes, and explaining what is found to be doubtful and ambiguous in old ones. *Lex Angliæ sine Parlamento mutari non potest.* Coke 2. Inst. p. 97. 618. 4 Inst. chap. 1. pag. 25. Bracton de legibus Angliæ, lib. 1. cap. 1, 2.]

IV.

4. The Right to protect Religion.

The Right of causing the Laws to be duly observed, and of maintaining in the State the general Order and Policy thereof by the Administration of Justice, and the good Use of the Sovereign Power, gives to the Prince a Right to employ his Authority for procuring a due Observance of the Laws of the Church, of which he ought to be the Protector, the Guardian, and the Executor; that by the Assistance of his Authority Religion may reign over all the Subjects, and that the Policy of the Church being supported by that of the State, both of them may concur in maintaining the State in Peace and Tranquillity, which ought to be the Effect of their Union.

The King of France the Protector, Guardian, Conservator and Executor of what the Church teaches and commands. See the Ordinance of Moulins in July 1562. See the

tenth Chapter of the Treatise of Law first Tome of the Civil Law in its Maxims. See the ninth Article of the third Se [The Kings of England enjoy the Title of Defender of the Faith, and Supremacy of the Church of England; and it is their Authority, and by their particular Permission the Clergy assemble themselves in Convocations to make Laws or Canons in relation to Matrimonial. And they are prohibited under severe Penalties to assemble without the King's Writ, or to make Laws or Constitutions without his especial Command. Stat. 26 Hen. 8. cap. 1. 35 Hen. 8. Coke 4. Inst. pag. 344. Stat. 25 Hen. 8. entitled, The Submission of the Clergy.]

V.

Seeing the Sovereign Authority regards the universal Order and Policy of the State, and the Publick Good, and extends to every thing necessary to compose the said Order, and to form the general Policy for the Administration of Justice, for the Government of the Army, for the Management of the Revenue, and for every thing which may demand the Use of Authority, the Sovereign hath therefore the Power of filling up the Offices and Employments that are necessary for all these different Parts of the Publick Order and Policy, with Persons who may exercise the Functions thereof, and of assigning to every one of them their proper Functions, and giving them the Dignity, the Authority, or the other Characters that are proper for the Functions committed to their Charge. Which implies a Right to erect Offices which may be of necessary use to the Publick Good; to settle the Rights and Functions thereof; and also the Right to suppress such Offices as appear to be useless and burdensome to the State.

5. The Right to appoint Officers, to regulate their Functions, and to suppress Offices.

Moreover thou shalt provide out of all the People able Men, such as fear God, Men of Truth, having Covetousness, and place such over them, to be Rulers of thousands, and Rulers of hundreds, Rulers of fifties, and Rulers of tens; and let them judge the People at all Seasons. And it shall be, that every great Matter they shall bring unto thee, but every small Matter they shall judge. Exod. 18. 21, 22.

So I took the chief of your Tribes, Wisemen, and Elders, and made them Heads over you, Captains over thousands, and Captains over hundreds, and Captains over fifties, and Captains over tens, and Officers among your Tribes. And I charged your Judges at that time, saying, Hear the Causes between your Brethren, and judge righteously between every Man and his Brother, and the Stranger that is with him. Deuter. 1. 13, 16. 2 Kings 18.

VI.

The Power of making Laws implies that of granting certain Dispensations which the Laws do allow of; and it is one

6. Right of granting Dispensations.

one of the Rights of the Sovereign to grant Dispensations of this kind. Thus, for example, it is one of the Rules for the Appointment of Officers, that they should be of the Age regulated by Law: but since there may be Persons whose Birth, Virtue, and Capacity may so distinguish their Merit, as to recommend them to Offices before they have attained the Age required for exercising them; it is for the publick Good, that the Sovereign should dispense with this Rule in their particular Case, and it is only he alone that has this Power g.

g The same Power is necessary for dispensing with a Law, as for making it.

Etatis venia Principale beneficium. l. 2. C. de his qui ven. at. imper.

Altho the Dispensation of Age mentioned in this Text be for another Use, yet it may be applied to the Rule explained in this Article.

[In England, the King has Power to grant Dispensations in many particular Cases, which are expressly reserved to him by the Statute; such as the holding Plurality of Livings, and other Cases, which it would be too tedious to enumerate here. Stat. 25 Hen. 8. cap. 21. But as to the Power of dispensing with the Law in general, where it relates to the Publick Good, or to the Property of private Persons, it is held to be the ancient Fundamental Law of this Realm, that all Dispensations of this kind, without the Consent of Parliament, are void. Hujusmodi vero Leges Angliana & Consuetudines, Regum autoritate, jubent quandoque, quandoque revocant, & quandoque vindicant & puniunt transgressores: qua quidem cum fuerint approbata consensu utentium, & Sacramento Regum confirmata, mutari non poterunt nec destrui sine communi consensu & consilio eorum omnium quorum consilio & consensu fuerunt promulgata. Bracton de Legibus Angliæ, lib. 1. cap. 2. This Matter, touching the Power of dispensing with the Laws, is very learnedly discussed by Dr. Stillingfleet, late Bishop of Worcester, in his Ecclesiastical Cases, Part 2. chap. 3. and by my Lord Chief Justice Vaughan, in his Reports, in the Case of Thomas vers. Sorrel. Vid. Coke's 3 Inst. cap. 86.]

VII.

7. Right of granting Privileges.

It is also owing to the Order of Justice and Policy that there has been established in the best regulated States divers Privileges, which are nothing else but Exceptions from the general Rules in favour of some Persons. Thus, for example, it is but just that the Inventors of new Things, which are of singular Use to the Publick, and who are desirous to reap some Advantage from their Inventions, should have the Privilege of being the sole Traders in the Things which they communicate to the Publick, and that this Privilege should be granted them during a certain Time, to be to them in lieu of a Reward for the Merit of so great a Service, to recompense the Pains and Charges they have been at, and to

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serve as an Example to excite others who are capable of rendering the like Services. And there are divers sorts of other Privileges, which are Benefits and Favours to be obtained only from the Sovereign h.

h This is the Consequence of the precedent Article. Nulli sit liberum, nulli permissum, ut novum aliquid urbis incolæ in urbe sustineant: sed in honorem æternæ urbis corporatis indulta suffragia valeat præcipimus. l. un. C. de privil. Cor. urb. Rom.

Privatas possessiones nostras ab universis muneribus sordidis placet immunes esse, neque earum conductores, neque colonos ad extraordinaria munera vel superindictiones aliquas conveniri. l. 1. C. de priv. Dom. Aug. 2. Tit. ff. de priv. vit.

VIII.

As it is conducive to the general Order of Justice, and to the good Government of a State, that the Services and other Merits of Subjects who may contribute to the Publick Good should be rewarded either by Titles of Honour, or by other Favours, which coming from the hand of the Sovereign may be the more remarkable; so it is the Sovereign alone who has the Right to distribute these kinds of Favours. Thus, it is he alone who can ennoble the Persons who, not being born in the Rank of Nobility, have render'd themselves worthy of that Honour. Thus, he may institute and create Orders which may give a Dignity, and a Rank of Honour to those on whom he confers the same, granting unto them particular Marks of this Favour, to be worn either about their Persons, or in their Coats of Arms, and which may procure them the Esteem and Respect that may be due to the said Dignity. Thus, the Sovereign may, in favour of Persons of Quality, and in consideration of their Services, annex Titles of Honour unto Lands held in Fee. Thus, he may assign Pensions out of the Publick Revenue to those who by some singular Service may have merited this Recompence and Mark of Honour i.

i This is a Consequence of the Right of Government, and of the Administration of Justice.

[Of ancient Time there were Feudal Baronies in England, as in other Countries; but at this Day there are none. Coke's 4 Inst. pag. 5.]

IX.

Besides these sorts of Benefits and Favours which are dispensed only by the Sovereign, there are many others which the Good of the State renders necessary, and which can be derived only from him. Thus, when a Foreigner

R r 2

reigner

8. The Right to recompense the several Merits of Subjects with Titles of Honour, and Pensions out of the Publick Treasury.

9. The Right of naturalizing Strangers.

reigner is desirous to fix his Habitation in a Kingdom, and there to enjoy the Liberty and the Rights which are peculiar to those who are Subjects thereof, and which the Subjects of other Kingdoms have no Title to; they are placed in the Number of the Members of the State, of which they are desirous to become Subjects, by the Favour of the Prince, which is granted in *France* by Letters of Naturalization, which are obtained from the King, and which are called so, because those who obtain them are reputed by the effect of the said Letters to be as natural-born Subjects of *France*.

l Natus antiquos, & ius ingenuitatis, non ordo præstare decurionum, sed a nobis peti potuit. *l. 1. C. de jur. aur. annul. Aureorum usus annulorum beneficio principali tributus, libertinitatis quoad vivunt imaginem, non statim ingenuitatis præstat. Natalibus autem antiquis restitui liberti, ingenui nostro constituuntur beneficio. l. 2. eod.*

Altho these Laws have no precise relation to the Right of Naturalization, yet they may be applied to it. See the fourth Article of the fourth Section of the fifth Title.

[The Law of England makes a Difference between Naturalization and Denization. Naturalization is, when an Alien born is naturalized by Act of Parliament; and an Alien so naturalized is to all Intents and Purposes as a natural-born Subject of England, and enjoys the same Liberties and Privileges in all respects. Denization is, when an Alien is enfranchised, or made Denizen, by the King's Letters Patent; who is not entitled to all the Privileges which those Aliens enjoy who are naturalized by Act of Parliament. For if he who is made Denizen by Letters Patent had Issue in England before his Denization, that Issue is not inheritable to his Father: But if his Father be naturalized by Parliament, such Issue shall inherit. And there are many other Differences between them. *Coke's 1 Inst. fol. 8. a. 129. a.*]

X.

The Legitimation of Bastards is likewise one of the Rights which peculiarly belong to the Sovereign, who alone may, by Letters of Legitimation, remove the Obstacles and the Incapacity under which Bastards lie, by reason of the Defect in their Birth, which excludes them from certain Honours, and certain Offices, of which they are made capable by the Benefit of this Legitimation.

m Ab imperio hoc percipientibus, ut in uno eodemque, hoc quod agitur, sit donum patris & principis: Id est, dicere, nature simul & legis. *Nov. 74. c. 2. §. 1.*

These Words are taken out of the seventh fourth Novel, where mention is made of a manner of Legitimation which was in use in the Roman Law; when a Father who had only Bastard Children did ordain by his Testament, what they should be his lawful Successors. This Disposition had no effect, if the said Children did obtain the Confirmation thereof by Letters from the Prince.

The Effect of the Legitimation of Bastards is limited to the removing of the Incapacity in this Article, and does not extend to them the Right of Succession, as many have and as is even regulated by some Customs. For such an Use of Legitimation would runn to Equity and good Manners; and be unjust and indecent, that a Bastard, by the Letters of the Prince, should be adjoined with Children begotten in lawful Wed. Succession of their Father or Mother, and should claim a Right to the Successions of children and Relations of his Father or Mother all these Successions are appropriated by Nature by the Laws, to those to whom a lawful Birth the Title of Children and Relations; and the unlawful Birth cannot be so defaced as to put the Bastard into the natural Condition of a Son or lawful Relation, to the Prejudice of those who are really such. See the third Article of the fifth Section of the fifth Title, and the Remark that is there made on it.

[This Power of legitimating Bastards has been very rarely exercised in England; and when it has been exercised, it has been always by Authority of Parliament. Our Chronicles mention one Instance of this kind in the twentieth Year of the Reign of Richard the Second, when John of Gaunt, Duke of Lancaster, caused to be legitimated in a Parliament then held the Issue which he had by Katherine Swinford before he married her. *Selden's Dissertation ad Fletam, cap. 9.* Long before this, at a Parliament held at Merton the twentieth Year of the Reign of Henry the Third, it had been attempted by the Bishops of England to have it enacted by a general Law, that all such as were born before Matrimony should be legitimate, and made capable of succeeding to Inheritances, as well as the Children born after Matrimony, in conformity to the Civil and Canon Law in this Particular. But all the Earls and Barons with one Voice answered, That they would not change the Laws of the Realm, which to that Time had been used and approved. And so the Law in England remains to this Day. See the Stat. 20 Hen. 3. cap. 9. *Coke 2 Inst. pag. 96, 97. Selden ad Fletam, cap. eod. Bracton de Legibus, lib. 5. cap. 19.*]

XI.

All these kinds of Rights are natural Consequences of the Power of those who are vested with the Sovereign Authority; and there may be others, which the peculiar Laws of every State reserve in the same manner solely to the Sovereign. Thus, in *France* it is the King alone, who is reputed to be present in all his Courts of Judicature, and who gives to the Sentences and Decrees of the said Courts the Authority and the Form that is necessary for their being put in Execution, and it is in his Name that they are executed. Thus, in the matter of Restitutions and Rescissions of Contracts which are founded on Acts of Fraud or Violence, on Wrong, on Minority, Letters are obtained from the King for relieving those Persons who have just Cause of Complaint from the Contracts of which they do complain; and the Judges are required by the

11. Divers Acts which demand the Authority of the Sovereign in the Administration of Justice.

11. The Right to legitimate Bastards.

the said Letters, which are directed to them for that purpose, to reinstate the Parties in the same Condition they were in before the said Contracts, if there appears to be just Cause for rescinding them. And in the Course of the Administration of Justice, and Decision of Law-Suits, whether in the first Instance, or in Appeals, the Parties procure the like Letters for several Purposes, which are Matters belonging to the Order observed in Judicial Proceedings, which it is not our Business to explain in this place. We shall only observe here, that these sorts of Letters, as also many of those which contain Grants of Privileges, and some others which have been mentioned in the foregoing Articles, do not require that the Prince himself should take particular Cognizance of them, altho they demand his Authority, and that it be in his Name that they are sped: But the dispatching of such Letters is left to the proper Officers, to whom the Sovereign gives that Power, and to whom he commits the said Functions; and the Judges, to whom the said Letters are directed, are obliged to take Cognizance of the Truth of the Facts which the Parties have alledged in order to obtain them, if the Favours which the said Letters grant have no other Foundation besides the Truth of the Facts alledged *n*.

n Univerſa reſcripta, ſive in perſonam precatum, ſive ad quemlibet judicem manaverint, quæ vel adnotatio, vel quævis pragmatica ſanctio nominentur; ſub ea condicione proferri præcipimus, ſi preces veritate nitantur. Nec aliquem fructum precator oraculi percipiat impetrati, licet in judicio adſerat veritatem, niſi quaſtio fidei precum imperiali beneficio monſtrear infera. Nam & vir magnificus quaſtor, & viri ſpectabiles magiſtri ſcriniorum, qui ſine prætata adjectione qualecunque divinum reſponſum dictaverint: & judices, qui ſuſceperint, reprehentionem ſubibunt. l. 7. C. de diverſ. reſer. & prag. ſancti. V. T. h. T.

According to our Uſage in France, we muſt diſtinguiſh between the Letters of Naturalization, thoſe of Legitiſmation, which have been mentioned in the two foregoing Articles, thoſe which contain certain Privileges, together with others of the like Nature, and the Letters which are mentioned in this Article. Thoſe of the fiſt ſort are diſpatched in the Great Chancery, and the others, which are commonly called Letters of Juſtice, or Judicial Writs, iſſue out of the Chanceries of the reſpective Parliaments, and other Jurifdictions.

XII.

12. The Right to regulate the Punishment of Crimes.

Seeing the Administration of Justice renders the Use of Laws for the Punishment of Crimes necessary, it is a part of the Authority of the Sovereign to have Power to establish new Punish-

ments, and to make them either severer or milder, according as the Frequency and Consequences of the Crimes may require *o*.

o Evenit, ut eadem ſcelera in quibuſdam provinciis gravius pieſtantur; ut in Africa meſſium in-centores; in Myſia vitum: ubi metalla ſunt, adul-teratores monerent. l. 16. §. pen. ff. de poenis.

Nonnunquam evenit, ut aliquorum malefactorum ſupplicia exacerbentur, quoties nimium multis perſonis graſſantibus, exemplo opus ſit. d. l. §. ult.

There are many Ordinances which have enacted Punishments for Crimes.

XIII.

The Power which the Sovereign has to inflict Punishments, and to make them severer or milder, implies that of granting particular Pardons to those who are accused of Crimes, if there be any good Considerations which may induce him to it. Thus, he may commute and mitigate the Punishment of a condemned Person, by inflicting one that is milder. Thus, before Condemnation, he may remit the Punishment, if the Circumstances make the Necessity of punishing the Crime to cease; as, if it is Homicide committed involuntarily, and in the defence of the Life of the Party accused. And there are also Cases where some particular Considerations may oblige the Sovereign to pass an Act of Oblivion of the Crime, either on account of Services which the Criminal has already rendered to the State, or which he may render hereafter, or for other Causes. And he may also discharge from Punishment those who have been already condemned, and restore them to their former State and Condition *p*.

p Cum ſalutatus eſſet a Gentiano, & Advento, & Opilio Macrino præfectis Prætorio, clariffimis viris; item amicis, & principalibus officiorum & utruſque ordinis viris, & proceſſiſſet; oblatuſ eſt ei Julianuſ Licinianuſ ab Opilio Ulpiano tunc legato in inſulam deportatuſ, tunc Antoninuſ Auguſtuſ dixit, Reſtituo te in integrum provincia tua; & ad-jeci, ut autem ſcias quid ſit in integrum reſtituere, honoribus, & ordini tuo, & omnibus cæteris te reſtituo. l. 1. C. de ſenſ. paſſ. & reſt.

Generalis indulgentia noſtra, redituſ exilibuſ ſeu deportatiſ tribuit. l. 7. cod. V. T. h. T.

XIV.

Seeing it is for the Order and good Government of a State, that not only Crimes, but every thing else which may disturb the publick Tranquillity, or any way endanger it, should be repressed, and that for this Reason all Assemblies of many Persons in one Body are unlawful, because of the Danger from those

14. Power to permit or prohibit the Assemblies of Communities and Corporations.

those Assemblies which may meet for no other end but to concert some Enterprize against the Publick, even those Assemblies which have nothing in view but what is just and lawful, cannot be formed without the express Approbation of the Sovereign, after he is fully satisfied of their Usefulness, and Tendency to the publick Good. Which makes it necessary to obtain leave to establish Corporations and Communities, Ecclesiastical or Temporal, Regular or Secular, and of all other kinds whatsoever, Chapters, Universities, Colleges, Monasteries, Hospitals, Companies of Trades, Fraternities, Common Councils of Cities and other Places, and all others which assemble together many Persons, for what end soever it be. And it is only the Sovereign who can grant this Leave, and approve the Communities and Corporations to whom the Right of assembling themselves together may be granted *q*.

q Mandatis principalibus præcipitur præsidibus provinciarum, ne patiantur esse (collegia, sodalicia) neve milites collegia in castris habeant. *l. 1. ff. de colleg. & corp.*

In summa autem, nisi ex senatusconsulti auctoritate, vel Cæsaris, collegium vel quodcumque tale corpus coeuit: contra senatusconsultum, & mandata, & constitutiones collegium celebrat. *l. 3. §. 1. eod.*

Neque societas, neque collegium, neque hujusmodi corpus passim omnibus habere conceditur. Nam & legibus & senatusconsultis, & principalibus constitutionibus ea res coercetur. Paucis admodum in causis concessa sunt hujusmodi corpora: ut ecce vestigalium publicorum focus permissum est corpus habere: vel aurisodinarum, vel argentisodinarum, & salinarum. Item collegia Romæ certa sunt quorum corpus senatusconsultis atque constitutionibus principalibus confirmatum est: veluti pistorum & quorundam aliorum, & naviculariorum. *l. 1. ff. quod conj. un. nom.*

XV.

15. The Right to give to Communities the Liberty of possessing Goods, and holding them in Mortmain.

It is a Consequence of the Right of permitting the Erection of Communities and Corporations, to permit them likewise to possess Goods moveable and immoveable for their Use *r*. And this Permission is particularly necessary for the Possession of Immoveables. For seeing the said Communities are perpetual, their Immoveables become unalienable, and cannot any more change their Master. So that the Prince, and the Lords of the Manor, of whom the said Immoveables were held in Fee, upon condition of paying a certain Acknow-

r Quibus autem permissum est corpus habere collegii, societatis, sive cuiusque alterius eorum nomine, proprium est, ad exemplum reipublicæ, habere res communes. *l. 1. §. 1. ff. quod conj. un. nom.*

†

ledgment at every Change of Master by Sale, or otherwise, according to the Titles or the Customs, lose the said Right in Lands which pass to Communities. And the Prince has moreover a further Interest in such Alienations, because of the Service which the Possessors of Lands held in Fee of the Crown owe him, when he summons his Vassals to attend him in his Wars. Thus, Communities cannot possess Immoveables but by the Permission of the Prince, and at the Charge of satisfying him for the Interest which he has therein, and the Lords of Manors for their respective Interests. And this Permission is granted by Letters which are called a Licence of Mortmain.

XVI.

As Towns and other Places cannot form Assemblies under pretext of consulting about their Affairs, without having first obtained a Right so to do from the Sovereign; so neither can they hold Fairs and Markets without leave from the Prince *s*.

16. The Right to permit Fairs and Markets.

s Qui exercendorum mercatum aut nundinarum licentiam, vel veterum indulto, vel nostra auctoritate meruerunt. *l. 1. C. de nund. & mercat* Nundinis impetratis a Principe. *l. 1. ff. de nund.*

XVII.

The Necessity of settling the Price of all Things that are in Commerce, and of which it is necessary to make an Estimate, whether it be for Sale, letting them to Hire, or for all other sorts of Commerce, and the several Wants of Mankind, hath render'd the Use of Money necessary to the Publick, that is to say, the Use of some Matter which may have an easy Currency from one Hand to another, and which may stand instead of the Value of the Things of which it is necessary to pay the Estimation. And this required the Authority of the Sovereign for making choice of this Matter, and for giving it its precise Value, which may in one or more Pieces make up all sorts of Values, from the lowest to the highest. Thus, the Right of making choice of this Matter, the coining it into Money, the Regulations which fix the Weight of it, its Size, Figure, and Value, and which give it Currency in a State, belongs only to the Sovereign. For it is he alone that can oblige his Subjects to receive for the Price of Things the Money which he makes current, and which he authorizes by his Image, or other

17. The Right of coining Money

other Mark that is stamped upon it. It is this Right which is called the Right of coining Money, and which implies that of raising or lowering the Value of it, of crying down the old Species and coining new, according as the Circumstances of the Times, the Plenty or Scarcity of the said Matter, the Wants of the State, or other Causes may give occasion to the said Changes.

Si quis nummos falsa fusione formaverit, universasque facultates fisco nostro precipimus addicere. In monetis crebrius tantum modo nostris, cudendæ pecuniæ studium frequentari volumus; cuius obnoxii, majestatis crimen committunt. Si quis super cudendo ære, vel rescripto aliquo, vel (etiam) adnotatione nostra sibi arripuerit facultatem, non solum fructum propriæ petitionis amittat, verum etiam poenam quam meretur excipiat. l. 2. & 3. C. de fals. monet.

[In England it has been ordained of antient time, that no King of this Realm should change his Money, nor impair, nor amend the same, nor coin other Money, except of Gold or Silver, without Assent of Parliament. Coke 2 Instit. pag. 576. Coke 3 Instit. pag. 17.]

XVIII.

18. And of prohibiting all other Coins except that which the Prince allows to be current. It is a Consequence of this Right of the Sovereign to coin Money, that there can be no other Money current in his Dominions, but what is coined by his Order, or the Coin of another State which he allows to be current in his Territories. Thus all coining of Money, altho it be equal as to the Value and Weight of the Matter to that which has the Image of the Sovereign, is a capital Crime; and with much greater Reason is it a capital Crime to coin false Money, or Money that is adulterated, and to clip and file the current Coin of the Nation.

Quoniam nonnulli monetarii adulterinam monetam clandestinis sceleribus exercent: cuncti cognoscant necessitatem sibi incumbere, huiusmodi homines inquirendi, ut investigati tradantur iudici, facti convictos per tormenta illius proditori, ac si digni supplicis addicendi. l. 1. C. de fals. mon.

[By the Law of England the forging of the King's Coin is High Treason. And likewise if any Person for Lucre or Gain sake, shall by any Art, Ways, or Means whatsoever, impair, diminish, falsify, scale, or lighten the King's Money, the same is declared by Act of Parliament to be High Treason. Coke's 3 Instit. p. 16, 17. This Punishment did at first extend only to the King's Money coined within the Realm; and therefore if a Man had counterfeited the Money of another Kingdom, tho it were current within the Realm, it was not Treason, until it was so declared by Parliament. But forging or counterfeiting of foreign Money, which is not current within the Realm, is likewise declared Treason: and the Offender forfeits as for Counterfeiting of High Treason. Coke ibid. p. 17.]

XIX.

19. The Right in Mines. The Necessity of Metals, not only for Money, Arms, and Artillery, but

for an infinite number of other Wants and Conveniences, many of which relate to the Publick Interest, renders the said Matters, and those of other Minerals, so useful and necessary to a State, that the Order of Government requires that the Sovereign should have over the Mines which produce the said Matters, a Right independent of that of the Proprietors of the Places where the said Mines lie. And moreover it may be said, that the Right of the Proprietors in its first Origin was confined to the use of their Lands for sowing them, planting, and building, or for other the like Uses; and that their Titles did not suppose a Right to the Mines which were unknown, and which Nature destines for the Use of the Publick, by the Want which a Kingdom may have of the Metals and other particular Matters that are dug out of Mines. Thus the Laws have regulated the Use of Mines, and leaving to the Proprietors of the Lands that which appeared to be just, they have likewise settled a Right for the Sovereign in the said Mines.

Perpenſa deliberatione duximus ſanciendum, ut quicumque metallorum exercitium, velut aſſuere, ſi labore proprio, & ſibi, & reipublicæ commoda comparet. Itaque ſi qui ſpontis conduxerint, eos laudabiliter ſua octonos ſcrupulos in balluca quæ græce χρύσῳ appellatur, cogat exolvere. Quidquid autem amplius colligere poterint, fiſco poſſimum diſtrahant, a quo competentia ex largitionibus noſtris præſentia ſuſcipiant. l. 1. C. de metal. & met.

Ob metallicum canonem, in quo propria conſuetudo reſervanda eſt quatuordecim uncias ballucæ pro ſingulis libris conſtat inferri. l. 2. eod.

Cuncti qui per privatorum loca ſaxorum venam laborioſis effuſionibus perſequantur, decimas fiſco, decimas etiam Domino repræſentent: cætero modo propriis ſuis deſideriis vindicando. l. 3. eod.

See the ninth Article of the firſt Section of the ſixth Title.

[By an Act of the Parliament of England, 5^o & 6^o Gul. & Mar. cap. 6. it is enacted and declared, that all Perſons Subjects of the Crown of England, Bodies Politick or Corporate, having any Mine or Mines within the Kingdom of England or Wales, wherein any Ore is diſcovered or wrought in which there is Copper, Tin, Iron, or Lead, ſhall and may enjoy the ſaid Mine or Mines, or Ore, notwithstanding they ſhall be pretended or claimed to be a Royal Mine or Mines: Provided, that their Majeſties, their Heirs and Succeſſors, and all claiming any Royal Mines under them, may have the Ore of ſuch Mines, paying to the Owners of the ſaid Mines the Rates ſetled by the ſaid Act of Parliament.]

XX.

We ought to place in the number of the Rights which the Law gives to the Sovereign, that of having all the Marks of Grandeur and Majesty neceſſary for ſetting off the Authority and Dignity of Grandeur.

20. The Right to ſet off his Power by Marks of a ſenſible Grandeur.

of a Power of so great an Extent and Elevation, and for imprinting a Veneration for it on the Minds of all the Subjects. For altho they ought to consider in the Power of the Sovereign the Power of God which subjects them to that of the Sovereign, and to reverence it without any regard to the sensible Marks of Grandure that may happen to be annexed to it; yet as God accompanies with a visible Splendour his own Power, which displays it self both on the Earth and in the Heavens, as it were upon a Throne and in a Palace, the Magnificence whereof strikes the Beholders into Admiration; and as when he exercised his august Power of a Lawgiver, he published his Law with Prodigies which imprinted such a Respect and Terrour on the Minds of the Spectators, that they were not able to behold the Glory thereof; he is willing that in proportion to the Share of this Power which he communicates to Sovereigns, it should be set off in their Hands by Marks which are proper for procuring to them the Respect of the People. Which cannot be otherwise done than by that Pomp which appears in the Magnificence of their Palaces, and in the other Marks of a sensible Grandeur with which they are environed, and which God himself has allowed the Use of to Princes who have reigned according to his Mind y.

y And God said to Solomon, Because this was in thine Heart, and thou hast not asked Riches, Wealth, or Honour, nor the Life of thine Enemies, neither yet hast asked long Life; but hast asked Wisdom and Knowledge for thy self, that thou mayest judge my People, over whom I have made thee King: Wisdom and Knowledge is granted unto thee, and I will give thee Riches and Wealth, and Honour, such as none of the Kings have had that have been before thee, neither shall there any after thee have the like. 2 Chron. 1. 11, 12. 1 Kings 3. 11, 12. And Solomon determined to build a House for the Name of the Lord, and a House for his Kingdom. And Solomon told out threescore and ten thousand Men to bear Burdens, and fourscore thousand to hew in the Mountain, and three thousand and six hundred to oversee them. And Solomon sent to Hiram the King of Tyre, saying, As thou didst deal with David my Father, and didst send him Cedars to build him an House to dwell therein, even so deal with me. 2 Chron. 2. 1, 2, 3.

XXI.

21. A
Rights to
have
Guards for
their Per-
sons.

It follows from this Use of the Grandure necessary to Princes, that altho they ought not to set their Hearts upon it, but ought rather to elevate them to a Zeal for the Glory of God; yet they have a Right, for the good of the Publick, to make use of the Marks necessary for displaying this Grandure. Thus

it is very just and reasonable that they should have Soldiers for the Guard of their Persons and of their Houses, and that they should allow likewise the Use of Guards to those who supply their Place in the Government of the Provinces z.

z That his Heart be not lifted up above his Brethren. Deut. 17. 20.

And Solomon gathered together Chariots and Horsemen; and he had a thousand and four hundred Chariots, and twelve thousand Horsemen, whom he bestowed in the Cities for Chariots, and with the King at Jerusalem. 1 Kings 10. 26.

XXII.

It is for the same Use that the Service of their Houses obliges them to have for their Domesticks a great number of Officers of different sorts for divers Uses, and that the said Officers are commanded by others whose Offices are among the chief Offices of the State, and which are conferred on Persons of the first Rank a.

22. A
Rights to
have many
Officers for
their
Household.

a So King Solomon was King over Israel. And these were the Princes which he had; Azariah the Son of Zadok, the Priest; Elihoteh and Ahiah, the Sons of Shisha, Scribes; Jehoshaphat, the Son of Ahilud, the Recorder; and Benoiiah, the Son of Jehojada, was over the Host; and Zadok and Abiathar were the Priests; and Azariah, the Son of Nathan, was over the Officers; and Zabub, the Son of Nathan, was principal Officer, and the King's Friend; and Ahilhar was over the Household; and Adoniram, the Son of Abda, was over the Tribute. And Solomon had twelve Officers over all Israel, which provided Victuals for the King and his Household; each Man his Month in a Year made Provision. 1 Kings 4. 1, 2, &c.

And when the Queen of Sheba had seen the Wisdom of Solomon, and the House that he had built and the Meat of his Table, and the sitting of his Servants, and the Attendance of his Ministers, and their Apparel, his Cup-Bearers also, and their Apparel, and his Ascent by which he went up into the House of the Lord, there was no more Spirit in her. 2 Chron. 9. 3, 4.

XXIII.

It is likewise a Consequence of the Grandure of the Sovereign, especially in Hereditary Monarchies, that the Prince should have a Demesne peculiar to the Crown, consisting of Lands and of Rights which yield Revenues to him, and that he should have Power to give out of this Demesne Portions to his Children, according as the Laws of the State may have provided in that Matter. Thus in France the King takes out of his Demesne a Patrimony for his Male-Children, which is commonly called an Appenage, of which None shall be taken in another Place b.

23. The
Demesne
of the
Prince.

b See the Title of the Prince's Demesne, and in this Title the fourteenth Article of the first Section.

XXIV.

XXIV.

24. The Right of raising the necessary supplies.

For the Use of many of the Rights of the Sovereign which have been just now explained, and for the Exercise of his Power in the several Wants of the State in Peace and in War, it is just that the Sovereign should have the Right of drawing from the State itself the Supplies which its Wants render necessary. As will appear more fully in the Articles which follow.

c Wherefore ye must needs be subject, not only for Wrath, but also for Conscience sake. For, for this Cause pay you Tribute also: for they are God's Ministers, attending continually upon this very thing. Render therefore to all their Dues, Tribute to whom Tribute is due, Custom to whom Custom, Fear to whom Fear, Honour to whom Honour. Rom. 13. 5, 6, 7. See the fourth Title.

[In England it has been received as a perpetual standing Law ever since the Reign of Edward I. that no Subsidy, Tax, Imposition, or other Aid or Charge whatsoever, is to be imposed or levied upon the Subject without Consent of Parliament. Stat. de tallagio non concedendo, edit. anno 34 Edw. I. 3 Car. I. cap. 1. Coke 2. Inst. pag. 532, 533.]

XXV.

25. Different occasions for Taxes.

In the time of Peace it is necessary to keep in repair the Fortifications of strong Towns, to maintain the Garisons, and to subsist the other Troops that are necessary for the defence of the Kingdom, and Safety of the Prince's Person; to supply the other Expences necessary for his Household; to pay the Wages of the several sorts of Officers; to repair and keep in good condition the Highways, the Bridges, the Causeys; to render the Use of the Sea-Ports safe and commodious; to facilitate the Navigation of the Rivers; and to provide for all the other Charges of the State. Which gives to the Sovereign a Right to demand from the Subjects the Money that is necessary for all these Uses.

d See the Passage cited on the preceding Article.

XXVI.

26. A Right to levy Troops for the War, and to provide for the Expences which the War may require.

In time of War it is necessary to have Troops, both Cavalry and Infantry, Horses, Arms, Artillery, Ammunition, Convoys for Provisions, Ships of War, if it be a Kingdom that borders on the Sea, and every thing that the Quality of the War may require. This implies the Right to levy Soldiers, to fortify more and more the strong Places, or to build new Fortresses according as the Occasion may require; and in general to provide every thing that may be necessary for supporting the War,

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and defraying the Charges of it out of the Publick Money.

e This is also a Consequence of the twenty fourth Article.

XXVII.

The Right of levying Soldiers comprehends that of obliging not only those to take up Arms who by their Military Offices are bound to it, but also those who by particular Engagements may be bound to serve in the Wars. Thus in France all Gentlemen, and all those who hold Fiefs in chief, or Meſne-Fiefs, are tied to this Service. For the Gentry have the said Quality with this Burden, and all Vassals owe this Service on account of their Fiefs, which are either held immediately of the Crown, as the first and greatest Fiefs are, or are held of these greater Fiefs, as Meſne-Fiefs. So that the King has a right to oblige the Vassals and Gentry to take up Arms; which is done by an Order which is called an Order for assembling the Ban and Arrier-Ban.

27. A Right to oblige those to take up Arms who are bound to that Service.

f In the Roman Empire they obliged all Persons to take up Arms whom they found proper for us, and they were chosen by Officers named Conquistores, who were the Persons who made that choice which they called Delectus; and it was a Crime to refuse the Service when they were called to it. But this Election was only practised in Cases of Necessity; and seeing the Troops were usually sufficiently filled with Soldiers who listed themselves voluntarily, they moderated the Punishment of those who declined to serve when called to it. Gravius autem delictum est derectare munus militiæ quam adpetere. Nam & qui ad delectum olim non respondebant, ut proditores libertatis in servitutem redigebantur. Sed mutato statu militiæ recessum à capitis poena est. Quia plerumque voluntario milite numerus suppletur. L. 4. §. 10. ff. de re milit.

And the Lord sent thee on a Journey, and said, Go, and utterly destroy the Sinners, the Amalekites, and fight against them, until they be consumed. 1 Sam. 15. 18.

[In England, in case of any Insurrection within the Kingdom, or fear of an Invasion from abroad, the King directs the Militia of the Kingdom to be assembled, in order to suppress the said Insurrection, and repel the said Invasion. The Militia is under the Direction of Commissioners of Lieutenancy named by the King for the several Counties, Cities, and Places of the Kingdom. And the manner of assembling the said Militia, and assessing the Subjects towards the Charge of the same, is particularly laid down in Stat. 13 & 14 Car. II. cap. 3. By which Statute it is expressly provided, that none that have advanced a Month's Pay, shall be charged with any other Month's Payment till they are reimbursed. For which reason, it has been necessary in the late Reigns, when there has been occasion to raise the Militia of the Kingdom, to have an Act of Parliament for that purpose, directing the Militia to be raised for that Year, tho the Month's Pay formerly advanced be not repaid.]

§ 1

XXVIII.

XXVIII.

28. A
Right to re-
gulate the
Expences
of the State
according
to the
Wants
thereof.

The Right which the Sovereign has to demand of his Subjects the Monies that are necessary for the different Wants which have been just now explain'd, extends to the regulating the ordinary Expences in the time of Peace, and to the regulating also the extraordinary Expences in the time of War, and to the taking care that Funds be provided sufficient for defraying the said Charges, either by laying on Imposts, or by other ways. Thus Taxes upon Land, the Excise, and other Subsidies, are Aids which the Subjects owe to their Sovereign, and which by consequence he has a Right to demand of them according as the Exigencies of the State may require g.

g See the twenty fourth Article of this Section, and the fourth Title of this Book.

XXIX.

29. Four
several
sorts of
Revenues
independ-
ent of the
Necessity
of the
Expences.

Besides these Funds of publick Taxes and Imposts levied upon the Subjects, which ought to be lesser or greater according to the Wants of the State, the Sovereign has likewise other sorts of Rights to Goods which belong to him naturally as being Head of the Body of the State, and without any regard to the publick Wants h. Which comprehends four several Rights, which shall be explained in the following Articles.

h See the Articles which follow, and the second, third, fourth, and fifth Sections of the Title of the Prince's Demefne.

XXX.

30. For-
feitures.

The first of these Rights is that of the Forfeiture of the Goods of Persons condemned to Punishments, which ought to have this Consequence, such as are at this day in France the Punishment of Death, of Condemnation to the Gallies for ever, and of perpetual Banishment out of the Kingdom. For those who lie under such a Sentence being incapable of possessing any thing, and deserving moreover this Punishment of having their Goods confiscated, they are justly deprived of the Goods which they possessed. For which reason these Goods being without an Owner, do belong to the Publick, and go to the Sovereign who has a Right to all such Goods. And we must place in the same Rank the Fines or Pecuniary Mulcts inflicted on Offenders, over and above what they are condemned to give as an Alms to the Poor, and for a

†

Reparation of the Civil Interest of the Parties concerned. These Pecuniary Mulcts are what they call in France the King's Fines, which are adjudged to the King, either out of the forfeited Goods, when the Forfeiture belongs to the Lord of the Mannor, and not to the King, or out of the Goods which remain to the Person that is condemned, and who has not incurred the Pain of Forfeiture i.

i Depontau nec eorum quidem rerum quas post pernam inrogatam habuerint, hæredem habere possunt; sed & hæ publicabuntur. l. 2. C. de bon. dam.

See the second Section of the Title of the Prince's Demefne.

XXXI.

The second of these Rights is that which entitles the Sovereign to all Goods that are vacant, that is to say, which are found to be without any Owner; such as the Goods of those who die without leaving any Relation behind them, and without making a Testament: for the want of Heirs in those Persons makes their Successions to pass to the Prince. And there are likewise other sorts of vacant Goods, as shall be explained in the third Section of the Title of the Prince's Demefne l.

31. The
Rights to
vacant
Goods that
have no
Owner,
and to the
Succession
of those
who die
without
Heirs.

l Successionum Edictum idcirco propositum est, ne bona hæreditaria vacua sine Domino diutius jacerent, & creditoribus longior mora fieret. E re igitur prætor putavit, præstare tempus his, quibus bonorum possessionem delulit, & dare inter eos successionem: ut maturius possint creditores scire utrum habeant, cum quo congregiantur, an vero bona vacantia sisco sint delata, an potius ad possessionem bonorum procedere debeant, quasi sine successore defuncto. l. 1. ff. de success. edict. Intestatorum res qui sine legitimo hærede decesserint, sisci nostri rationibus vindicandas. l. 1. C. de bon. vacant.

See the third Section of the sixth Title of the Prince's Demefne.

XXXII.

The third of these Rights is that by which the King acquires the Goods of Strangers who die within his Dominions without having been naturalized, and without leaving behind them Heirs who are natural born Subjects. For since no Person is capable of succeeding to them, their Estates are in the same Condition as the Estates of Persons dying without Heirs, and do belong to the King m.

32. The
Right of
Succession
to the Estates
of Aliens.

m See the fourth Section of the sixth Title of the Prince's Demefne.

XXXIII.

The fourth and last of these Rights is that of Succession to Bastards, which entitles

33. The
Rights of
Succession

to Bastards
own lie
State,
a. with-
out Chil-
dren.

entitles the King to the Goods of Bastards who die without leaving behind them Children begot in lawful Wedlock, or making a Testament. For seeing they can have no lawful Heir, their Succession falls into the Condition of that of Persons dying without Heirs.

n See the fifth Section of the sixth Title of the Prince's Demefne.

XXXIV.

34. How
these four
sorts of
Rights
and Revenues may
be applied.

It is to be observed that these four sorts of Rights in France have this belonging to them in common, That the King disposes in three different manners of that which he happens to acquire by any one of these several Titles. For if it be Lands he acquires, he may incorporate them into his Demefne by the ways which are prescribed for that purpose, and which shall be explained in their proper place: thus, there are Lands annexed to the Crown by Confiscations. Or the King may make a Grant of them to Persons whom he has a mind to gratify, or to reward, for some past Services. And as for the Fines and other Goods which consist in Money, he may either give them away, or he may comprize all these sorts of Profits within the Farms of the Demefnes, and leave them to the Farmers thereof. For all these ways of conveying to the Prince these several sorts of Goods, do not render them inalienable till after they are annexed to the Demefne, as shall be explained when we come to treat thereof.

o See the twenty second, twenty third, twenty fourth, and twenty fifth Articles of the first Section of the sixth Title of the Prince's Demefne.

S E C T. III.

Of the Duties of those who are vested with the Sovereign Authority.

The CONTENTS.

1. The first Duty of the Sovereign, is to acknowledge that he holds his Power of God.
2. They ought to study the Rules of Government in the Holy Scriptures.
3. The first Rule is, To use their Power for the Support of Justice.
4. Another Rule, The Liberty of Justice.
5. Another Rule, Freedom of Access for Complainers, and Care to suppress Violence.

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6. Another Rule, To make choice of good Ministers, and of good Officers.
7. Another Rule, Free Access for Persons who are to make Proof of the Truth.
8. Another Rule, To use Precaution for finding out the Truth.
9. Another Duty, To protect Religion and the Laws of the Church.
10. Another Duty, Prudence in granting Privileges and Exemptions, and in inflicting Punishments.
11. A Duty in respect of Strangers.
12. A Duty in the Management of the Revenue.
13. A Summary of the Duties of the Sovereign.
14. In what Sense the Sovereign is said to be above the Law.

THE first and most essential of all the Duties of those whom God exalts to the supreme Government of a Kingdom, is to own and acknowledge this Truth, That it is from God that they derive all their Power; that it is His Place which they fill; that it is by Him that they ought to reign, and from Him that they are to have that Wisdom and Understanding which are requisite for the Art of governing. And they ought to make these Truths the Principles of all the Rules of their Conduct, and the Foundation of all their Duties.

a See the sixth Article of the first Section of the first Title.

Thou hast made me King over a People, like the Dust of the Earth in Multitude. Give me now Wisdom and Knowledge, that I may go out and come in before this People. 2 Chron. 1. 9, 10.

Give therefore thy Servant an understanding Heart, to judge thy People, that I may discern between Good and Bad. 1 Kings 3. 9.

Give me Wisdom, that I may siteth by thy Throne. Wild. of Sol. 9. 4. See the Preamble of this Title. I will send thee a Man out of the Land of Benjamin, and thou shalt anoint him to be Captain over my People Israel, that he may save my People out of the hand of the Philistines. 1 Sam. 9. 16.

II.

The first Consequence which naturally arises from these Principles is, That Sovereigns ought to know that which God demands of them in the Station where he has placed them, and what Use they ought to make of the Power which he has given them. And it is of him that they are to learn it, by reading his Law, which he has expressly commanded them to study, having laid down therein the Rules which they ought to know, in order to their governing well.

b And so shall be when he sitteth upon the Throne

1. The first Duty of the Sovereign, is to acknowledge that he holds his Power of God.

2. They ought to study the Rules of Government in the Holy Scriptures.

Throne of his Kingdom, that he shall write him a Copy of this Law in a Book, out of that which is before the Priests the Levites. And it shall be with him, and he shall read therein all the Days of his Life; that he may learn to fear the Lord his God, to keep all the Words of this Law, and these Statutes, to do them. Deut. 17. 18, 19.

The Book of the Law shall not depart out of thy Mouth, but thou shalt meditate therein Day and Night, that thou mayest observe to do according to all that is written therein: For then thou shalt make thy way prosperous, and then thou shalt have good Success. Josh. 1. 8.

III.

3 The first Rule is, to use their Power for the Support of Justice.

The first Rule which the Law of God lays down touching the Duties of the Sovereign, is a Consequence of this Truth, That it is of God that he holds his Power: And the same Divine Law which teaches Princes this Truth, and which informs them of the natural Use of their Power, commands them not to make thereof an Instrument of Pride and Vanity; but to imploy it in such a manner for the Support of Justice, as that they may not give their Authority to any other Use besides this; and that they do exercise it for this purpose as often as occasion shall offer, so as that nothing may be capable of diverting them from it. For a Sovereign ought to look upon himself as a Father of the People who compose the Body of which he is the Head; and to consider that they are to answer to the severe Judgment which God will exercise against those who shall have made a bad Use of the Power which they held of him c.

c That his Heart be not lifted up above his Brethren; and that he turn not aside from the Commandment to the right Hand, or to the left. Deut. 17. 20.

Hear therefore, O ye Kings, and understand; learn ye that be Judges of the Ends of the Earth. Know ear, you that rule the People, and glory in the Multitude of Nations. For Power is given you of the Lord, and Sovereignty from the Highest, who shall try your Works, and search out your Counsels. Because being Ministers of his Kingdom, you have not judged aright, nor kept the Law, nor walked after the Counsel of God; horribly and speedily shall he come upon you: For a sharp Judgment shall be to them that be in high Places. For Mercy will soon pardon the meanest; but mighty Men shall be mightily punished. Wild. of Sol. 6. 1, 2, 3, &c.

IV.

4. Another Rule, The Love of Justice.

This Duty of Sovereigns, not to imploy their Authority but for the Support of Justice, implies that of a great Love for the Justice which they are obliged to support and maintain, and of a great Application to know what it is

that Justice requires, and to enforce the Observance thereof d.

d Have Righteousness, ye that be Judges of the Earth. Wild. of Sol. 1. 1.

Give therefore thy Servant an understanding Heart, to judge thy People, that I may discern between Good and Bad. 1 Kings 3. 9.

V.

It is a Consequence of the Love of Justice in the Heart of the Prince, that he make himself easy of Access to receive the Complaints of Persons who suffer some Violence, or some Injustice, whether it be from those who abuse the Authority of Justice, being intrusted by the Prince with the Administration of some Branch thereof, or from those who by their Condition being exalted above others, should make use of that Advantage for oppressing them e.

e Deliver him that is spoiled out of the hand of the Oppressor, lest my Fury go out like Fire, and burn that none can quench it. Jer. 21. 12.

Then Samuel took a Viol of Oil, and poured it upon his Head, and kissed him, and said, Is it not because the Lord hath anointed thee to be Captain over his Inheritance? 1 Sam. 10. 1.

VI.

Seeing the Sovereign cannot by himself exercise all the Functions in which his Power and Authority are to be imployed for the Support of Justice, and that he is obliged to divide among a great Number of Ministers and Officers those different Functions; the Administration of the sovereign Power, which he holds of God, lays another Duty upon him of making a good Choice of the Ministers and Officers to whom he delegates any part of his Authority. Which obliges him to enquire into the Characters of the Persons whom he employs, when it is he himself that is to chuse them; and when the Election is to be made by others, to see that they observe the standing Rules and Orders of the Kingdom for that purpose, and the Regulations which he himself may have made for filling up the Offices with Persons in all respects duly qualified for the Employment, both by their Capacity and their Probity; and to inform himself of the good or bad Use which they make of the Authority which they have in their hands f.

f And be ye Judges in the Land, throughout all the fenced Cities of Judah, City by City. And said to the Judges, take heed what ye do: for ye judge not for Man, but for the Lord, whose is with you in the Judgment. Wherefore now, let the

5. Another Rule, Freedom of Access for Complainants, and Care to repress Violence.

6. Another Rule, To make choice of good Ministers, and of good Officers.

Fear of the Lord be upon you, take heed and do it: for there is no Iniquity with the Lord our God, nor respect of Persons, nor taking of Gifts. 2 Chron. 19. 5, 6, 7.

Have but one Counsellor of a thousand. Ecclus. 6. 6.

VII.

7. Another Rule, Free Access for Persons who are to make Proof of the Truth.

In the Occasions where the Sovereign himself exercises his Authority in Person, whether it be that the Consequence of the Affair requires it should be so, or that particular Considerations oblige him to reserve to his own Cognizance what he might have committed to other Persons, whether Ministers or Officers, he is obliged to make an exact Inquiry into the Truth, and to render himself accessible to the Persons who may be able to furnish him with Proofs of it. Thus, he ought to hear equally both the Complainants and Defendants, and to allow them as much as is possible the free Use of the Ways which may lead him to the Knowledge of the Truth; that after having discovered the same, he may decree, and cause to be executed, that which shall appear to be just.

The King that faithfully judgeth the Poor, his Throne shall be established for ever. Prov. 29. 14.

Hear the Causes between your Brethren, and judge righteously between every Man and his Brother, and the Stranger that is with him. Ye shall not respect Persons in Judgment, but ye shall hear the small as well as the great: you shall not be afraid of the Face of Man, for the Judgment is God's. Deut. 1. 16, 17.

VIII.

8. Another Rule, To use Precaution for finding out the Truth.

Since it often happens that in the Cases where the Sovereign ought to take cognizance of the Truth, the same is smothered by the Prevarication of those very Persons to whom he commits the Care of enquiring into it, or of those who, having the Honour to approach his Person, make Reports to him either of Complaints, or of other Affairs, in which they disguise the Truth; it would be prudent in the Prince, and it is his Duty, to moderate the Confidence which he places in all his Ministers, and in all those who have the Honour to approach him, and of whom he may take Advice, or receive any Testimony of the Truth. For it is often prudent in the Prince, especially in Affairs of Importance, and wherein any Minister expresses a great Earnestness, to consider that the Truth may be industriously concealed from him, and to take therefore the proper ways for discovering it, lest by suffering himself to be imposed upon by Lying,

Imposture, and Calumny, he should grant his Protection to some Injustice, and give too ready an ear to Ministers who are Protectors of Iniquity.

h Then shalt thou enquire and make search, and ask diligently: And behold if it be Truth, and the Thing certain, that such Abomination is wrought among you, thou shalt surely smite the Inhabitants of that City with the Edge of the Sword, destroying it utterly, and all that is therein, and the Cattle thereof, with the Edge of the Sword. Deut. 13. 14, 15.

And it be told thee, and thou hast heard of it, and enquired diligently, and behold it be true, and the Thing certain, &c. Deut. 17. 4.

They that seek the Lord, understand all Things. Prov. 28. 5.

i If a Ruler hearken to lyes, all his Servants are wicked. Prov. 29. 12.

IX.

Seeing the Sovereign is the only Person who has within his Dominions the Temporal Power in its full Extent, and that he ought to imploy the said Power for the Support of Justice and Truth, and that both the one and the other are inseparable from the Spirit of Religion and the Worship of God, of whom he holds his said Power; he ought likewise to imploy the said Power for the defence of Religion, and of the Worship of God, of whom he holds it; which obliges him to protect and maintain the free Exercise of Religion, to give to the Laws of the Church the Assistance which may be necessary to enforce the Observance of them. And thus we see in France, that as to what relates to the Roman Catholick Religion, and as to what the Church decrees and determines, the Kings of France declare themselves Protectors, Guardians, Conservators, and Executors of the same.

9. Another Duty, To protect Religion, and the Laws of the Church.

l Ordinance of Francis the First, of the Month of July, 1543.

Unam nobis esse, in omni nostræ reipublicæ & imperii vita, in Deo spem credimus: scientes quia hæc nobis & animæ & imperii dat salutem. Unde & legisationes nostras inde pendere competit, & in eam respicere: & hoc eis principium esse, & medium, & terminum. Nov. 109. in præfat.

See the fourth Article of the second Section.

X.

We may reckon among the Duties of those who have the Sovereign Authority committed to them, Prudence in the dispensing of Bounties and Rewards which are to distinguish Merit, procure it to be esteemed, and to induce others to imitate it. And they ought likewise to be very circumspect in granting Privileges, Exemptions, and other Favours, especially such as might turn

10. Another Duty, Prudence in granting Privileges and Exemptions, and in inflicting Punishments.

to the prejudice of other Persons *m*. And in inflicting Punishments and Corrections, they may mitigate the Severity on some occasions, where Wisdom and Clemency may agree together *n*, nor bating any thing of the Severity thereof in the Cases where the Necessity of an Example, and the Dignity of Justice demand Firmness and Resolution.

m Memento aut prætor, quæ ex re quid illi damni datur. Nam quoviscumque aliquid in publico fieri permittitur, ita oportet permitti, ut sine injuria cuiusquam fiat. Et ita solet princeps quovis aliud novi operis instituendum petitur, permittere. l. 2. §. 10. ff. ne quid in loco pub. vel itin. fiat.

Si quis a principe simplici impetraverit, ut in publico loco ædificet; non est credendus sic ædificare, ut cum incommodo alicujus id fiat; neque sic conceditur, nisi forte quis hoc impetraverit. d. l. §. 16.

n Si vindicari in aliquos severius contra nostram consuetudinem pro causæ intuitu iusserimus, nolumus statim eos aut subire poenam, aut excipere sententiam: sed per dies triginta super statu eorum fors & fortuna suspensa sit. l. 20. C. de poen.

It appears by this Law, that it is prudent for the Prince, when he has been moved to inflict a severer Punishment than what is ordinary, to take time to consider of it, and to suspend in the mean while the Execution thereof, if the Circumstances will allow of it.

XI.

11. A Duty in respect of Strangers.

Besides these Duties of the Sovereign which have been explained in the preceding Articles, and which relate to his Conduct within the Kingdom, he has his Engagements with respect to Strangers, who are his Neighbours or Allies, whether it be for cultivating a Friendship and good Correspondence with them as much as is possible, or for defending himself and his Dominions from any Attempts they shall make against them *o*.

o If it be possible, we must as much as we can, live peaceably with all Men. Rom. 12. 18.

Altho this Text of Scripture relates chiefly to Persons in a private Capacity, yet the Truth which it teaches is common to Princes.

XII.

12. A Duty in the Management of the Revenue.

Seeing many of the Duties of the Sovereign, whether it be within or without his Kingdom, demand the Use of Money, and a Right to levy it; this Right implies the Duty of a prudent Conduct in laying on Taxes, and in proportioning them to the Wants of the State, and to the Abilities of the People *p*.

p See the primary fourth and following Articles of the second Edition.

q Neither shall he greatly multiply silver and Gold. Deut. 17. 17.

Quod communiter omnibus prodest hoc rei private nostre utilitati preferendum esse censemus: Nostrum esse proprium subsectorum commodum imperialiter existimantes. l. un. §. 14. C. de cad. toll.

XIII.

These general Duties we have just now explained, comprehend in their extent the whole Detail of the Duties of those who are vested with the Supreme Authority. For they extend to every thing that relates to the Administration of Justice, the general Policy of the State, the publick Order, the Tranquillity of the Subjects, the Quiet of Families, the Watchfulness about every thing that may contribute to the common Good, the Choice of able Ministers and such as love Justice and Truth, the Nomination of good Officers for the Dignities and Offices which the Sovereign himself ought to fill with Persons who are known to him, and the Observance of the Regulations for filling up the other Offices by other ways than his own proper Choice, the discerning between the Use of Severity or Clemency on the Occasions where Justice may admit of a Mitigation of the Rigour of the Law, a prudent Dispensation of Bounties, Rewards, Exemptions, Privileges, and other Favours; a discreet Management of the Publick Money; Prudence in his Conduct with regard to Strangers; and in a word every thing that may render the Government agreeable to the Good, terrible to the Wicked, and worthy in all respects of the divine Function of governing Men, and of the Exercise of a Power, which, being derived from none but from God, is a Branch of the Divine Power itself *r*.

r This is a Consequence of the preceding Articles. Salutem republicæ tuam nulli magis credit convenire, nec alium sufficere ei rei quam Cæsarem. l. 3. ff. de offic. præf. vii.

See 2 Chron. 34. and Est. 1. 22.

XIV.

We may add for a last Duty of the Sovereign, which is a Consequence of the first, and which likewise includes in the others, that altho his Power seems to set him above the Law, there being no body upon Earth that has a right to call him to an account for his Administration; yet he ought to observe the Laws which relate to him; and he is obliged to do it, not only that he may give a good Example to his Subjects, and render them Duty and

13. A Summary of the Duties of the Sovereign.

14. In what Sense the Sovereign is said to be above the Law.

to them ; but because he is not dispensed with as to his own Duty by virtue of this Power of Sovereign ;, but on the contrary this Rank obliges him to prefer to his own particular Interest the common Good of the State, which he ought in honour to look upon as his own proper Good.

s Digna vox est maiestate regnantis legibus alligatum se principem profiteri, adeo de auctoritate juris nostra pender auctoritas. Et reuera majus imperio est submittere legibus principatum. Et oraculo presentis Edicti, quod nobis licere non paumur, alius indicamus. *l. 4. C. de legib. & const. pr.*

*L*ucet enim lex imperii solemnibus juris Imperatorum solverit, nihil tamen tam proprium imperii est, quam legibus vivere. *l. 3. C. de testam.*

t See the Law quoted on the thirteenth Article.



T I T L E III.

Of the Prince's Council, and of the Functions and Duties of those who are called to it.

WE intend to treat under this Title of that which relates in general to the Functions and Duties of those who are called to the Council of Princes, in what sense soever that Word be taken, whether it be of standing Councils in some States, and such as are composed of Officers of whom the Laws of the Kingdom oblige the Prince to take Counsel and Advice, or that he himself make choice of the Persons whom he is pleased to call to his Council. For we ought to suppose that Prudence will direct even Princes who have the most upright Intentions, and who are of the greatest Abilities, as it is indeed their Duty, to take Counsel and Advice in Affairs which they have to regulate, whether it be for the Good of the State in general, or to render Justice to particular Persons *a* and as on one hand they

a Humanum esse probamus, si quid de cetero in publica privataque causa, emerit necessarium quod formam generalem & antiquis legibus non insertam exposcat, id ab omnibus antea tam proceribus nostri palatii, quam nobis placuerit, tunc legata dictari. Et sic ea denuo collectis omnibus recenseri, & cum omnes consenserint tunc demum in sacro nostri numinis consistorio recitari; ut univerforum consensus nostrae serenitatis auctoritate firmetur. *l. 8. C. de leg. & const. pr.* Bene enim cognoscimus, quod cum vestro consilio fuerit ordinatum, id ad beatitudinem nostri imperii, & ad nostram gloriam redundare. *d. l. in f.*

The Honour of Kings is to search out a Matter. Prov. 25. 2.

ought to inform themselves of the Truth of the Facts which they cannot know of themselves, and which yet it is necessary that they should know ; to on the other hand it is for their Interest, and for the Good of the Publick, that they should take the Assistance of the Experience and Knowledge of Persons who are capable to give them good Counsel and Advice *b*

We have thought proper to explain in this Title that which relates in general to the Functions and Duties of the Persons, who by their Offices, or by the Will of the Prince, are called to give

He that walketh with wise Men shall be wise. Prov. 13. 20.

b There was never any Prince in the World who stood less in need of Counsel than did *Moses*, of whom it may be said that God himself was his Counsel, to whom he had liberty of free Access in all his Straits and Difficulties, and yet nevertheless he received agreeably, and followed the Advice which *Jethro* his Father-in-Law gave him touching the manner in which he administer'd Justice to the People.

And it came to pass on the morrow, that Moses sat to judge the People, and the People stood by Moses from the Morning unto the Evening. And when Moses's Father-in-Law saw all that he did to the People, he said, What is this thing that thou doest to the People, why sittest thou thyself alone, and all the People stand by thee from Morning unto Even? And Moses said unto his Father-in-Law, because the People come unto me to enquire of God. When they have a Matter, they come unto me, and I judge between one and another; and I do make them know the Statutes of God and his Laws. And Moses's Father in-Law said unto him, The thing that thou doest is not good: Thou wilt surely wear away, both thou and this People that is with thee; for this thing is too heavy for thee, thou art not able to perform it thyself alone. Hearken now unto my Voice, I will give thee Counsel, and God shall be with thee: Be thou for the People to God-ward, that thou mayst bring the Causes unto God. And thou shalt teach them Ordinances and Laws, and shalt shew them the Ways wherein they must walk, and the Work that they must do. Moreover, thou shalt provide out of all the People able Men, such as fear God, Men of Truth, hating Covetousness, and place such over them to be Rulers of thousands, Rulers of hundreds, Rulers of fifties, and Rulers of tens; and let them judge the People at all Seasons. And it shall be that every great Matter they shall bring unto thee, but every small Matter they shall judge; so shall it be easier for thy self, and they shall bear the Burden with thee. If thou shalt do this thing, and God command thee so, then thou shalt be able to endure, and all this People shall also go to their Place in Peace. So Moses hearkened to the Voice of his Father-in-Law, and did all that he had said. Exod. 18. 13, 14, 15, &c. See Prov. 1. 5. See Tob. 4. 19

Nos autem in constitutionum compositione multa quidem & alia de istis decrevimus: exilumavimus autem oportere nunc consilii perfectioribus causam considerantes etiam quaedam corrigere, non aliorum solum modo, sed etiam quae a nobis ipsis sancta sunt. Non enim erubescimus si quid melius etiam horum, etiam, quae ipsi prius diximus adinveniamus, hoc sancire, & competentem prioribus imponere correctionem, nec ab aliis expectare corrigi legem. Nov. 22. in Praefat.

them

them Counsel, or who by the same Engagement of their Offices, or otherwise, are bound in Duty, and have Opportunity to give them some Advice, or to inform them of the Truth of Facts which they are ignorant of, and which it is necessary they should know in order to give the proper Directions therein as the Occasion may require. Thus the Rules which shall be explained in this Title regard in general all those Functions and all those Duties, whether the Counsel to be given be concerning Affairs which relate to the Person of the Prince, or his Household, or to Affairs of State, such as Declarations of War, Treaties of Peace, general Regulations touching the Policy and Government of the State, and other the like Matters; or whether it be concerning particular Affairs, of what nature soever they be, which may deserve that the Prince himself should take cognizance of them.

It is in this general and indefinite Sense that we intend to treat here of the Council of the Prince. So that the subject Matter of this Title respects in general all the Persons, Officers, Ministers, and others who are about Princes, and who are to give them any Counsel or Advice of what nature soever it may be. And this shall be the Subject Matter of two Sections; one shall contain the several sorts of Functions of the said Persons, and the other the Duties which are the Consequences of them.

SECT. I.

Of the Functions of Officers, Ministers, or others who are engaged to give Princes Counsel or Advice.

THE CONTENTS.

1. *The Functions of the said Persons are of several sorts.*
2. *There are three sorts of Functions, according to three sorts of Affairs.*
3. *There are three other sorts, according to the three sorts of Persons who are to exercise them.*
4. *Difference between Counsel and Advice.*
5. *Two sorts of Counsel and Advice; those which concern the Rights of the Prince, and those which relate to his Functions.*
6. *Difference between Functions annexed to Offices, and others.*

7. *All these Functions oblige to proportionable Duties.*

I.

THE Functions of those who have the Honour to be about the Prince, whether it be on account of their Offices, or as being Ministers, or because he honours them with his Confidence, are different and of several sorts, according to their Engagements, and according to the Occasions, as will appear by the Articles which follow *a*.

a See all the Articles of this Section.

II.

These Functions may be distinguished in general by their Nature into three kinds. The first is of those which concern the Person of the Prince, his Rights, and his Interest. The second is of those which regard the Publick. And the third is of those which relate to the particular Affairs it is necessary the Prince should be informed of *b*.

b All the Affairs which can come to the knowledge of the Prince belong to one of these three kinds.

III.

We may under another View distinguish these Functions with respect to the Persons who are to exercise them; which makes three sorts of them. The first is of those which are proper and natural to the Persons who have Offices about the Prince. Thus in France the Officers of the Crown, the Secretaries of State, and others, have several Functions of the three kinds explained in the second Article. The second is of the Functions of those Officers, who, altho they are not immediately about the Person of the Prince, have notwithstanding Opportunity, and are bound to inform him of Facts relating to their Charges, and which it is highly important the Prince should know. Thus it is the Function of the Governours of Provinces to acquaint the Prince with what passes within their Jurisdiction that may be worthy of his knowledge. Thus it is the Function of Judges to have recourse to the Prince in Matters which may demand his Cognizance, whether it be for the Reformation of some Abuses, or for other Causes. The third is of the Functions of such Persons as, without any particular Engagement by their Offices, are called

to be about the Person of the Prince, whether it be that they are employed as Ministers of State, or that they are the Prince's Favourites in whom he reposes a great Confidence, are naturally under an Engagement to give him Counsel or Advice according to the Opportunities and Conveniences which the Honour they have to approach the Prince's Person may afford them c.

c All Persons who are called to give Prince's Counsel or Advice, are under some one of these three sorts of Engagements.

IV.

4. Difference between Counsel and Advice.

It is necessary to observe this Difference between Counsel and that which we call here Advice; that by Counsel we mean the Sentiments of those who give Counsel, and who recommend what they judge proper to be done in the Matter under Deliberation: and that by Advice is meant the Information or Intelligence which is given to the Prince, of things which he is ignorant of, and which he ought to know, or which it would be convenient that he should know in order to give the necessary Directions therein. And this implies the Duty of informing him of the Facts and Circumstances, of which the Truth may be either concealed or disguised from him d.

d It is on the one hand impossible for Princes to know by themselves all the Facts which deserve their Knowledge, and on the other it is necessary they should have Information of them, that they may give proper Directions therein, either by themselves or by the Vigilancy of their Ministers. I am not able to bear you my self alone: the Lord your God hath multiplied you -- How can I my self alone bear your Cumbeance, and your Burden, and your Strife? Take ye wise Men, and understanding, and known among your Tribes, and I will make them Rulers over you. *Deut. i. 9, 12, 13.*

And hardly do we guess aright at things that are upon Earth, and with Labour do we find the things that are before us. *Wisdom of Solomon, 9. 16.*

V.

5. Two sorts of Counsels and Advices; those that concern the Rights of the Prince, and those which relate to his Functions.

Since it is for the Service of the Prince that it may be necessary that Counsel or Advice should be given him, we may under this View distinguish them into two sorts, which will comprehend them all. The first is of those which concern the Interest and the Rights of the Prince, and the second of those which have relation to the Duties which he owes to the State in ge-

neral, and to his Subjects in particular e.

e Whatever may be worthy of the Prince's Knowledge, relates either to his own Rights and Interest, or the Affairs of the Publick, or the Concerns of particular Persons who apply to him for Remedy therein.

VI.

Among these different Functions of the Persons who approach the Prince, whether they be Officers or others, some are essential to the Offices which the said Persons enjoy, or to the Engagements which they are under by the Prince's Order, and nothing dispenses with their Performance thereof on the Occasions where the same may be necessary; and other Functions are necessary only in so far as Prudence may render them useful. Thus Officers, and others to whom the Prince commits any Part of the Administration, or whom he engages in any other sort of Service, have their Functions regulated by their Employments, which oblige them to give the Counsel and Advice that properly belongs to their Ministry. Thus those very Persons, and others who have a free Access to the Prince, may have Occasions of giving Counsel or Advices, which, altho the same be not essential to their Employments, may nevertheless be of so great importance as to require that they should make use of the Confidence which the Prince has placed in them to communicate them unto him; but without intruding themselves too officiously upon the Prince; and taking the Precautions which Prudence may suggest to them, as proper for procuring a good Success in their Application f.

f There is this Difference between these two sorts of Functions, that those which are annexed to Offices oblige indispensably, and that the other Functions do not oblige so absolutely, but are to be exercised with Prudence and Discretion. And Prudence is likewise required in the discharge of the Functions which are indispensably annexed to Offices, so as that they be exercised in such a manner as to render them useful by taking the Precautions which the Nature of the Affairs and the Circumstances may require.

VII.

All these several Functions oblige the Persons whom they concern to Duties proportioned to their Offices, or other Engagements, as shall be explained in the following Section g.

g See the following Section.

7. All these Functions oblige to proportionable Duties.

S E C T. II.

Of the Duties of Officers, Ministers, or others who are engaged to give Counsel or Advice to Princes.

The CONTENTS.

- The first Rule to give such Advice and Counsel as is conformable to the Principles of the Duties of Princes.*
2. *To regulate them according to Justice and Truth*
 3. *Without Passion and without Self-Interest.*
 4. *The several sorts of Duties, according to the sorts of Advices and Counsels.*
 5. *Advices and Counsels relating to the Prince.*
 6. *Advices and Counsels which respect the Good of the State.*
 7. *Advices and Counsels which regard particular Persons.*
 8. *Fidelity in informing the Prince of the Truth.*
 9. *Integrity in giving Counsel and judging in the Cases which are called to it.*
 10. *The several sorts of Duties of those different sorts of Persons who may be about the Prince.*
 11. *The Duty of representing the Inconveniences that might attend the Execution of an Order which might have bad Consequences.*
 12. *The Protection of the Weak.*
 13. *Fidelity in performing all the Duties in Matters of the smallest Concern.*
 14. *To avoid false Wisdom and false Policy.*
 15. *Not to render their Greatness into Pride.*

I

1. *The first Rule, to give such Advice and Counsel as is conformable to the Principles of the Duties of Princes.*

SELING the Counsels and Advices which Persons who are about Princes, whether it be on account of their Offices or otherwise, may give them, relate to the Conduct which Princes ought to observe in the Conjunctions where the said Counsels and Advices may be of use: The first Rule of the Duty of those Persons is the same with the first Rule of the Conduct of Princes, and of their Duties. Thus, as the Duties of a Prince consist in holding the Place of God here upon Earth, and in exercising according to his Spirit the Power which he holds of him, as has been explained in its Place; so the Duties of those who are about his Person consist in inspiring into the Prince, whether it be by their Coun-

sels or Advices, only such Sentiments as have the Character of the same Divine Spirit *a*.

a See the first Article of the third Section of the second Title.

II

It follows from this first Rule, and from this first Duty, that in the Advices and Counsels which are given to Princes, all Wisdom, all Prudence, all Policy whatsoever, which hath not for its Principle and Foundation Justice and Truth, which the Prince ought to support and maintain, and which it is his Business, his Honour, and his Glory so to do, are a Breach of this Duty. Thus all Advices, and all Counsels opposite to Truth and Justice, whether they be calculated for advancing the Fortune of those who give them, or for favouring some Passion or some Interest either of the Advisers themselves, or of their Relations or Friends, ruin the Foundations and transgress the essential Rules of the Conduct of Princes, the Maxims of which God will have them to take from the Spirit of his Law, as being the Source of the Wisdom, the Forces, and Counsels of which they stand in need *b*. And those who give Counsel upon any other Principle, or with any other view, cannot but draw upon themselves the bad Consequences thereof, and the Vengeance which God prepares for such a Prevarication *c*.

b With him is Wisdom and Strength, he hath Counsel and Understanding. Job 12. 17.

Counsel is mine, and sound Wisdom, I am Understanding, I have Strength. Prov. 5. 14.

There is no Wisdom, nor Understanding, nor Counsel against the Lord. Prov. 21. 30.

See the second Article of the third Section of the second Title.

c He leadeth Counsellors away spoiled, and maketh the Judges Fools. Job 12. 17.

III.

The first Duty which is so essential and so indispensably necessary, comprehends all the others, of which the most general and that of the greatest Importance is, for those who give Counsel and Advice to Princes to examine narrowly whether their Passions and their Interests, or those of the Persons whom they are desirous to serve, have not too great a share in the Counsels and Advices which they give; that they may take care, not to give any Counsel or Advice where their Love for themselves, or their Friends, does not give way to the Love of Truth and Justice, and where

2. *To late it, according to Justice and Truth.*

3. *Without Passion and without Self Interest.*

where they do not prefer to the greatest Fortune, the greatest Interest, and the greatest Grandure, the Glory and the Duration of the Prince's Reign, which are the natural Consequences of a Conduct that is founded upon Justice and Truth *d.*

d For by Speech Wisdom shall be known, and Learning by the Word of the Tongue. In no wise speak against the Truth, but be ashamed of the Error of thine Ignorance. Eccclus. 4. 24, 25.

If thou followest Rightcounes, thou shalt obtain her, and put her on as a glorious long Robe. Eccclus. 27. 8.

IV.

These general Duties contain three kinds of particular Duties, which are to be distinguished according to the three kinds of Functions explained in the second Article of the preceding Section. The first is of the Duties which relate to the Prince's Person, his Rights, and Interest. The second is of those which concern the Publick; and the third of those which regard the Affairs of particular Persons *e.*

e All sorts of Advices and Counsels that can be given to Princes, may be reduced to these three kinds.

V.

As for the Counsels and Advices in Matters which may relate to the Prince himself, the Duties of the Persons who give them, consist in a sincere Fidelity, which has nothing in view besides his true Good, which is inseparable from Truth and Justice, and in a discreet use of the necessity of making it known to him without Dissimulation and without Flattery, but still with such Prudence and Energy, as to discharge the double Duty which they owe him, both that of Respect for his Person, as also that of Zeal for his Service. Thus, for example, if there is any Dispute concerning an Estate, or a controverted Right, between the Prince and any one of his Subjects; seeing the Prince is himself the natural Judge of it, there being none superior to him that can judge it, and he being the Sovereign Dispenser of Justice in his own Dominions; it is the Duty of those who give him Counsel to distinguish two different Interests of the Prince: one which has no relation either to his Person or his Duties, but only to the Rights in question; and the other, which is his true and essential Interest, to do Justice even in his own proper Cause. So that those who are his Counsellors ought to regulate their Sentiments according to what this

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second and principal Interest of the Prince does demand, and to propose and back it with that Prudence and Freedom which a Duty of this nature requires *f.*

f Seeing the Prince himself is bound to regulate his own Conduct by a Prudence and Discretion that are worthy of the Divine Wisdom, by which he ought to govern; so those who are his Counsellors ought to regulate their Conduct by the same Spirit in proportion to their Ministry. Counsel is mine, and sound Wisdom; I am Understanding, I have Strength. By me Kings reign, and Princes decree Justice. Prov. 18. 14, 15.

There came a Man of God to him, saying, O King, let not the Army of Israel go with thee. —But if thou wilt go, do it, be strong for the Battle. God shall make thee fall before the Enemy; for God hath Power to help and to cast down. 2 Chron. 25. 7, 8.

VI.

As to the Counsels and Advices which respect the Good of the State, as there are Deliberations of divers sorts, so they ought to be proportioned to the said Deliberations. Thus the Duties of such Counsels are different: For if, for example, the Matter be only to give bare Counsel in the Affairs of the Publick, whether they relate to the War, or to the Civil Government, or whether they be other Affairs in which the particular Interest of the Persons who are to give the said Counsel is no ways concerned, they discharge their Duties, if being capable of giving good Counsel, they join to the Capacity that is necessary a great Application to study and find out the Good of the Publick, and to make choice of an Expedient that may be useful to it. And it rarely happens that in these sorts of Counsels they have occasion for that Disinterestedness which would be otherwise necessary, if the Affairs about which they are consulted had any Mixture of Interest and Passion that might counterballance the Publick Good. But in the Conjunctions where this Mixture may chance to be, they ought to join to their Capacity a sincere and disinterested Fidelity, that they may not fall into the enormous Crime of directing their Counsels to the Views of their own Interest, and of preferring that to the Good of the Publick *g.*

g This is a consequence of the three first Articles.

VII.

In the Cases where the Advices or Counsels regard the Affairs of particular Persons, it is necessary to distinguish two different sorts of Duties. One respects

6. Advices and Counsels which respect the Good of the State.

7. Advices and Counsels which regard particular Persons.

spects that which they who have the Honour to be about the King's Person owe to Truth, and the other has relation to what they owe to Justice and to Equity, as shall be explained in the two Articles which follow *b*.

b See the following Articles.

VIII.

8. Fidelity
in inform-
ing the
Prince of
the Truth.

Seeing it is not possible for Princes, even those of the greatest Penetration, and who apply themselves the most diligently to their Duties, to have always themselves a particular Knowledge of the Facts relating to the Affairs which they are to regulate or judge, and which are not handled after the manner of Judicial Proceedings, as Law-Suits are which contain the Proofs of the Facts alledged, but are Affairs of another nature; such as Complaints of Persons under Oppression, and other Affairs of the like nature; they are obliged to trust to those who are about them for getting Information of the Truth thereof. Thus it is the Duty of those Persons to inform themselves very exactly of the Truth, that they may afterwards lay the same before the Prince, without any disguise, and without having any regard either to the Quality of those who complain, or of those who are the Oppressors. For as it is the Duty of the Prince to protect those who suffer any Violence, and to exercise all the other sorts of Functions of the Sovereign Power which he has in his hands; so it is likewise the Duty of those who by virtue of the Rank they hold about the Prince are obliged to serve him on the said Occasions, to be faithful on their part in not concealing the Truth in the case of any Injustice; and to inform him of the Facts which it is necessary know, that he may be able to administer Justice, and to protect Innocence and Truth.

i Who hold the Truth in Unrighteousness. Rom. 1. 18.

Altho this Passage relates to a Prevarication against a Duty of another nature than that which is menioned in this Article, yet it may be very naturally applied to it.

IX.

9. Integrity
in giving
Counsel,
and in
judging in
the Cases
where
they are
called to it.

When the Truth being sufficiently known to the Prince, the Duty of informing him of it is fulfilled, it is a second Duty in the Cases where it is necessary to give Counsel concerning Facts that are known, and in all other Cases where Counsel is to be given to the Prince, to give Counsels that are whol-

ly disinterested, and which have for their Principle and Foundation a Zeal for Justice. And in the Cases where those Persons are to administer Justice themselves to particular Persons, whether it be by virtue of their Offices, or by order of the Prince, they enter into the Engagements of the Duties of Judges, which are explained in their proper Place *l*.

l See the fourth Title of the second Book.

X.

As there are three sorts of Persons who may be under an Engagement to give some Advices or some Counsels to the Prince, as hath been explained in the third Article of the first Section; so the Duties of the said Persons are different, according to the Difference of their Engagements. The Officers or Ministers who are of the Prince's Council have their Duties regulated by the Necessity of their Functions, which make the liberty of exercising them natural to them; and are obliged to give the Prince unbiass'd Counsels in every thing that may belong to their Ministry, whether it respect the Order of Government, or the Administration of Justice, or the Management of the Revenue, or the Ease of the People, or other Affairs which regard the Interests and Rights of the Prince, and the publick Good, or which concern the Interests of particular Persons. The Officers who, without being of the Prince's Council, are obliged by virtue of their Offices to inform him of the Matters of Fact which it is necessary he should know, are bound to acquaint him therewith. And if the Matter be in relation to the Reformation of some Abuses, they ought to inform him of the Consequence of them, and propose to him proper Remedies for redressing them. The Persons who have no other Engagement about the Prince besides the Honour which he does them by employing them about his Person, have their Duty regulated by the Confidence which he reposes in them, and by the free Access he gives them. Which implies the Obligation of acquainting him sometimes, as Prudence directs, with the Facts it may be of importance for him to know, such as some Oppression which it might be in his power alone to revenge, or other Facts of the like nature *m*.

10. Three
different
sorts of
Duties of
three dif-
ferent sorts
of Persons
who may
be about
the Prince

m See the third and sixth Articles of the first Section.

XI.

Deliver him who suffereth Wrong from the hand of the Oppressor. Ecclesi. 4. 9. Psal. 32. 3.

XI.

11. The Duty of representing the Inconveniences that might attend the Execution of an Order which might have bad Consequences.

We may reckon among the Duties of giving Counsel or Advice to the Prince, the Conduct which those Persons ought to observe, who being charged with the Execution of some Order which had been surreptitiously obtained from the Prince, foresee that it might turn to some Injustice, or prejudice the Interest of the Prince. For both Prudence and their Duty would oblige them to take the necessary Measures for representing in an humble submissive manner to the Prince the Consequences that might be apprehended to ensue thereupon.

n It was because of this Duty that Joab made his Remonstrances to David upon the Order which he had given for numbering his People. And again the Anger of the Lord was kindled against Israel, and he moved David against them, to say, Go number Israel and Judah. For the King said to Joab the Captain of the Host, which was with him, Go now thro' all the Tribes of Israel, from Dan even to Bersheba, and number ye the People, that I may know the Number of the People. And Joab said unto the King, Now the Lord thy God add unto the People, how many soever they be, an hundred-fold, and that the Eyes of my Lord the King may see it: But why doth my Lord the King delight in this thing? 2 Sam. 24. 1, 2, 3.

And Satan stood up against Israel, and provoked David to number Israel. 1 Chron. 21. 1.

XII.

12. The Protection of the Weak.

The Importance and Consequence of all these Duties which have been now explained is not confined to Affairs of great moment, but they extend even to the smallest Matters where it may be necessary to have recourse to the Prince. Thus the Interests of the meanest Persons who suffer any Oppression, and whose Deliverance depends upon the Prince, make it a Duty in those whose proper business it is to lay the same before the Prince, to hear the Complaints that are brought before them, that they may inform the Prince thereof, and to protect the Weak against the Violence of those who are in power. For it is in order to support the Weak against Oppression and Injustice, that God hath established the use of Authority.

o Deliver him that is spoiled out of the hand of the Oppressor. Jer. 21. 12.

Execute ye Judgment and Righteousness, and deliver the Spoiled out of the hand of the Oppressor; and do no wrong, do no violence to the Stranger, the Fatherless, nor the Widow, neither shed innocent blood in this case. Jer. 22. 3.

The Lord raised up Judges, which delivered them out of the hand of those that spoiled them. Judges 2. 10.

XIII.

It is not enough that the Persons who are obliged to all these several Duties perform some of them on some particular occasions, of which they reserve to themselves the distinction, neglecting the others which they believe they may omit without any prejudice to their Honour or Fortune; but they ought to perform all the Duties in general as much as in them lies. For the Principle which ought to be the Rule of their Conduct does not reject any one of them, seeing the said Principle ought to be a fixed Habit of a generous Love of Truth and Justice, which never fail to have an Interest in all Affairs which may deserve the Prince's Cognizance. Thus every one of the said Conjunctions makes it a Duty incumbent on them to exercise their Ministry and their Power for the support of Justice and Truth.

p He who is faithful in that which is least, is faithful also in much. Luke 16. 10.

XIV.

As the Principle of the Duties of the Prince, and the true Grandure of his Glory consists in filling in a manner worthy of God the Place which he holds of him; so it is also the Principle of the Duties, and of the true Honour of those whose business it is to give the Prince Counsel and Advice, to inspire into him only such Sentiments as are suitable to this Grandure. Thus nothing is more opposite to their Duty than that Littleness of Soul and Spirit which bounds their Views to those of their own Preferment and Fortune, and to other Meannesses of human Motives which engage them in base and unworthy Flatteries, and to give Counsel that is founded only upon a false Wisdom, and upon a Policy that is criminal. But this Conduct, what Success soever it may have, cannot escape the knowledge of God, nor screen it self from his Justice.

14. To avoid false Wisdom and false Policy.

q There is no Wisdom, nor Understanding, nor Counsel against the Lord. Prov. 21. 30.

I will destroy the Wisdom of the Wise, and will bring to nothing the Understanding of the Prudent. 1 Cor. 1. 19.

The Wisdom of their wise Men shall perish, and the Understanding of their prudent Men shall be hid. Isaiah 29. 14.

See the Text quoted on the eleventh Article of this Section.

XV.

15. Not to
turn their
Greatness
into Pride.

We may add as a last Duty of those who have the Honour to be about the Prince, and to have a share in his Confidence, that the Use which they ought to make of it, according to the Rules that have been now explained, obliges them not only not to use that Advantage against Justice and Truth, but on the contrary, to defend and support them with all their Force; and further, not to make use of the Honour which they have of approaching the Prince's Person, as an occasion of shewing to the World their Pride and their Vanity. For this would be to debase the Dignity of their Ministry, and to raise among the Subjects a Spirit of Indignation and Aversion against this Use of an Authority, which ought naturally to procure unto them the Respect and Love of the People, and which they would certainly gain by a moderate Use of the Prince's Favour, which raises them above the rest of the Subjects.

Many the more often they are honoured with the great Bounty of their gracious Princes, the more proud they are waxen. Esther 16. 2.

If thou be made the Master of a Feast, list not thy self up, but be among them as one of the rest; take diligent care for them, and so sit down. And when thou hast done all thy Office, take thy Place, that thou mayest be merry with them, and receive a Crown for thy well ordering of the Feast. Ecclus. 32. 1, 2.

Then the Men of Israel said unto Gideon, Rule thou over us, both thou and thy Son, and thy Son's Son also; for thou hast delivered us from the hand of Midian. And Gideon said unto them, I will not rule over you, neither shall my Son rule over you; the Lord shall rule over you. Judges 8. 22, 23.

Altho this Text relates to the Prince, yet it may be applied to his Ministers.

the Forces necessary in a Kingdom: for this Design might extend to the Rules of Fortification, and of attacking and defending strong Towns, to the Rules for the Exercise of Soldiers, to those of the Marches of the Troops, of their Encampments, of their making Retreats, of an Order of Battle, of the Artillery, of Ships of War, and to other the like Matters. But this Detail, altho it be of a very important Consequence, yet seeing it hath its particular Rules which Experience and Use diversify according to Times and Places, ought not to be mixed with the Rules which are to compose the Science of the Law, and that of the Publick Law, which is a part of the Law in general, and which hath its Principles in the Divine Law, and in the immutable Rules of natural Equity. So that we shall comprehend under this Title only the Rules which have this Character, and some of which have been taken from the Body of the Roman Law. And these are reduced to the Rules of Justice, which may direct the right Use of the Forces of a State, whether it be for maintaining within the Kingdom Order, Peace, and Tranquillity, by supporting Justice, or for defending it against the Attempts of Enemies from without. And these sorts of Rules shall be the Subject-matter of two Sections. The first shall be of the Use of Forces within the Kingdom; and the second of the Use of Forces without the Kingdom, and of the Military Government, which regulates the Duties of the Officers of War and of the Soldiers.



TIT. IV.

Of the Use of the Forces necessary for the Defence of a State; and of the Duties of those who serve in the Army.

What Rules
are to be
explained
under this
Title.

THE Reader may easily judge from the Design of this Book, which has been explained in the Preface, that he is not to expect to see under this Title the Detail of the several Matters which might be comprehended in a particular Treatise of

S E C T. I.

Of the Use of Forces within a Kingdom.

The CONTENTS.

1. *The Use of Forces for the Support of Justice.*
2. *The Force of Justice ought to reign in all Cases.*
3. *The Power resides in the Person of the Sovereign.*
4. *It is communicated from him to the Officers.*
5. *The Use of the Power of the Sovereign for the Benefit of every particular Person.*

6. *Use*

- 6 Use of the Power for punishing Crimes.
- 7 The Forces ought to be proportioned to the Use of the Government.
- 8 The Duty of those who share in the Authority.

I.

1. The Use of Forces for the Support of Justice.

SEEING Forces are necessary for the Support of Justice against those who do not voluntarily submit themselves to it, they are of use in all Cases where the Administration of Justice is necessary, and where it may meet with any Obstacle *a*.

a For Power is given you of the Lord, and Sovereignty from the Highest. Wild. of Sol. 6. 3.

II.

2. The Force of Justice ought to reign in all Cases.

This Use of Forces within a Kingdom for supporting Justice therein, extends in general to every thing which hath relation to the publick Order and the common Good, as also to the Administration of Justice between the Subjects. Thus, the said Forces are communicated from the Sovereign to the whole Body of which he is the Head, and he dispenses them to all the Uses of the Body and of the Members. So that as it is the Force of Justice which ought to animate this Body and these Members, and which is as it were the Life of the Body; so it ought to be felt in all the Members thereof, in the same manner as the Life of the Soul makes it felt to be felt in what it animates *b*.

b This is a Consequence of the preceding Article.

III.

3. The Power resides in the Person of the Sovereign.

The first place in which the Force of the Authority of the Sovereign within his Dominions resides, and from whence it ought to diffuse itself throughout the whole Body, is his own Person, which ought to be environed with all the Marks and all the Pomp of Authority, in such a manner, that as it is in him that the Ministry of the whole Dispensation of Justice hath its Origin, so the Force of Justice may derive its Origin from him likewise, that so the good Use which the Wisdom of the Prince ought to make of this Power, may be the Foundation of the publick Quiet *c*.

c See the Passage cited on the first Article.
A wise King is the upholding of the People. Wild. of Sol. 6. 25.

IV.

4. It is communi-

It is in order to attain this Use of the

Power of the Sovereign that he exercise the principal Functions thereof himself, and commits the others which he cannot or ought not to exercise in Person to those whom he raises to this Ministry, whether it be in the quality of Officers of the Crown, Governors of Provinces, or Magistrates, and all others to whom he communicates a Share of the Authority, whether it be for the Administration of Justice, for the Civil Government, or for the whole Detail of the Functions which the publick Good doth demand. Thus, this Power ought to be considered in the hands of the said Officers and other Ministers, as being the Power of the Prince, which he holds of God *d*.

d Submit your selves to every Ordinance of Man for the Lord's sake, whether it be the King as Supreme, or unto Governors, as unto them that are sent by him. 1 Pet. 2. 13.

V.

This Power of the Sovereign, and the Functions thereof, which he commits to his Ministers, ought to have this effect, to make Peace to reign among his Subjects by means of the Reign of Justice, which may contain them all in that Order which produces the said Peace, by making every one of them to dread the Power of Justice if they rebel against it, and assuring them of its Protection if they are faithful and obedient. For which reason it is that every particular Person who contains himself within the bounds of his Duty, ought to have the same use of this Power as if he himself had the Dispensation of it, provided that he has Justice on his side. And it is in this use of the Power, so as to make every particular Person sensible of their having the Protection thereof, that the publick Tranquillity doth consist *e*.

e For every Man sat under his Vine, and his Fig-Tree, and there was none to fray them. 1 Maccab. 14. 12.

He strengthened all those of his People that were brought low. 1 Maccab. 14. 12.

XI.

Seeing the Use of the Forces necessary in a Kingdom for the Support of Justice, cannot have always, and in all Cases, its effect so as to stop the Torrent of Iniquity which carries along with it so many Injustices, which no Vigilancy of the Sovereign, nor of his Ministers, is able to prevent, and that often those very Persons to whom he intrusts the said Power, make use of it against

2. Use of the Power for punishing Crimes.

against Justice itself, it is therefore a Consequence of the Ministry of the said Power, that when the Peace and Order which Justice ought to support is disturbed, Justice may make the Weight of its Forces to be felt by those who were not restrained by Fear. Thus the Disorder which hath troubled the Peace is redressed by Punishment and Correction, whether it be by inflicting them on the particular Persons who have been disobedient to the Authority of Justice in order to reduce them to a Subjection to it, or by taking Vengeance of those Ministers, by means of the natural Use of Authority, for the criminal Abuse which they have made thereof.

f But if thou do that which is evil, be afraid; for he beareth not the Sword in vain; for he is the Minister of God, a Revenger to execute Wrath upon him that doth Evil. Rom. 13. 4.

For the Punishment of evil Doers. 1 Pet. 2. 14.

VII.

7. The Forces ought to be proportioned to the Use of the Government.

It follows from all these Truths, that the Use of Forces, as to what concerns the internal State of a Kingdom, demands that they should be such as to suffice for giving Authority to the Government, imprinting on the Minds of all the Subjects Respect and Obedience to the Sovereign, and to those who exercise his Authority, for giving to the Good an Assurance of the Protection of Justice, and for terrifying the Wicked with the Fear of Punishment.

g For Rulers are not a Terror to good Works, but to the Evil; wilt thou then not be afraid of the Power? Do that which is good, and thou shalt have Praise of the same. For he is the Minister of God to thee for Good. Rom. 13. 3, 4.

VIII.

8. The Duty of those who share in the Authority.

All these several Uses of Authority in a Kingdom demand the Application of the Sovereign, and Fidelity in his Ministers in all the Functions committed to them, for dispensing the same according as there is occasion. And this Fidelity is one of the Duties of those Ministers, which shall be explained in its proper place.

h See the fourth Title of the second Book.

S E C T. II.

Of the Use of Forces without the Kingdom, of Military Discipline, and of the Duties of those who serve in the Army.

The CONTENTS.

1. *The Use of Forces without the Kingdom*
2. *In what these Forces do consist.*
3. *Different Uses of the Forces according to the different Occasions.*
4. *Necessity of Military Discipline.*
5. *The first Rule of Military Discipline, Obedience to the Head.*
6. *Disobedience is punished, altho it have a good Success.*
7. *Three parts of the Conduct of the General.*
8. *The first Part of this Conduct, Vigilance in carrying on his own Undertakings, and in preventing those of the Enemy.*
9. *The second Part of the General's Conduct, is to be careful to have his Troops in good Order.*
10. *Third Part of the General's Conduct, Vigilance in providing all the Necessaries for the War.*
11. *The Duties of subaltern Officers.*
12. *The Duty of Soldiers.*
13. *Crimes and Offences of the Soldiers.*
14. *Time of Service.*
15. *Three sorts of Discharges.*
16. *Other arbitrary Regulations for the Military Discipline*
17. *Officers and Soldiers ought to abstain from all manner of Violence and Extortion.*

I.

THE Use of Forces as to what concerns the external State of a Kingdom, consists in defending it against the Attempts of Strangers, by preventing them before they are fully ripe, and by resisting those which could not be foreseen before they were put in execution.

a See the second Article of the second Section of the second Title.

II.

This Occasion for Forces to prevent the Enterprizes of Strangers, or to put a stop to them, obliges those who have the supreme Government in their hands to

1. The Use of Forces without the Kingdom.

2. In what these Forces do consist.

provide for the Safety of the Kingdom, not only by having strong Places on the Frontiers well garisoned, but also by a Facility of assembling Troops readily on any emergent Occasion, or even by having them always in a readiness, if there be reason for using such Precaution: Which ought to depend on the Prudence of the supreme Governours, who should take such wise and prudent Measures as not to alarm their Neighbours, and oblige them to take up Arms, which might draw on Wars; and who likewise ought not to neglect to prevent the Enterprizes which seem to threaten the Kingdom, and might surprize it, if not timely prevented *b*.

b And he (Jehosaphat) placed Forces in all the fenced Cities of Judah, and set Garisons in the Land of Judah, and in the Cities of Ephraim. 2 Chron. 17. 2.

And Jehosaphat waxed great exceedingly, and he built in Judah Castles and Cities in store. And he had much Business in the Cities of Judah; and the Men of War, mighty Men of Valour, were in Jerusalem. And these are the numbers of them according to the House of their Fathers; of Judah, the Captains of thousands, Adnah the chief, and with him mighty Men of Valour, three hundred thousand, &c. 2 Chron. 17. 12, 13, 14.

And there was sore War against the Philistines all the Days of Saul; and when Saul saw any strong Man, or any valiant Man, he took him unto him. 1 Sam. 14. 52.

III.

2. Different Uses of the Forces according to the different Occasions.

It is also on the same Prudence of the supreme Governours that the use of the Forces in open War ought to depend. For according to the Causes of the Wars, the Acts of Hostility committed by the Enemies, the Violences, the Inhumanities which they are guilty of, and the other Manners in which they on their part use their Forces, a Nation may use different ways of defending themselves, or attacking their Enemies with more or less Moderation. Thus when a Town is besieged, the Besiegers do not begin with violent Attacks and an Assault upon the Place; but they first summon the Governour of the Town to surrender it, and if he refuses, then they go on with their Attacks; and if they come to capitulate, the Conditions are made easier or harder, according as the Condition in which the besieged are, and their Conduct may oblige the Besiegers to treat them *c*.

c When thou comest nigh unto a City to fight against it, then proclaim Peace unto it. And it shall be, if it make thee Answer of Peace, and open unto thee, then it shall be that all the People that is found therein, shall be Tributaries unto

thee, and they shall serve thee. And if it will make no Peace with thee, but will make War against thee, then thou shalt besiege it. And when the Lord thy God hath delivered it into thy hand, thou shalt smite every Male thereof with the Edge of the Sword. Deut. 20. 10, 11, 12, 13.

IV.

Since the Use of Forces is not only necessary in time of War, but may be so also in time of Peace, whether it be for Garisons, or for other Troops that may be necessary for other Services, Military Discipline is also necessary in both those times. And this Discipline consists first of all in some general Rules that are common at all Times and Seasons, and relate to the Duties of Soldiers and Officers; and secondly in particular Regulations which are diversified according to the Times, the Places, and the Occasions. We shall explain these general and common Rules in the Articles which follow; and as to the particular Regulations, it would neither be possible nor of any service to make a Collection of them in this Place, seeing those which have been made hitherto relating to this Matter, are to be found in the Ordinances, in the Edicts, and in the several Regulations which have been touching this Matter *d*.

d See the following Articles.

[By the Law of England the Exercise of Martial Law, or Military Discipline, is not permitted within his Majesty's Dominions in time of Peace, when the King's Courts are open for all Persons to receive Justice, according to the Laws of the Land. But it having been judged necessary of late Years, that a certain number of Troops should be kept on foot even in time of Peace, for the Guard of his Majesty's Royal Person, and for the Safety of the Kingdom, the Exercise of Military Discipline, for the better Government of the said Troops, has been from time to time permitted by express Acts of Parliament, under certain Restrictions and Limitations, particularly specified in the said Acts. See Stat. 3. Car. I. cap. 1. and 12 Anna, An Act for the better regulating the Forces to be continued in her Majesty's Service; as also the subsequent Acts of Parliament for the Punishment of Mutiny and Desertion. See the Lord Chief Justice Hale's History of the Common Law of England, chap. 2. pag. 38, 39.

There is this Difference to be observed with respect to the Exercise of Martial Law in England, that altho it is not permitted in the Land Forces in time of Peace, except by the express Consent of Parliament, which is renewed from time to time; yet the same is allowed to be exercised over the Naval Forces on board the Fleet in time of Peace as well as War. And there are for that purpose standing Articles and Orders, ratified by the Parliament, for the regulating and better Government of his Majesty's Navy, Ships of War, and Forces by Sea. See 13 Car. 2. cap. 9. In the twelfth Year of the Reign of the late Queen Anne, some Doubts having arisen at the Board of Admiralty touching the Construction of the said Act of Parliament of 13 Car. II. cap. 9. whether the same was to be put in execution in time of Peace as well as War,

the late Queen did, upon Application to her by the Lords Commissioners of the Admiralty, direct the Judges to consult and give their Opinion upon the said Act. And accordingly the Judges of the Common Law, and some Doctors of the Civil Law, having met together on December 22. 1713, in Obedience to her Majesty's Command, and having taken the said Matter into consideration, they agreed in the following Opinion; 'That the Act of Parliament made in the thirteenth Year of King Charles II. entitled, *An Act for establishing Articles and Orders for the regulating and better Government of his Navy, Ships of War, and Forces by Sea,* was made for the Regulation and better Government of the Fleet at all times, as well in Peace as War; and that Muting, or any other of the Offences therein specified, committed by any Person or Persons in actual Service and Pay in her Majesty's Fleet, or Ships of War, at the time of such Offence, may be punished in a Court-Martial according to the Direction of that Act, in time either of Peace or War, provided such Offence be done upon the main Sea, or in any Ships or Vessels being and hovering in the main Stream of great Rivers, only beneath the Bridges of those Rivers nearest to the Sea, where the Admiralty had before that Act Jurisdiction, in case of Murder and Mayhem.' Which Opinion they reported to her Majesty.]

V.

5. The first Rule of Military Discipline, Obedience to the Head.

'The first of all the Rules of Military Discipline, and which is common to Officers and Soldiers, is the Duty of Obedience to the Orders which they are to execute. Thus the General of an Army owes this Obedience to the Orders of the Sovereign, and the other Officers owe it to the General, and to other their superior Officers, and the Soldiers owe it to all those who have a Right to command them. For without this Obedience the Use of Forces would be ineffectual; since instead of being united in carrying on that only End proposed by the Sovereign, they would be divided into the different Views of those who by their Disobedience would turn them to other Uses. Thus the Disobedience both of Soldiers and Officers is justly repressed by the Punishments which the particular Regulations may have established, and even by Death itself, if the Consequence demands that Severity f.

*a See the second Section of the first Title.
f See the following Article.*

VI.

6. Disobedience is punished, altho it have a good Success.

The Consequence of Obedience in Military Government is such, that even Success itself, let it be ever so great, cannot justify Disobedience, nor be an Excuse for it. But altho he who disobeys may have taken in effect a better Course, or may have avoided or prevented Inconveniences which would have ensued upon his obeying his Or-

ders, or that he may have obtained Advantages which could not have been hoped for except from the Course which he has followed, his Disobedience does nevertheless deserve the Punishment that may be due to it, and even the Loss of Life, according to the Quality of the Fact, and the Circumstances. For all the Good which the Success of an Act of Disobedience would cause, would not be able to counterbalance the infinite Evils which would follow upon the Impunity of this overthrowing of all Order and Discipline. And the Liberty which all those who should flatter themselves with obtaining much greater Advantages from their own private Views and Designs might imagine they had to disobey, would put all into Confusion, and into such a Disorder as would ruin all Military Government, and would destroy that Union in which consists the Use of Forces.

g In bello qui rem a duce prohibitam fecit, aut mandata non servavit, capite punitur, etiamsi res bene gesserit. l. 2. §. 15. ff. de re milit.

To shall not do after all the things that we do here this Day, every Man whatsoever is right in his own Eyes. Deuter. 12. 8.

VII.

We may set down as a second Rule of Military Discipline, the Watchfulness of the General about every thing that may be necessary for the Execution of the Orders of the Sovereign, in relation to the War he has entrusted him with the Management of. And this contains three different Parts of his Conduct, which comprehend the whole detail thereof, and on which depends the good Use of the Forces that are in his hands *b*, as will appear by the Articles which follow.

b See the Articles which follow.

VIII.

The first Part of the Conduct of the General, is Vigilance in discovering the Designs of the Enemy, in forming his own Designs as Occasion may offer, and in concealing them until the Execution thereof require that he make known either his Designs, or that which may be necessary to be done in order to attain them, without letting them be discovered by the Motions which are made for the more effectual Accomplishment of them. And this Vigilance implies the Care of observing and watching the Countenance, the Motions, and the Proceedings of the Enemy.

7. Three Parts of the Conduct of the General.

8. The first Part of this Conduct, Vigilance in carrying on his own Undertakings, and preventing those of the Enemy.

my, and of sending out Detachments to view their Situation, their Number, their Force, the use of good Spies for the Discoveries that may be made by their means, and the other Ways of prying into the Designs and Undertakings of the Enemy, if there be ground to fear any, that proper Means may be provided for preventing them, or resisting them; Application in concerting his Designs in a manner proportionable to the Number and Condition of his Forces, and to the Advantages which he may hope to obtain over those of the Enemy, whether it be in giving of Battle, or forming a Siege or other Undertaking, the General determining himself in these Matters, after mature Deliberation thereupon with his Council, and pursuant to the Orders of the Prince, Moderation in good Success, and an Intention to improve the Advantages of Victory, and to prevent any Slackness or Remissness of Discipline that may be apt to creep in after some Advantage has been gained over the Enemy; a Firmness and Steadiness which in bad Events may preserve a Presence of Mind for diminishing the Losses, or repairing them, for re-establishing that which may be preserved, for rallying the Troops, and inspiring them with fresh Courage; for conducting a Retreat without Trouble, without Emotion, and with all the Order that is possible, and in a word, for acting on all Occasions whatsoever with that Prudence and Courage which may answer the present Wants, and may inspire both into Officers and Soldiers a Zeal to acquit themselves on their parts of all their Duties.

i He that ruleth, with Diligence. Rom. 12. 8.

Altho this Text does not particularly respect the Duties of those who have the Command of Armies, yet these Duties are comprehended under this Precept, since in general whoever is entrusted with a Government, with a Command, or other Publick Ministry, is obliged to be diligent and careful in the discharge of his Functions.

IX

s. The second Part of the General's Conduct, is to be careful to have his Troops in good Order.

The second Part of the General's Conduct relates to the good Order and the good Condition of all the Troops which may happen to be under his Command. This comprehends an Exactness in observing punctually himself, and causing others to observe the Regulations already made, and in making new ones according as there is occa-

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sion; an Application to know personally as much as he can the several Regiments he commands, the Condition of every Regiment, if the Number of the Officers and Soldiers be entire, in order to have it as complete as may be; the Care to examine if all the Soldiers have their Arms in good Condition, and to punish those who are faulty therein; an Enquiry into the Characters of the Officers, and of those who are distinguishable by their Birth, their Services, their Conduct, their Valour, Experience; a Distinction of the Regiments, of the Companies, and of the other Bodies, according as they are stronger or weaker, more or less un'd to War, that they may regulate by all these Views the Choice either of the Regiments or of the Persons who shall be most proper for the different Expeditions, an Exactness to keep the Soldiers within their Camp, or in their Posts, to review the Troops, to keep the Soldiers and Officers to their Duty, and to make them do their Exercises; the visiting of the Guards and Centinels; the keeping of the Keys which ought to be in his Custody; a Dexterity to make himself be beloved and feared both by the Officers and Soldiers, and in giving his Orders to join a Mildness with the Authority of the Command, and to apply the several Temperaments that may be necessary according to the Quality of the Orders, and that of the Persons to whom he commits the Execution of them; Prudence in not exposing the Army, or a Part of it, or even single Soldiers, to Danger without great Necessity, a Care to see that Justice be administer'd, and Discipline observed throughout the Army; a prudent Severity in punishing the

l Officium regentis exercitum, non tantum in danda, sed etiam in observanda disciplina consistit. Paternus quoque scripsit, debere eum qui se munitur armato præesse, paucissime commeatum dare; equum militarem extra provinciam duci non permittere; ad opus privatum, piscatum, venatum, militem non mittere. Nam in disciplina Augusti ita caveatur. Et si scio, fabrilibus operibus exerceri milites, non esse alienum: vercoi tamen, si quicquam permiscio quod in usum meum aut tuum fiat, ne modus in ea re non adhibeatur, qui mihi sit tolerandus. l. 12. ff. de re milit.

m Arma non sine flagitio amittuntur. l. 2 §. ult. ff. de capt. & post. lim. rev.

Miles qui in bello arma amisit, vel alienavit, capite puniuntur. l. 3. §. 13. ff. de re milit.

n Officium tribunorum est, vel eorum qui exercitui præsunt, milites in castris continere, ad exercitationem producere, claves portarum suscipere, vigiliis interdum circumire. l. 12. §. 2. ff. de re milit.

U u 2

Crimes

Crimes of the Soldiers, such as those who abandon their Posts, Deferters who may be differently punished according to the quality of the Desertion and the Circumstances^o; those who resist him, and violate the Respect due to his Person^p; those who transgress the general Rules, or the particular Orders which concerned them^q: An Application to repress the Extortions and Violences which Officers or Soldiers may be guilty of towards other Persons^r; and to prevent and pacify all Quarrels and Tumults among them, and especially those which may be likely to cause a Sedition in the Army^s. An easiness of Access for receiving Complaints, and doing Justice upon them^t. A Care of the Sick and Wounded^u: Prudence in discerning, and likewise in recompensing as much as is possible signal Services that

^o Non omnes desertores similiter puniendi sunt: sed habetur & ordinis & stipendiorum ratio, gradus militiæ, vel loci muneris deserti, & ante actæ vitæ, sed & numerus, si solus, vel cum altero, vel cum pluribus deseruit, aliudve quod crimen desertioni adiunxerit. Item tempore quo in desertione fuit, & eorum quæ postea gesta fuerint. Sed & si fuerit ultro reversus non cum necessitudine, non erit ejusdem sortis. Qui in pace deseruit eques gradu pellendus est, pedes militiam mutat: in bello idem admissum capite puniendum est. l. 5. D. l. §. 1. ff. de re milit.

Si præsidis, vel cujusvis præpositi ab excubatione quis desistat, peccatum desertionis subit. l. 3. §. 6. eod.

Qui excubias palatii deseruerit, capite puniunt. l. 10. eod.

^p Qui manus intulit præposito, capite puniendus est. Augetur autem petulantia cum en dignitate præpositi. Contumacia omnis adversus ducem, vel præsidem, militis capite punienda est. l. 6. §. 1, et 2. ff. de re milit.

Irreverens miles non tantum a tribuno, vel centurione, sed etiam a principali coercendus est. Nam cum, qui centurioni castigare se volenti resisterit, veteres notaverunt. Si vires tenuit, militiam mutat, si ex industria flegit, vel manum centurioni intulit, capite puniunt. l. 13. §. 4. eod.

^q Delicta secundum suæ auctoritatis modum castigare. l. 12. §. 2. eod.

^r Decem librarum auri multa ferietur quisquis administrator, rogator, apparitorve ullus militans scilicet, vel iter agens, ullo in loco aliquid ab hospite postulaverit. l. 5. C. de metat. et epidem.

Nequis comitum vel tribunorum, aut præpositorum, aut militum nomine, salgami gratia culcitras, lignum, oleum a suis extorqueat hospitibus, sed nec volentibus hospitibus, in prædictis speciebus aliquid auferat: sed sint provinciales nostri ab hac præbitione securi: comitibus, tribunis, vel certe præpositis militibusque gravi vexationi subjacentibus. l. un. C. de salgamo hosp. n. p.

^s Si quis commilitonem vulneravit, si quidem lapide militia rejicitur: si gladio, capitale admittit. l. 6. §. 6. ff. de re milit.

Qui seditionem atrocem militum concitavit, capite puniunt. l. 3. §. 19. eod.

^t Querelas commilitonum audire. l. 12. §. 2. eod.

^u Valetudinarios inspicere. D. l. 12. in fine. See the Law quoted on the following Article.

deserve it: And lastly, a Vigilance about every thing that may be necessary for putting and keeping the Troops in a good Condition, and holding them in a Readiness for all the Services which his several Orders may require.

X.

The third part of this Conduct of the General takes in all the rest of his Functions, which consist in joining to the good Condition and to the good Disposition of the Troops, the Art of posting them advantageously, of providing Subsistence for them, of adding to the Force of the Men all the other necessary Helps, such as Artillery, and all the Instruments and Materials that the Quality of the War by Land or by Sea, and the different Expeditions may demand, whether it be for defending themselves, or attacking the Enemy, or for forming a Siege, or executing all manner of Enterprizes or Orders. And this implies a Care to chuse an advantageous Ground for a Camp, to fortify it, to defend the Avenues thereof, to place Guards and Centries, to order Detachments, to see that the Army be supplied with Provisions, and that there be sufficient Convoys to guard the same, to be well informed of the Quantity and Quality of the Grain, and of the Ammunition Bread, and of their Weight, and of every thing that ought to be furnished for the Subsistence of the Troops, and of Forage for the Horses: To provide every thing that may be necessary for the Undertakings, such as to facilitate the Passages over Rivers, and thro difficult Ways: To cause the Officers who are placed Overseers over all these different Functions to bring him in an Account of the Condition of that which belongs to their Ministry; and to inform himself of all the Particulars as minutely as he can, or to recommend the Care of what he cannot visit himself to Persons in whom he may confide: And in a word, to study and procure every thing that may strengthen and augment the Forces, and contribute to the good Use that ought to be made of them.

^x Frumentationibus commilitonum interesse, frumentum probare, mensuram fraudem coercere. l. 12. §. 1, et 2. ff. de re milit.

It is by the good Use of these Regulations that the Troops can subsist in the natural Condition in which they ought to be.

See the Texts cited in the preceding Article; and the Ordinances of Henry the Third at Blois, Art. 315. and at Fountainbleau in 1553, Art. 8, and 28. Of Lewis the Thirteenth at Paris in 1633.

2633. Of Lewis the Fourteenth as Compeigne in 1645.

Joshua arose, and all the People of War, to go up against Ai: And Joshua chose out thirty thousand mighty Men of Valour, and sent them away by Night. And he commanded them, saying, Behold, ye shall lie in wait against the City, even behind the City; go not very far from the City, but be ye all ready: And I, and all the People that are with me, will approach unto the City; and it shall come to pass, when they come out against us, as at the first, that we will flee before them, &c. Josh. 8. 3, 4, 5.

XI.

11. The Duties of Subaltern Officers.

The Rules of Military Discipline which relate to other Officers besides the General, and who serve under him, are reduced to those of the Conduct of the General himself, according as they are applicable to the Subaltern Officers, in proportion to their Functions, and to a strict and faithful Observance of the Regulations of their Charges, and of the particular Orders which concern every one in his proper post.

y See the preceding Articles.

XII.

12. The Duty of Soldiers.

As for the Soldiers in particular, the Military Discipline obliges them to apply themselves to the Service which they are bound to by their Engagement. This comprehends the Respect and Obedience which they owe their Officers; as also an Affection for their Persons on all Occasions where it may be in their power to do them any Service, and especially to assist them when they see them in danger a; Fidelity in every thing that may require an exact and ready Execution of their Orders, whether it be for a March, for a Retreat, for an Encampment, for a Siege, for an Attack, for a Battle, for being placed in a Guard, or as a Sentinel, or for any other Function of the Service; which they ought to perform with the greatest Chearfulness, with all possible Care, and without Delay b; that they should be careful of their Arms, their Clothes, their Horses, for those who are obliged to have Horses c; that they

z See the third Article.

a Qui præpositum tuum protegere noluerunt, vel deseruerunt, occiso eo, capite puniuntur. l. 3. §. ult. ff. de re milit.

Qui præpositum suum non protexit, cum posset, in pari causa factori habendus est. Si resistere non potuit, parcendum ei. l. 6. §. 8. eod.

b Omne delictum est militis quod aliter quam disciplina communis exigit, committitur; veluti segnitæ crimen, vel contumaciæ, vel desidæ. l. 6. ff. de re milit.

c Arma non sine flagitio amittuntur. l. 2. §. ult. de rap. & post. rev.

Miles qui in bello arma amisit, vel alienavit, capite puniuntur; humane militiam mutat. l. 3. §. 13. ff. de re milit.

should be assiduous in the Service, which they ought never to quit or intermit without Leave, and then they ought to return when the time of their Leave is expired, unless they have some just Excuse d, that they should prefer their Functions in the Service to their own private Concerns, unless they are dispensed with by their Officerse. And finally, an exact Observance of the Regulations and Orders which concern them in particular, even to the exposing of their Lives, if the Occasion should require their doing so.

d Si ad diem commeatus quis non veniat, perinde in eum statuendum est, ac si emanisset, vel deseruisset, pro numero temporis; facta prius copia dicendi, num forte casibus quibusdam detentus sit, propter quos venia dignus videatur. d. l. 3. §. 7.

e Milites qui a republica alimentum & aluntur, solis debent utilitatibus publicis occupari, nec agrorum cultus, & custodia animalium vel mercimoniorum quaestui: sed propriæ militis insudare militiæ. l. 15. C. de re milit.

Militares viros, civiles curas arripere prohibemus: aut si aliquam huiusmodi sollicitudinem forte susceperint, & milita statim & privilegia omnibus denudari decernimus, formidantibus his morum nostræ serenitatis, qui temeritate saluberrimis statutis obviare tentaverint. l. 16. eod.

XIII.

All these different Rules of the Military Discipline for Soldiers are so very essential, that every thing that is a Violation of any one, even the least of them, ought to be punished with Punishments proportionable to the Crimes and Offences, according to the quality of the Facts and Circumstances. Thus, a Soldier who goes over to the Service of the Enemy, if he is taken, is punished with Death: Thus, a Deserter in the time of War, is also punished with Death, both because of the Quality of the Crime, and because of the Consequence g, and Desertion in time of Peace, is punished according to the Consequence thereof: Thus, Desertion from a particular Function, such as the Guard of a Post, or the Station of a Sentinel, or others of the like nature, deserves a Punishment suitable to the Circumstances of the Fact, and the particular Regulations which may have been provided against such Offences h. Thus, every

13. Crimes and Offences of the Soldiers.

f Is qui ad hostem confugit, & rediit, torquebitur, ad bestiasque vel in furcam damnabitur: quamvis milites nihil eorum patiantur. Et is qui volens transfugere adprehensus est, capite puniuntur. l. 3. §. 10, & 11. ff. de re milit.

g Qui in pace deseruit eques gradu pellendus est: pedes militiam mutat. In bello idem admissum capite puniendum est. l. 5. §. 1. ff. de re milit.

h Qui stationis munus reliquit, plusquam eman-

for

every thing that violates the respect due to the Officers, whether it be by some Gesture, or some insolent Language, or otherwise, and all Acts of Disobedience are so many Crimes against the Military Discipline, which deserve to be punished in a manner proportionable to the Disobedience, the Insolence, and the Attempt. Thus, Absence without Leave, the delaying to return after the Time of Leave is expired, without just Cause, deserve their particular Punishments. And Quarrels, Mutiny, Negligence, Carelessness, the Loss of their Arms, and the other Faults, Crimes, or Offences against the Laws of Military Discipline, are punished with Punishments that are in use; and a Soldier is punished even for running away, on an Occasion where his so doing may have given a bad Example to others, and where it was contrary to his Duty.

for est, naque pro modo delicti, aut castigatur, aut gradu militie deponitur. *l. 1. §. 5. cod.*

Si p[re]sidiis vel c[on]siliis p[ro]positi ab excubatione quis delinquit, p[er] annum desertionis subicitur. *u. l. §. 6.*

1. Irreverens miles non tantum a tribuno vel centurione, sed etiam a principali coercendus est. Nam eum qui centurioni castigare se volenti resistit, veteres notaverunt. Si vitium tenuit, militiam mutat. Si ex industria flegit, vel manum centurioni intulit, capite punitur. *l. 13. §. 4. cod.*

l. Qui comineatus spatium excessit, emanforis vel desertoris loco habendus est. Habetur tamen ratio dierum quibus tardius reversus est: item temporis navigationis, vel itineris. & si se probet valetudine impeditum, vel a laniationibus detentum, simile casum moram passus, dum non tardius a loco profectum se probet, quam ut occurrere posset intra comineatum, restitendus est. *l. 14. cod.*

Si ad diem comineatus quis non veniat, perinde in eum statuendum est, ac si emanisset, vel desertisset, pro numero temporis facta prius copia docendi num forte quibusdam casibus detentus sit propter quos venia dignus videatur. *l. 3. §. 7. cod.*

m See the preceding Articles.

2. Qui in acie prius fugam fecit, spectantibus militibus, propter exemplum capite puniendus est. *l. 6. §. 7. cod.*

Arma alienasse grave crimen est; & ea culpa desertioni exaquatur, utique si tota alienavit. Sed & si partem eorum, nisi quod interest. Nam si tibiale, vel umerale alienavit, castigari verberibus debet. Si vero lorica, scutum, galeam, gladium, desertori similis est: Tirom in hoc crimine facilius parceretur. Armorumque custodi plerumque ea culpa imputatur, si arma militi commisit non suo tempore. *l. 14. §. 1. cod.*

According to the Roman Law the Crimes of Soldiers were differently punished. Pœnæ militum hujuscemodi sunt; castigatio, pecuniaria multa, munerum indictio, militiæ mutatio, gradus defectio, ignominiosa missio. Nam in metallum, aut in opus metalli non dabuntur, nec torquentur. *l. 3. §. 1. cod.*

XIV.

The Engagements of Officers and Soldiers last during the Time that they

ought to serve, and do not cease but by a Discharge, either general, if the Troops are broken or disbanded, or particular, and for some Cause.

o See the following Article.

XV.

The particular Discharges of Soldiers are of three sorts, according to three several sorts of Causes. For a Soldier may be discharged after the Time of Service for which he was engaged is elapsed, or because some Infirmary, or other Cause, may excuse him from serving; or by reason of some Crime, or some Offence, for which he may have deserved to be broke, and to be expelled the Army.

p. Missionum generales causæ sunt tres: honesta, causata, ignominiosa. *Honestæ*, est quæ tempore militiæ impleto datur. *Causata*, cum quis vitio animi, vel corporis minus idoneus militiæ renunciatur. *Ignominiosa* causa, est cum quis propter delictum sacramento solvitur. *l. 17. §. 2. ff. de re milit.*

There is a very great difference between these three sorts of Discharges, for those who had quitted the Service, missione honesta, were capable of enjoying the Privileges of Veterans.

Si solemnibus stipendius & honeste sacramento solutus es, licet super hujusmodi re instrumenta (ut dicitur) facta peritura sint: tamen si alius evidentibus probationibus veritas ostendi potest, veteranorum privilegia etiam usurpare possis dubium non est. *l. 7. C. de fide instrum.*

XVI.

Besides these Rules of Military Discipline which have been just now explained, there are other particular and arbitrary Regulations which are different in divers Places, and which in the same States are often varied, according as Experience or other Causes may give occasion for so doing. Thus we see the Orders for the Service often changed, as also those for the Artillery, for Provisions and Forage. And these sorts of Regulations oblige those whom they concern to observe them, and the Officers to look to the Execution thereof, according as the Orders of the Prince may have directed them.

q. There is in the Ordinances a great Number of Regulations for the Military Discipline, and even some of those which have been explained in this Section.

See the Ordinance of Henry the Third at Fontainebleau, in the Year 1553, Art. 8, and 28. at Blois, Art. 108. at Villiers-Cotterets in 1570. Art. 1. That of Charles the Ninth at Paris in 1533, Art. 2. Of Charles the Sixth in 1413. Of Francis the First in 1523. Of Henry the Fourth in 1591, Art. 1. Of Lewis the Thirteenth at Paris, in 1615.

XVII.

17. Officers and Soldiers ought to abstain from all manner of Violence and Extortion.

We must add to all the Duties both of Officers of War and Soldiers, that of a good Use of the Forces which they have in their hands, and of employing them only for the Execution of their Orders, abstaining from all manner of Violence and Oppression, and contenting themselves with the Allowance appointed them by the Prince.

r Do Violence to no Man, neither accuse any falsely, and be content with your Wages. Luk. 3. 14.

Omne delictum est militis, quod aliter, quam disciplina communis exigit, committitur: veluti segnitie crimen, vel contumacia, vel desidat. l. 6. ff. de re milit.

T I T. V.

Of the Publick Revenue; and of the Functions and Duties of those who have any Office or Employment about it.

The Duty of contributing to the Expences of the State.

BEING the State forms a Body, of which every one is a Member; and that all the Members of a Body ought to perform their Functions in it, that the Body may subsist in the good Order in which it ought to be for the common Good; it is both necessary and just that all those who compose a State, since they may look upon the Good of the State to be their own proper Good, should also look upon it as their peculiar Duty to do what they ought on their part to contribute to this common Good. And they ought to be moved to a Performance of their Engagements and Duties towards the Publick, not out of fear of the Punishments which those who fail in the Performance of their Duty may deserve; but by an inward Persuasion of Reason and Conscience, as has been observed in another Place.

This Truth, which respects in general all sorts of Duties towards the Publick, comprehends particularly the Duty of those who compose a State, to contribute towards the Expences which the publick Good makes necessary, whether it be for preserving Order in it, or for defending it against its Enemies;

a See the third Article of the Tenth Section of the First Title.

since without this Help the State would inevitably perish by Injustices, Violences, Divisions, Seditions; and it would be left as a Prey to its Neighbours, who would take the advantage of its Disorders and Want of Money to invade it.

The Expences of a Kingdom are of several sorts. There are extraordinary Expences in the Time of War: And there are Expences that are always necessary; such as those of the King's Household; those for the keeping in repair fortified Places, for maintaining Garisons in them, and other Troops which may be necessary in Time of Peace; those of the Pay of the Officers, and of all those who have publick Salaries, the Charges of Embassies; those for the Repair of Bridges, for the Conveniency and Safety of Navigation, for making Rivers navigable, mending the Highways, and many others.

For supplying all these Expences of the State, which may be greater or lesser, according to the Times, there are two sorts of Funds: That of the Revenues which are gathered from the several sorts of Taxes and Imposts, which are greater or lesser, according as the Expences may increase or diminish, and which are properly called the Publick Revenue, which shall be treated of under this Title; and that of the Revenues arising from the Prince's Demesne, which shall be the Subject-matter of the following Title.

The Contributions or Taxes for defraying the Expences of the State can be levied only on the Persons who compose it: And as we cannot demand of Persons any more than what may arise from their Goods, comprehending under this word Goods all the Estate and Effects which every one hath of whatever sort they be, and in what manner soever he may have acquired them; it is from these Goods and Effects that the whole Supply of the Revenue of a State does proceed. Thus, in order to explain the divers manners in which the Funds of the Publick Revenue are provided for, it behoveth us in the first place to distinguish the several sorts of Goods which may contribute to them; and in the second place to consider the different ways that are taken for levying the said Contributions.

All Goods whatsoever may be divided into two kinds: One of Immoveables, taking in under this kind Ground-Rents, Annuities, and the other sorts of Goods which are of the nature of Immoveables, such as Offices, and many

ny Rights. And the other of Moveables, or mobiliary Effects, comprehending under this sort of Goods, Gold, Silver, Jewels, Merchandize of all sorts, Credits, the Profits of Industry, and all other Goods which are not Immoveable.

According to this Distinction of these two general kinds, which comprehend all sorts of Goods without exception, there might be three ways of raising out of them the Funds for the Expences of the State, whether they be ordinary or extraordinary. The first, by raising them all out of the Immoveables, the second, by taking them only out of the other sort of Goods; and the third, by laying them partly on the Immoveables, and partly on the Moveables.

Of these three ways, the two first would be unjust. For the Charges of the State respect the Persons, and seeing every one ought to contribute towards them in proportion to his Estate, there would be no manner of reason for laying the said Charges rather on one kind of Goods than the other, and to make the whole Burden to fall on those who should chance to have Goods of that kind which are made subject to the Charge, and to free intirely from the said Charge those whose Goods should happen to be all of another nature.

The third Manner therefore of levying the Funds for the Expences of the State out of both the kinds of Goods, is undoubtedly the most just and the most natural, since it affects all sorts of Goods indifferently, and even those acquired by Industry; so that no body is exempted from it, except those who having neither Goods nor Industry are themselves a Burden to the State, which is forced to provide for their Subsistence. And it is to this third Manner that all sorts of Taxes and Imposts are reduced in general, whether it be under the Name of Land-Tax, Excise, Customs, or others; not so as that every one of these kinds of Taxes is laid on all the kinds of Goods, but they are raised differently, the one upon one kind of Goods, and the others upon the other kind; so that all Persons and all sorts of Goods contribute to the Publick Charges, excepting the Exemptions and Privileges, which shall be explained in the seventh Section.

Three sorts
of Imposts.

The Imposts or Assessments which are called in *France*, *Le Tailles*, or Land-Tax, are Contributions of certain Sums

of Money which are levied yearly in two different manners; the first whereof is in use in most of the Provinces of *France*, and the second in some others. The first is that of Imposts or Assessments which are called Personal, being laid on every Head of a Family, who is assessed according to his Estate, whether it consist in Moveables or Immoveables, or in the Perquisites of his Labour and Industry; which is called a Personal Tax, because it is levied on each Person who is Head of a Family, with regard to all his Goods and Effects without distinction. And the second, which is called a Real Tax, is an Imposition of a certain Tribute or Tax which is levied on every Land and Tenement in proportion to its Revenue, without having any regard to the Possessor of it. And in the Places where this Tribute or Tax is in use, there is another Impost or Assessment which is Personal, being laid on every Head of a Family, for his other Goods besides his Immoveables, and for his Gains by his Labour and Industry. So that whereas in the Provinces of *France* where the Taxes are Personal, each Person is only liable to one single Assessment for all his Goods, and the Gains which he makes by his Labour and Industry. In the other Provinces where the Real Taxes are in use, there are two different Assessments for those who have Immoveables, and other sorts of Goods.

These Real Taxes on Lands and Tenements were in use among the *Romans* *b*; and it is from them that we have derived the use of Real Taxes in some of the Provinces of *France* which are governed by the *Roman Law*.

Besides these two sorts of Taxes, whether they be Real on Immoveables, or Personal upon Persons, there are other different sorts which are neither laid upon Immoveables, nor upon Persons on account of their Goods, but on certain kinds of mobiliary Effects, such as Salt, Wine, and other Wares and Merchandizes, without any regard to the Persons to whom they belong. These sorts of Duties come under the Denomination of Excise, Customs, and other Names, and are distinguished from the Personal Tax, because that Tax is laid on Persons on account of their Goods and the Gains which they

b Is, qui agrum in alia civitate habet, in ea civitate proficere debet in qua ager est. Agri enim tributum in eam civitatem debet levare, in cujus territorio possidentur. *l. 4. §. 2. ff. de cens. l. 1. Tit. h. Tit.*

make by their Industry; whereas these other Impositions are laid on these kinds of Goods without respect to the Persons to whom they may belong. Thus the Duty upon Salt is laid upon that Commodity in such a manner as to restrain private Persons from having it, except for the Price which the King has fixed; and the Commerce and Distribution thereof is committed only to such Persons as the King names for that purpose. Thus the Excise, the Customs, and other Duties are levied on Wines and other Liquors, and on other Wares and Merchandizes which are made liable to the said Duties, and are collected either at the Entry of these sorts of Goods into the Ports, or into the Towns, or in their Passage from one Province to another, or at the time of their Sale, or otherwise, according to the different Regulations made therein.

Besides these several sorts of Imposts, and others of the like kind, there is likewise in *France* another Tax which is called the Tenth, which are a Tax or Imposition laid upon the Revenues of Church Benefices; for the Revenues of the Temporal Goods belonging to Church Benefices ought to contribute towards the Publick Good of the State.

All these sorts of Taxes or Impositions make up the greatest Part of the Publick Revenue, which is destined for supplying the several Wants of the State. But besides these several Funds, the Sovereign has other Revenues, and other sorts of Rights, such as Forfeitures, Fines, the Successions of Foreigners or Aliens, those of Bastards, and of Persons who die without leaving any Heir behind them, the Right to vacant Goods, and the other casual Revenues, such as in *France* those which the King draws from venal Offices, whether it be by the annual Acknowledgment due from those who are possessed of the Offices charged with such annual Acknowledgment, in order to perpetuate the said Offices in their Family, or by the Forfeiture of the Offices by those who die without having paid that Acknowledgment.

Of all these Kinds of Revenues, we shall treat under this Title, as we have already observed, only of those which are properly called the Publick Revenue, and which are these several sorts of Taxes or Contributions. And we shall explain in the following Title that which relates to the King's Demesne, Goods that are vacant, or which have no Owner, Forfeitures, and those Successions which fall to him for want of

Heirs or otherwise. And in treating of all these Matters, we shall confine ourselves to the Rules which have the Characters that have been remarked at the End of the Preface to this Book. So that the Reader must not expect to find here all the several Rules relating to these Matters which are contained in the Ordinances. And there are even some Matters which we shall take no manner of notice of hereafter, as for example, those casual Duties due upon Offices, the Tenth, and other Duties explained in the Ordinances. For these Duties and others are of the same nature with those which shall be explained, and the same Rules which are within the Design of this Book, may be applied to them. And as for the other Rules which regard the Detail of all these Matters, they are to be found in the Ordinances.

It remains only that we set down the Order of the particular Matters treated of under this fifth Title, which we have divided into eight Sections. The first is of the Necessity of Taxes, and of their Kinds. The second, of the laying on in general of the several sorts of Taxes. The third, of the rating or assessing particular Persons. The fourth, of the particular Taxes on Immoveables. The fifth, of Imposts on Wares and Merchandize. The sixth, of the levying and collecting all these sorts of Taxes. The seventh, of the Exemptions from several sorts of Taxes. The eighth, of the Functions and Duties of those who have any Office or Employment about the Publick Revenue.

We shall not take up time to explain here, nor in any other Part of this Title, the relation which the Taxes that are in use with us may have to those mentioned in the Texts of the *Roman Law* which shall be quoted. This useless Curiosity would exceed the Bounds of the Design of this Book; and it sufficeth to acquaint the Reader, that he ought not so much to study in those Texts to find out the Conformity between our Taxes and those mentioned in the said Texts, as to apply the Rules we gather from them for our Use.

[The Publick Taxes in England are levied by Authority of Parliament, according to the present Occasions and Exigencies of the State. And they are laid upon Lands, and Tenements, and Personal Estates, upon Liquors, and upon most sorts of Wares and Merchandizes, in such manner and in such Proportion as the Wisdom of the Parliament judgeth necessary to supply the Demands which are made by the King for the Publick Service. See the several Acts of Parliament made in every Session for these purposes.]

Other kinds of Revenues belonging to the Sovereign.

S E C T. I.

*Of the Necessity of Taxes, and of
their Kinds.*

The CONTENTS

1. *The Justice of Taxes.*
2. *The Duty of paying the Taxes.*
3. *Divers sorts of Taxes*
4. *It is only the Sovereign that can lay on and regulate the Taxes*
5. *The Publick Expences regard either the whole Kingdom in general, or particular Towns and other Places*
6. *Contributions for the Expences of Towns ought not to be raised without the Permission of the Sovereign.*

I.

1. *The
Justice of
Taxes.*

THE Necessity of Publick Money for the Subsistence of the State in time of Peace and of War, demands Contributions for the raising of the said Money: So that the common Good justifies the laying on and levying of the Taxes which the Occasions of the State render necessary *a*

a See the twenty third and twenty fourth Articles of the second section of the second Title.

See the second Book of the Chronicles, ch. 10.

II.

2. *The
Duty of
paying the
Taxes.*

It follows from this Necessity, and from this Justice of Taxes, that all those whom they concern are obliged to pay them as a most lawful Debt, and that they may be constrained to do it by the Ways which the Laws and Usage have established for that End *b*.

b Render unto Cæsar the things which are Cæsar's, and unto God the things which are God's. Mat. 22. 21. Mark 12. 17. Luke 20. 25.

Wherefore ye must needs be subject, not only for Wrath, but also for Conscience sake. For, for this Cause pay you Tribute also. For they are God's Ministers attending continually upon this very thing. Render therefore to all their Dues; Tribute to whom Tribute is due, Custom to whom Custom. Rom. 13. 5, 6, 7.

Seeing the Payment of Taxes is a Duty, and that this Duty is an Effect of the Necessity of these publick Aids for the common Good, and of the Justice which imposes the said Charge; we may from thence conclude, that it is a Duty of Conscience. And it is enjoined as such in these Passages of the Gospel and of St. Paul. From whence it follows, that it is not lawful to defraud the Publick of the said Duties, and to imbezzle them. For besides that an Injustice is done thereby, either to the Publick, or to those who have farmed the Taxes, it is because of the said Frauds which are so frequent,

†

that the Government in order to prevent them is obliged to use several Precautions which are very chargeable. And these Frauds are likewise increased by reason of this Effect which they have of increasing the Publick Expences, which would be much less if every one were faithful to his Duty in paying the Taxes.

The defrauding of the Publick of the Taxes was called a Crime in the Roman Law. *Fraudati vectigalis crimen. l. 8. ff. de publ. & vectig.*

III.

It is a Consequence of the Necessity of Taxes, that they should be greater or lesser according to the Occasions and Exigences of the State, and that according to the divers sorts of Goods and Commerces in each Kingdom they should be diversified, and raised differently in proportion to what the Persons and Goods may be able to bear, to the end that each sort of Tax being less, those who are to bear it may be thereby eased. Thus Impositions are laid upon Persons because of their Goods and the Profit which every one may make by his Labour and Industry, and this is called a Tax on Personal Estates. Thus a Tax is laid upon Lands and Tenements, which is called a Tax on Real Estates. Thus divers sorts of Duties are laid upon some sorts of Provisions, such as Salt and Wine, and upon other sorts of Goods and Merchandize: all which come under the Names of Excise, Customs, and other Imposts of divers sorts *c*.

c Munerum civilium quædam sunt patrimonii, alia personarum. l. 1. ff. de muner. & honor.

Sciendum est quædam esse muneria aut personæ aut patrimoniorum. l. 6. §. 3. eod.

Altho this Text relate to other Charges than Taxes upon Persons, yet they may be comprehended under this Division, and also under the Name of the Taxes which were levied at Rome by the Head or Poll. Tributum capitis. l. 3. ff. de censib.

Divus Vespasianus Cæsarienses colonos fecit, non adjecto ut & juri Italici essent, sed tributum his remisit capitis. l. ult. §. 7. eod.

As to Taxes upon Land, vid. tot. tit. ff. & C. de censib.

As to Excise, Customs, and other Imposts, vid. tit. ff. de public. & vectig.

Ex præstatione vectigalium nullus omnino nomine quicquam minuat, quin octavas more solito constitutas omne hominum genus, quod commercii voluerit interesse dependat; nulla super hoc militarium personarum exceptione facienda. l. 7. C. de vectig. & com. Vid. tit. C. de annon. & Trib. & seq.

As to the Relation which these Texts have to our Taxes, the Reader may consult the last Remark in the Preamble of this Title.

IV.

All the Taxes and Contributions that can be levied in a Kingdom, whether the Sovereign or others can

lay on and
regulate
the Taxes.

ther it be upon Persons, or upon Lands and Houses, or upon Provisions and Merchandize, or otherwise, being destined for the Publick Good, and all those upon whom the said Taxes are to be raised being obliged to bear the Burden of them whether they will or not, it is only the Sovereign who having alone the universal Authority of the Government, and the Right of providing for the Publick Order, and for every thing wherein the Good of the Kingdom is concerned, may lay on Taxes and Impositions of all kinds, and regulate the Use of them. And it is he alone who can either establish new Taxes, or augment the old ones, or diminish them, or make any other Alterations in them *d*.

d Vestigalia sine imperatorum præcepto, neque præfidi, neque curatorum, neque curiarum constituere, nec præcedentia reformare, & his vel addere vel minuire licet. l. 10. ff. de public. & vestig.

Omnes pensitare debent, quæ manus nostræ delectionibus adscribuntur, nihil amplius exigendi vel remittendi potestatem esse; nam si quis vicarius aut rector provinciarum aliquid jam cuiquam crediderit remittendum, quod alii remiserit de propriis dare facultatibus compellatur. l. 4. C. de annon. & trib.

[It has been already observed, that in Great Britain no Taxes are imposed or levied on the Subjects but by and with the Consent of Parliament. See the Remark on the twenty fourth Article of the second Section of the second Title of this Book.]

V.

5. The
publick
Expences
regard ei-
ther the
whole
Kingdom
in general,
or particu-
lar Towns
and other
Places.

The Publick Order and the common Good of a Kingdom demand two sorts of Expences; the first is of those which concern the whole Kingdom in general, such as the Expences of a War, those for subsisting Garisons and other Troops in time of Peace, the Expences for the Prince's Household, those for the Salaries of the Officers, and many others: And the second is of the Expences which are necessary for the Government of every particular Town and other Places, such as paving the Streets, the keeping in repair the Fountains, the Town-Halls and other publick Edifices, and for their other Charges. It is because of these two sorts of Expences that it is usual to have two sorts of Publick Money. One is of the Money that is destined for the Expences which concern the whole Kingdom in general, and of which the Sovereign orders the Disposal and Application; and this Money is collected and received by Officers whom the Prince names for that purpose. And the other is of the Money allotted for the Expences of Towns, which does not enter into the Coffers of the Prince, but is received by Persons to whom the Communities of Towns and

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other Places commit that Trust *e*.

e See the following Article.

VI.

Altho these Impositions of Money necessary for the Expences of Towns, and other Places, seem not to concern the State, and that one may think that those Corporations might regulate the said Impositions, and levy the said Money without leave from the Prince, yet nevertheless it is necessary to have his leave; and they cannot raise any greater Sum for the said Expences than what he allows. For besides the Abuses that are to be feared on the part of those who should lay on these Impositions, it is certain that otherwise they are of great Importance to the State, upon two Considerations: One is, that the good Order of the State depends on that of the Towns and other Places; and the other, that it concerns the State that those Expences be regulated in such a manner, as that they do not hinder the raising of the Taxes which the Inhabitants of the Towns and other Places are bound to pay to the Publick. And it is by reason of this Necessity of having leave from the Sovereign to levy these sorts of Impositions, that they are called in France Impôts by Letters of Licence from the Prince; whither they be laid on by way of Capitation or Poll-Tax, that is, so much on every Head, or by other Ways, according as the Prince gives leave *f*.

f Non quidem temere permittenda est novorum vestigalium exactio: sed si adeo tenuis est parva tua, ut extraordinario auxilio juvari debeat, allega præfidi provinciarum, quæ in libellum consulisti, qui re diligenter inspecta, utilitatem communem intuitus, scribet nobis quæ compereant: & an habenda sit ratio vestri, & quatenus exstimabimus. l. 1. C. vestig. nov. inst. non poss.

See the fourth Article.

SECT. II.

Of the laying on in general of the several sorts of Taxes.

The CONTENTS.

1. The Manner of laying on the Taxes is different according to the Nature of the Tax.
2. Three kinds of Taxes.
3. The first kind of Taxes is that on the Personal Estate.
4. Second kind, Taxes on the Real Estate.
5. Third kind, Impôts upon Provisions and Merchandize.

XX 2

6. The

6. *The Manner of laying on the Tax on Personal Estates.*
7. *The Manner of laying on the Tax on Real Estates.*
8. *The Duties on Goods and Merchandizes are laid on by Regulations, which fix how much each sort is to pay.*
9. *The Tax on Personal Estates is liable to Changes.*
10. *As is also the Tax on Real Estates.*
11. *The Imposts on Wares and Merchandizes are fixed.*
12. *The Revenue of the Prince arising from the Customs laid on Goods and Merchandize may rise or fall, but the Produce of the Tax on Real and Personal Estates is always certain.*
13. *The yearly Produce of the Excise and Customs cannot be fixed at any certain precise Sum.*
14. *All these Taxes do respect both Persons and Things directly or indirectly.*

I.

1. *The Manner of laying on the Tax is different according to the Nature of the Tax.*

THE Manner of laying on the Public Taxes is different, according to the different Nature of the Taxes *a*, which shall be distinguished in the Article that follows.

a See the following Article.

II.

2. *Three kinds of Taxes.*

The Taxes are of three sorts, as hath been already observed *b*. Those which are levied upon Persons on account of their Goods, moveable and immoveable, and of the Profits which they make by their Labour and Industry. Those which are raised upon Immoveables, without respect to the Persons. And those which are gathered from mobiliary things on which Duties have been laid, and which Duties are collected either in the Passage of those things from Place to Place, or in the Commerce of them, or otherwise, without regard to the Persons to whom they may belong. And for these three sorts of Taxes there are three Manners of laying them on, which shall be explained in the Articles that follow.

b See the third Article of the preceding Section, and the Preamble of this Title.

III.

3. *The first kind of Taxes is that on the Personal Estate.*

The first sort of Taxes is that which is called Personal, by which Persons are assessed in a certain Sum in proportion to their Goods, and to what they acquire by their Labour and Industry *c*; which

c Tributum capitis. l. 3. ff. de cens.

Divus Vespasianus Caesariales colonos fecit, non

shall be the subject Matter of the third Section.

adjecto, ut & juris Italici essent, sed tributum his remittit capitis. l. ult. §. 7. eod.

IV.

The second sort of Taxes is that which is raised on Immoveables, and is called a Real Tax, being laid on each Land and Tenement *d*, and which shall be explained in the fourth Section.

d V. tot. tit. ff. de censib.

Omne territorium censatur. l. 4. C. eod.

See the first Article of the fourth Section of this Title.

V.

The third sort is that of the Duties or Imposts which are levied on certain Provisions and Merchandize which the Laws have made subject thereto *e*, which shall be the subject Matter of the fifth Section.

e Omnium rerum ac personarum, quæ privatam degunt vitam, in publicis functionibus æqua debet esse inspectio. Hoc ideo dicimus quia nonnulli privatorum elictis suffragio protegentur sanctiones, quibus vectigalia vel cetera hujusmodi, quæ inferri sibi communis est sibi adferant esse concessa. Si quis ergo privatorum hujusmodi rescriptione nitatur, cassâ eadem sit. Vectigalium enim non parva functio est, quæ debet ab omnibus, qui negotiationis seu traficandæ mercium habent curam, æqua ratione dependi. l. 6. C. de vectig. & comm. l. 1. l. b. T.

V. I. ff. de public. & vectig.

VI.

The Tax on Personal Estates in France *6*. The is laid on after this manner: First the King by an Order in writing regulates for every Year the Sum which he intends should be raised throughout the whole Kingdom. And that Sum being divided among the Provinces, the Towns, and the other Places, the several Inhabitants of each Place are rated and assessed for the Share which they are to bear of the same *f*.

See the fourth Article of the first Section, and the third Section.

This Tax is laid on in France, first by an Order of the King whereby he regulates the Sum Total of the Tax; and then it is divided among the Generalities, the Officers whereof, who are the Treasurers of France, make a second Distribution thereof among the Elections, who make a third Division thereof, by which it is fixed and adjusted what Proportion of the said Tax is to be paid by each respective Town and other Place, where the Persons appointed to make the particular Assessments make up Rolls or Lists, wherein each particular Person is rated for what he ought to pay in proportion to his Goods, and the Gains he makes by his Industry.

[The Manner of laying on and levying the Public Taxes in Great Britain is thus: The King lays before the House of Commons Estimates of the several sorts of Expences which are judged to be necessary for the Service of the current Year. And the

Commons

Commons having voted the necessary Subsidy or Aid to his Majesty for defraying the said Expences, they then consider of proper Ways and Means to raise the Sums granted with the greatest Ease and Equality to all his Majesty's Subjects, partly by a Tax upon Lands and Tenements and Personal Estates, and partly by an Excise upon Liquors, and by Customs and Duties laid on Goods and Merchandize, and by other Ways, as they in their great Wisdom judge to be meet and proper. Which Aids and Subsidies being settled and adjusted by the Commons, and approved of by the Lords, have afterwards the Royal Assent, and thereby become Acts of Parliament, and are binding on all the Subjects.

In the Act of Parliament which grants an Aid to his Majesty by a Land Tax, there is a certain Sum fixed by Parliament, which is to be raised on Lands and Tenements, and Personal Estates throughout the whole Kingdom of Great Britain, according to the Proportions and in the manner prescribed by the said Act. Which Act specifies the particular Sums that are to be raised in each County, City, Town, or other Place within the Kingdom, and the Proportion that is to be laid on the respective Lands, and Tenements, and Personal Estates of the Inhabitants of the said Counties, Cities, Towns, and other Places. And in the said Act Commissioners are named and appointed for the respective Counties, Cities, Towns, Boroughs and other Places throughout the Kingdom, for the better assessing, ordering, levying, and collecting of the several Sums of Money so limited and appointed to be raised. Which Commissioners are directed to ascertain and set down in writing the several Proportions which ought to be charged upon every Hundred, Lathe, Wapentake, Rape, Ward, or other Division, for and towards the raising and making up the whole Sum charged upon the whole County, City, or other Place, for which they are appointed Commissioners. And the said Commissioners have power to name Assessors for each Parish, Township, or Place within the respective Divisions, who are to rate and assess the several Inhabitants of the Parish, Township, or Place for which they are appointed Assessors. And the said Commissioners do likewise appoint Collectors for each Parish, Township or Place within their respective Divisions, who are to collect and levy the Monies which are assessed, and to pay the same into the hands of the Receiver General, who is to pay the said Monies into the Exchequer. *Coke 4. Inst. ch. 1. See the several Acts of Parliament for the Land Tax.*

VII.

7. The *Manner of* The Tax on Real Estates in France is laid on in the same manner in each Province, and in each Town, and in every one of the other Places where it is in use, in proportion to what all the Lands and Tenements situate within any Division ought to pay of the Tax that is laid upon the whole Kingdom. And the Officers who are named for that purpose do rate and assess each particular Land or Tenement in proportion to the Rent which they yield g.

g See the fourth Section.

VIII.

8. The *Duties on* The Duties on Goods and Merchandizes are imposed in France by Regulations which fix the Sum that each kind

of Goods is to pay, and which is to be levied in proportion to the Value of the things, which are estimated according to their Nature, either by Number, Weight, or Measure. These Duties are settled and adjusted by the means of Tariffs, or Books of Rates, which contain the Tax or Impost that is laid on each sort of the things that are taxed b

b See the fifth Section.

IX.

It is to be observed concerning the Tax on Personal Estates, that it is subject to two sorts of Changes. One on the part of the Prince who may make the Tax greater or lesser; and the other on the part of those who are to pay it, because of the Events which may encrease or diminish the Fruits of the Ground in the respective Parishes, and the Goods of particular Persons, and even the Number of the Inhabitants of a Place, which occasions the augmenting or diminishing the Sums that are allotted to be levied on the respective Places, and the Assessments of particular Persons i

i See the fifth Article of the third Section.

X

The Tax upon Lands and Tenements may likewise receive Changes, either by reason of the Augmentation or Diminution of the general Tax, or because of the Loss which the Lands may have sustained by an Inundation, or by other Accidents, or because of Augmentations or Diminutions that may happen to every Estate, as if one plants in it, or builds on it, or if some Inundation or other Accident renders it barren, or destroys some Portion of it l.

l Illam æquitatem debet admittere censor, ut officio ejus congruat, relevare eum, qui in publicis tabulis delato modo frui certis ex causis non possit, quare, & si agri portio chasmate perierit, debebit per censitorem relevari. Si vites mortuæ sint, vel arbores aruerint; iniquum, eum numerum inferri censui.

Quod si exciderint arbores, vel vites; nihilominus eum numerum profiteri jubetur, qui fuit census tempore, nisi causam excidendi censori probabit. l. 4. §. 1. ff. de censib.

See the fifth and seventh Articles of the fourth Section.

XI.

The Impositions on Wares and Merchandizes in France receive no other Augmentations or Diminutions, besides those which the Prince makes, by Regulations which either raise or lower the Duties

11. The *Imposts on* Wares and Merchandizes are fixed.

Duties on the respective kinds of Goods, or on some of them. For whereas the Tax upon the personal Estates, and Lands belonging to particular Persons may be greater or lesser, altho the general Tax continue the same, because of the Changes which have been mentioned in the two preceding Articles; yet the Taxes on Wares and Merchandizes being laid not on any one Thing in particular, but in general on the Kind in proportion to the Number, Weight, and Measure, the said Tax cannot be changed except by a general and universal Change, which augments the Duty, or diminishes it *m*.

m This is an effect of the Nature of these sorts of Impositions, each Thing being estimated on a certain foot in order to fix the Duty, which it would neither be just nor possible to raise or lower, in proportion to the different Estimations that might be made of the several Things of one and the same kind.

XII.

12. The Revenue of the Prince arising from the Customs laid on Goods and Merchandizes, may rise or fall, but the Produce of the Tax on real and personal Estates is always certain.

It follows from these Differences between these several sorts of Impositions, that, with respect to the Prince, the Changes which may happen in the Taxes on real and personal Estates, do neither augment nor diminish the Sum that is to be paid into the Prince's Coffers. For the Sum Total which he has directed to be raised by the said Tax throughout the whole Kingdom is to be levied; and the Changes respect only the particular Persons, and the Lands and Tenements which are to contribute towards the general Tax, and which may be divided among them unequally, according as the said Changes may give occasion thereto. But as for the Duties and Impositions on Wares and Merchandizes, there may happen, and there does likewise often happen, many Changes which augment or diminish the Income of that Branch of the Revenue, altho the Duty on each kind of Goods continues to be the same. For the Commerce of a Merchandize may increase or diminish: There may likewise be a greater or less Consumption of the Things subject to the said Duties: Some of them may grow rarer, or it may happen that some sort of Merchandize is not any more imported into a Kingdom where it was formerly in use *n*.

n This is a Consequence of the preceding Articles.

XIII.

It follows from the same Differences between these several Impositions, that whereas in the Taxes on personal Estates, and upon Lands and Tenements in France, the Prince may fix a certain Sum to be raised thereby throughout the Kingdom; he cannot fix in the same manner the Sum to be raised by Duties or Impositions on Wares and Merchandizes; seeing every Year there may happen Changes which make it impossible to fix the Produce of that Branch of the Revenue at any certain precise Sum. And it is for this Reason that these sorts of Taxes are farmed out either by Cant or Auction, or by Contract with particular Persons, to whom the King assigns over his Right in consideration of a certain Sum of Money *o*. And he might likewise let out to Farmers the Tax on real and personal Estates, according as the Circumstances of the Times, and the Conditions of the Contract may make that Method more advantageous than levying the Tax by the hands of the Officers who are appointed for that Service.

o Publicani dicuntur qui publica vestigalia habent conducta. l. 12. §. ult. ff. de publ. et vestigal.

Publicani autem sunt, qui publico fruuntur. Nam inde nomen habent, sive fisco vestigal pendant, vel tributum consequantur: & omnes qui quid a fisco conducunt, recte appellantur publicani. l. 1. §. 1. eod.

XIV.

Altho all these sorts of Impositions of the said several Taxes have a direct relation either barely to Persons, or barely to Things; yet there is not any one of them which does not affect the Things, and also oblige the Persons. Thus, the Tax on the real Estate regards those who are the Proprietors or Possessors of the Lands and Tenements, or who reap the Profits of them, altho the Tax does not particularly mention them. Thus, the Duties and Imposts on Goods and Merchandizes respect those who are the Owners of them, altho they be not named, nor known. Thus, the Tax on personal Estates affects the Goods of the Persons who are assessed, altho the Assessments do not make any mention of their Goods *p*.

p This is a Consequence of the preceding Articles.

The Rule of this Text may be applied to the Tax on personal Estates, and it is usually applied to it

SECT. III.

Of the Assessments of particular Persons for their Personal Estates.

THE CONTENTS.

1. The Tax for Personal Estate is imposed on the Head of the Family.
2. Widows and unmarried Women may be assessed.
3. Children who are emancipated, altho they be not married, are assessed
4. The Assessments ought to be in proportion to the Goods.
5. In assessing the Goods, the Charges ought to be deducted
6. Every one is assessed in the place of his Abode.
7. Assessments made in the place of one's Abode, not in the personal Estate which they have else where.
8. Equity to be observed in Assessments
9. The Assessments of particular Persons are made by the Assessors
10. The Assessor cannot exempt themselves
11. Assessments of Offices
12. One may apply for a Mitigation of the Assessment.
13. The Effect of the Mitigation.
14. Another way of obtaining a Mitigation of one's Assessment.

I

1. The Tax for personal Estate is imposed on the Head of the Family.

THE Taxes which respect personal Estates are imposed in each Town, and in each Place, not upon every individual Person in particular, as upon every one of those who compose a Family, but upon every Head of a Family, in proportion to his Goods and his Acquisitions by his Industry. For it is because of their Goods and Industry that particular Persons are assessed *a*.

a See the third Article of the first Section.

II.

2. Widows and unmarried Women may be assessed.

Widows and unmarried Women, who are Heads of a Family, may be assessed as well as Men, but not Women who are married; for their Husbands are assessed for their own Goods, and also for the Goods of their Wives. But Wives who have a Separation of Goods may be assessed: for since they enjoy their Goods independently of their Husbands, they ought also to bear this Burden. *b*.

b Patrimoniorum munera mulieres etiam sustinere debent. l. 9. C. de muner. patr.

III

When Children are emancipated, whether they have Children of their own, or whether they have none, and whether they be married or not, they are assessed, if they have any Goods, or any Acquisitions by their Industry. For the Emancipation makes them Heads of a Family *c*.

c This is a Consequence of the first Article.

IV

The Assessments of every Family are laid upon him who is Head of it, according to the Share which he ought to bear of the Sum that is to be levied on the Place of his Abode, in proportion to his Goods, and to the Goods of the other Families inhabiting the same place, so as that the Strong may help out the Weak. So that according to the greater or lesser Value of the Goods of each Family, their Assessments ought to be greater or lesser *d*.

d Ita ut relevato onere rei quod imminet sanguis, et influat in eos qui integris viribus florent, & adscriptio tributorum æqui lince dividam. l. 10. c. de fund. patrim.

The Reader must not forget, as to the Quotations of Texts out of the Roman Law, in relation to this Matter, the last Remark made in the Preamble to this Title.

V.

Seeing the Assessments ought to be made on the foot of the Goods, and of the Acquisitions by Industry, and that every one has more or less Income from his Estate, and Profit by his Industry, in proportion to the Charges of his Condition, the Number of his Children, the Debts which he owes, the Losses which he may have sustained, and other Causes which may lessen and diminish the clear Profit which he might otherwise make by the Income of his Estate, and by his Industry: The Assessments for personal Estates ought to be made in proportion to the Goods, in such a manner, as to join to this Proportion that of the Conditions of the Persons, of the Debts which they owe, and of their other Charges, that every one may be assessed in that Sum which these Proportions joined together may demand. And as there happen every Year divers Changes in the Estates of Families, and in their Charges, and that likewise the Tax may

e In assessing the Goods, the Charges ought to be deducted.

may be raised or diminished, for this reason the Assessments are renewed every Year.

e This is a Consequence of the preceding Article.

VI.

6. *Persons
ones assess-
ed in the
place of his
Abode.*

Since Assessments for personal Estates respect directly the Persons without mention of their Goods, altho they are to be made in consideration of their Goods, every one is assessed in the Place of his Abode, and not in the Places where their Goods may chance to be situated f.

f Intubationes que agris sunt, vel ad fidei, possessoribus indicuntur. munera vero qua patronorum habentur, non alius quam municipibus vel incolis. l. 6. §. ult. ff. de maner. & hon.

Originis ratione, ac domicilii voluntate ad munera civilia quemque vocant, certissimum est. l. 6. c. de inc. ex ubi quisque.

Altho these Texts have relation to other sorts of Charges, yet they may be applied to Taxes.

VII.

7. *Assess-
ments
made in
the place
of one's
Abode take
in the per-
sonal Li-
ability which
they have
elsewhere.*

Altho Assessments on account of personal Estates express only the Persons who are assessed, without making any mention of their Goods, yet it is for their whole personal Estate that the Assessment is made: and the same is regulated in proportion not only to the Goods which they have in the place of their Abode, but also those which they have elsewhere, excepting the Immoveables which they may chance to have in another place, which is subject to the Tax on real Estates, for these Goods bear their Charge in the Places where they are situated g.

g This is a Consequence of the preceding Articles.

VIII.

8. *Equity
is to be ob-
served in
Assess-
ments.*

In order to settle the foot on which the Assessments for personal Estates are to be made, it behoveth to begin by taking out of the Number of these who are to contribute, such as have any one of the Exemptions which shall be explained in the seventh Section, and then to distribute the Sum which is to be raised in the Place among all the rest of the Inhabitants of the same, in proportion to the Share which every one ought to bear thereof, according as it is greater or lesser, and as every one has more or less Goods, and Profits by his Industry h.

h See the fourth Article.

IX.

Seeing the Assessment of Persons for personal Estates ought to be made with that Equity which is due to the several Regards that ought to be had to the Conditions, the Goods and Acquisitions of the Persons, and to their Charges, it cannot be rightly made but by Persons who have a thorough knowledge of the Condition of the Families which are to be assessed. Thus, in order to make this Assessment, choice is made of the Inhabitants of the same Place, and of different Conditions, who are named every Year, and the Name of Assessors is given to the Persons to whom this Function is committed i.

i Nec inspectio, nec peræquatio fiat aliter quam ex scripta iussione principis. l. ult. c. de ann. & trib.

This Text may be applied to the Imposition of Taxes, which are laid on pursuant to the Regulations for that purpose by Persons who are called Assessors, and who are chosen by the Inhabitants of the respective Parishes, as having knowledge of the Estates and Charges of those who are to be assessed.

X.

The Assessors cannot be Judges in their own Cause, and therefore their Assessment remains on the same foot as it was before their Nomination: And they cannot ease themselves of their former Assessment, except in so far as the Tax is lessened with respect to all the Inhabitants in general. But if they have cause to shew why they ought be eased in their Assessment, they may alledge the same before the proper Judges, in order to have a Redress therein, in the same manner as in the exorbitant Assessments of other particular Persons, as shall be shewn in the twelfth Article. Neither can they discharge or ease their Wives, their Children, or other Relations l.

l Generali lege decernimus neminem sibi esse judicem, vel jus sibi dicere debere: in re enim propria iniquum admodum est alicui licentiam tribuere sententiae. l. un. c. ne quis in sua causa jud.

Qui jurisdictioni præstat, neque sibi jus dicere debet, neque uxori, vel liberis suis, neque libertis, vel cæteris quos secum habet. l. 10. ff. de jurisdic.

It is the same thing as to Assessors; for it is a kind of Judgment which they render in settling the Assessments.

See the ninth Article of the eighth Section.

XI.

Since it frequently happens in little Places, that there are some Inhabitants thereof

*11. Assess-
ments of
Officers.*

thereof, who by virtue of their Offices and their great Estates take so much Authority upon them, as that the Assessors dare not assess them in the just proportion which they ought to bear; this Abuse is remedied by making Application to the proper Judges of such Cases, who regulate their Assessments; for which reason they are called Assessments of Office, because they are made independently of the Function of the Assessors, and by the Office of the Judges who are to take cognizance of the said Matters, and to assess those Persons upon a just and equitable foot with their Neighbours *m*.

m See the Text cited on the following Article.

It is both just and necessary to supply by this means the Injustice and the Weakness of the Assessors, who favour these sorts of Persons to the prejudice of others.

Perequatores ac discussores si incurerint culpam negligentiae vel gratiae, non solum bonorum iacturam, verum etiam annorum in quadriplum inoleant subire debebunt: ea vero, quae in damnum provincialium fuerint acceptisse convicti, in quadriplum cogentur evolvere. l. 6. C. de censib. & cens.

See the fourth Article of the Regulation of the Tax on real and personal Estates for the Year 1660.

XII.

12. One may apply for a Mitigation of their Assessment.

If the particular Persons who are assessed complain that their Assessment is excessive, and desire that it may be moderated, whether it be that the Assessors refuse to do them Justice, or that the Value of their Estates, and the greatness of their Charges was not sufficiently known, or that they have sustained Losses; they may sue for Redress before the proper Judges against those who represent the Community, whether they be Sheriffs, Consuls, or others. And in order to judge of their Demand for a mitigation of their Assessments, the Officers whose business it is to hear and determine all such Complaints, name Persons who are called skilful Persons, or Arbitrators, whom the Parties on both sides agree to, or whom the Judges name of their own accord, pursuant to the Rules which shall be explained in their proper place. And the said Arbitrators, after having examined the Roll of the Assessments, the Circumstances of the Plaintiff, as to the Income of his Estate, and the Charges with which the same is burdened, and the other Writings produced by the respective Parties, regulate the Assessment complained of, and may either

confirm it, or mitigate it, as they shall judge reasonable *n*.

n Quoniam tabulam civitatum per collationem potentiorum facinam ad inferiores transferunt, jubemus, ut quisque se gravatum probaverit, suam tantum pristinam professionem agnoscant. l. 1. C. de censib. & censitor.

XIII.

The Defalcation which he who complained of his Assessment may obtain, will not excuse him from paying the Sum he is assessed at provisionally; for it is necessary that the whole Sum which is laid upon the Place, be levied without any diminution *o*. But care is taken to do him Justice afterwards in the following Years.

13. The Effect of the Mitigation.

o This is an Effect of the Privilege of Monies granted for the Use of the Publick.

[The Act for the Land-Tax in England empowers the Commissioners, upon Complaint made to them, to abate and lessen the Assessments for that Year, and does not postpone the granting Relief to the subsequent Year.]

XIV.

Besides this way of making a Complaint in general terms of their being over-rated in the Assessment, there is another way, which is called Comparison; by which the Party who complains is obliged to name some Person among those who are assessed with him, whom he alledges to be under-rated, and upon whom he desires that the Overplus of his Assessment may be laid. So that it is between them two that the Question is to be decided, what share each of them ought to pay of the Sum which their two Assessments amount to *p*.

14. Another way of obtaining a Mitigation of one's Assessment.

p Qui gravatos se esse a perequatoribus conqueruntur, & injusto oneri impares esse proclamant, competitiois habeant facultatem: ut quid remissum gratia, quidve interceptum fuerit fraude convincant, & ex eo levamen accipiant, quod per deformia & criminosa commercia sibi impositum esse deplorant, ut aliis demeretur. l. 5. C. de censib. & censitor.

Ut quod ei fuerat superfluum ille cognoscat quem debitae functioni fraus clandestina subtraxerat. d. l.

This way of Comparison would not be attended with any Inconveniences, if it were circumscribed to that of leaving him who complains of his Assessment, at liberty to produce Instances of other Persons who are assessed at a much less Sum than he is, in proportion to their Estates; which is the Method when a Complaint is received in general terms. But when one singles out another Person, in order to have a part of his Assessment thrown upon him, this way may indeed be useful to the Publick, but is attended with this bad Consequence, that it is often an occasion of Quarrels and Enmities among Neighbours.

S E C T. IV.

Of Taxes on Immoveables.

The CONTENTS.

1. In what manner the Tax on Real Estates is laid on.
2. This Tax is imposed in the Places where the Lands and Tenements are situated.
3. The Form of the Imposition.
4. In what manner the Taxes on Lands and Tenements oblige the Persons.
5. The Tax on each Land or Tenement may be raised or lessened according to the Changes that happen to the said Land or Tenement.
6. The Rate at which a Land or Tenement is assessed, is independent of the other Goods of the Proprietor or Possessor thereof.
7. The Tax which is laid upon one Estate is cast upon the others.
8. The Duty of those who make the Assessments for the Land Tax to inform themselves of the Changes.
9. The whole Estate is liable for the whole Tax.
10. One may apply for a Diminution of their Assessment in the Land Tax.

I.

1. In what manner the Tax on Real Estates is laid on. **T**HE Taxes on Immoveables, which are called Taxes on the Real Estate, are imposed in the Places where the said Tax is received on each Estate, in proportion to what the Revenue which they yield is able to bear of the Sum Total that is to be levied on all the Lands and Houses of that Place, estimating them all according as their Revenue is more or less considerable *a*.

a Omne territorium censetur. l. 4. C. de censib. & censib.

Ut sterilia atque eterna his quæ culta vel opima sunt compensentur. D. l.

II.

2. This Tax is imposed in the Places where the Lands and Tenements are situated. **T**HE Taxes on Lands and Tenements are laid on in the Places where the Lands and Tenements are situated, and not in the Places where the Persons to whom they belong inhabit. For they are imposed on the Lands and Tenements themselves which are subject to the said Tax, without any regard to the Persons, whether they be Proprietors or Possessors thereof *b*.

b Is qui agrum in alia civitate habet, in ea civitate

III.

The Imposition on each Land or Tenement is distinguished by the Nature of the Land or Tenement, by its Situation, by its Extent, and by its Confines *c*.

c Forma censuali cavetur, ut agri sic in censum referantur nomen fundi cujusque, & in qua civitate & quo pago sit, & quos duos vicinos proximos habeat. l. 4. ff. de censibus.

Quot jugerum sit. D. l.

IV.

Altho the Taxes on Lands and Tenements do directly affect only each Land and Tenement that is subject thereto; yet seeing the said Tax ought to be taken out of the Revenues thereof, the Charge of it follows those who have enjoyed the Fruits, and received the Rents. Thus the Proprietors, the Possessors, the Mortgagees, the Usufructuaries and their Tenants, and others who may have enjoyed by other Titles, ought to pay these Taxes. And altho the Fruits themselves be no more in being, yet the other Goods of the said Persons ought to answer for them *d*.

d In tributiones quæ agris fiunt, vel ædificiis, possessionibus indicuntur. l. 6. §. ult. ff. de mun. & honor.

V.

Seeing the Tax on each Land or Tenement ought to be imposed on the foot of the Revenue that it may yield, it may be either raised or lessened in proportion to the Augmentation or Diminution which may happen in the Revenue. Thus the Revenue of an empty Space of Ground in a Town may be augmented by building a House or Shop upon it. Thus a Country Farm may be improved by making a Plantation or other Improvement in it. Thus, on the contrary, Lands and Tenements may perish or be diminished, as a House by Fire or by Decay; a Ground may be carried away either in whole or in part by a Flood. And in all these Cases, and others of the like nature, the Tax may be either augmented or diminished in proportion, and may even cease entirely if the Land or House perishes *e*.

e Quisquis vitem succiderit aut feracium ramorum latus veraverit, quo declinet fidem centium, & mentatur callidæ paupertatis ingenium, mox defectus competentis indignationi subiciatur. l. 2. C. de censib.

Illam æquitatem debet admittre censitor, ut officio ejus congruat relevari eum qui in publicis tabulis delato modo frui cernis ex causis non possit. Quare & si agri portio calamitate perierit, debet per censitorem relevari. Si vines mortuæ sint, vel arbores aruerint, iniquum, eum numerum inferri censui. Quod si exciderint arbores vel vites, nihilominus eum numerum profiteri jubetur qui fuit census tempore, nisi causam excidendi censitori probabit. l. 4. §. 1. ff. eod.

See the tenth Article of the second Section.

VI.

6. The Rate at which a Land or Tenement is assessed, is independent of the other Goods of the Proprietor or Possessor thereof.

The particular Impositions on each Land or Tenement are independent of all manner of regard for those who are the Proprietors or Possessors of them. And whether they be rich or poor, the Lands and Houses are assessed on the same foot. For it is on the Lands and Houses, and in proportion to the Rent which they may yield, that this Burden ought to be laid, without regard to any thing else f.

f Onus fructuum hæc impendia sunt. l. 13. ff. de imp. in res dot. fact.

Indictiones non personis sed rebus indici solent: ideo ne ultra modum earundem possessionum quas possidet conveniaris præses provinciae prospiciat. l. 3. C. de annon. & trib.

VII.

7. The Tax which is laid upon one Estate is cast upon the others.

In order to settle the Proportion that each Land or Tenement is to pay, it is necessary to leave out of the Number of the Lands and Tenements of the Places where the Tax is to be levied, those which may happen not to be subject to it, as also those which have perished, or are become unfruitful by an Inundation, or other Accident, and to distribute the Tax among the others g.

g Cum divus Aurelianus parens noster civitatum ordines pro desertis possessionibus jussit conveniri, & pro his fundis qui Dominos invenire non poterunt, quos præceperamus earundem possessionum triennii immunitate percepta de solemnibus satisfacere, servato hoc tenore præcipimus, ut si constiterit ad suscipiendas easdem possessiones ordines minus idoneos esse; eorumdem agrorum onera possessionibus & territoris dividantur. l. 1. C. de omn. agr. desert.

VIII.

8. The Duty of those who make the Assessments for the Land Tax is to inform themselves of the Changes.

Altho there be no Change in the general Imposition of the Land-Tax that is to be raised in any Place or Division, yet since the particular Assessments of the several Lands and Houses may be increased or lessened on account of the Changes explained in the fifth and seventh Articles, and that the Augmentation or Diminution of the Assessment of one particular Land or House diminishes or augments the Assessments of some others; it is the Duty of those

who are entrusted with the Regulation of the said Assessments, to inform themselves of these Changes h.

h See the fifth and seventh Articles of this Section.

IX.

If an Estate which is subject to the Land Tax, and comprehended under one single Assessment in the Distribution of the Sum that is to be raised in the Place where it lies, happens to be divided either among Coheirs, or by an Alienation of one part of it, or by some other means; each Portion of the said Estate would be liable for the whole Sum that the said Estate was assessed at; and he who should be sued for the whole Tax would be compelled to pay it, and he would recover the Portions of the others i.

i Cum possessor unus expediendi negotii causa tributorum jure convenietur, adversus ceteros quorum æque prædia tenentur, ei, qui conventus est, actiones a fisco præstantur, scilicet omnes pro modo prædiorum pecuniam tributi conferant. l. 5. ff. de censib.

X.

If the Proprietors or Possessors of Lands and Tenements that are subject to the Land Tax, pretend that they are exorbitantly taxed in comparison of others, they may complain of it, and sue for Redress in the Way and Method that is practised in the Places where the said Lands and Tenements are situated l.

l See the Text cited on the fifth Article, and that of the fourteenth Article of the preceding Section.

SECT. V.

Of the Impositions laid on Goods and Merchandize.

The CONTENTS.

1. These Duties are of several sorts.
2. How they are collected.
3. The same.
4. How Doubts, whether some particular Merchandizes be liable to the Duty, ought to be determined.
5. Duty upon Salt.
6. Difference between these Imposts, and the Tax on Lands and Personal Estates.
7. The Duties of the Excise and Customs in some Countries are let to Farm.
8. After the Farms have been adjudged to the highest Bidder for a certain time, others are admitted to outbid him.

9. The *Tenants*, & *Leases* who contract for the said Duties, are obliged to give a *Receipt* of the *Leases* of these Duties, when they are farmed out.

I

1. These are the names of the duties of public law.

THE Impositions on Goods and Merchandize are those which are called by the Names of Excise, Customs, and other Appellations *a*, and they have all of them this in common, that they are levied on the things which are subject to them, and in the Places where the things are at the time when this Duty ought to be paid, as shall be explained by the Articles which follow.

a Vectigalia. l. 1. C. de vectig. & comm. Octav. l. 7. C. eod. Portorium. l. 203. ff. de verb. signif.

II.

2. How they are collected.

The Duties which are payable at the Passage or Entry of Goods and Merchandize into Towns and other Places where they are to be sold, are due at the Passage or at the Entry. And those who carry or transport them, whether it be upon their own account or on the account of others, ought to pay there the said Duties at the time of their Passage or Entry *b*.

b Ex his tantum speciebus quas de locis propriis unde conveniunt, huc deportant, octavam vectigal accipiunt. l. 8. C. de vectig. & comm. V. l. 203. ff. de verb. signif.

These Duties, and the Ways of collecting them, depend on the Regulations which have made Provision therein.

III.

3. The same.

If this Duty is due on Goods which are not to pass from one Place to another, such as Wine which the Person who made it of his own Vineyard sells *b*, retail in the Place where it grew, it ought to be paid in the Place where the said Goods are *c*.

c The Duty on such things is collected in the manner prescribed by the Regulations.

IV.

4. How Doubts, whether some particular Merchandizes be liable to the Duty, ought to be determined.

Seeing there is an infinite Number of different sorts of Goods and Merchandizes, that there are some which are not liable to any Duty whatsoever, and that of those which are not expressly exempted, there may be some concerning which it may be doubted whether they are or are not comprehended under the Kinds expressed in the Regulations and Book of Rates, as being liable to the said Duties; this Doubt is to be decided either by the

Usage, if there is any in relation to the said Matter, or by the Considerations which may determine either for their being subject to the Duty, or for their being exempt from it; which depends on the Prudence of the Judges who are to take cognizance of the Matter, or on the Regulation thereof by the Sovereign, if the Difficulty be of such importance as to require it *d*.

d In omnibus vectigalibus sere consuetudo spectari solet. Idque etiam principalibus constitutionibus cavenit. l. 4. § ult. ff. de public. & vectig.

Eorum rerum vectigal quatum nunquam praestitum est, praestari non potest. l. 9. § 6. eod.

Res exercitus paratas, praestandi vectigalium subiecti non placent. D. l. § 7.

V.

We must reckon in the number of the *5. Duty* Duties of this sort that which is laid upon Salt. which in France is different from the other Duties in this respect, that whereas the Commerce of all other Commodities is permitted to particular Persons, that of Salt is not allowed to any within the Provinces where that Duty takes place, except to such as are authorized by the Prince, who makes them Masters of all the Salt within the said Provinces, and they distribute it for the Price that is fixed; which comprehends, besides the Value of the Salt, the Duty which the Prince gathers from it *e*.

e Publica vectigalia intelligere debemus ex quibus vectigal siscus capit: quale est vectigal portus, vel venalium rerum, item salinarum. l. 17. §. 1. ff. de verb. signif.

Qui salinas, & cretiosodinas, & metalla habent, publicanorum loco sunt. l. 13. ff. de publican.

Si quis ita haeredem instituerit, Titius quae ex parte mihi socius est in vectigalia salinarum pro ea parte mihi haeres esto. l. 59. §. 1. ff. de haered. instit.

VI.

There is this Difference between the Duties laid on Goods and Merchandizes, and the Taxes upon Personal Estates, and upon Lands and Houses, that, as has been observed in another Place, the Total of the general Imposition that is laid on Lands, and Houses, and on Personal Estates, are fixed by the Sovereign at certain Sums which he ordains to be raised; whereas the general Imposition which is laid on Goods and Merchandize cannot be fixed at any certain Sum: and there is nothing regulated but the Duty on each kind, without any certainty what the Sum Total will amount to *f*: For that varies constantly, for the Causes explained

f See the sixth, seventh, and twelfth Articles of the second Section.

in the twelfth Article of the second Section.

VII.

7. The Duties of the Customs and Con-
fessions in
from Com-
mon are let
to farm.

The Changes which render the total Sum arising from the Duties on Goods and Merchandize uncertain, induce them in France to let them out to Farm by Cant or Auction to the highest Bidder, or by Contract with those who offer the best Condition, whether there be a publick Auction, or not g.

Penes illum vectigalia manere oportet qui superior in licitatione exstitit. l. 4. C. de vectig. & comm.

VIII.

8. After the Farms have been adjudged to the highest Bidders for a certain time, others are admitted to outbid him.

The Farms of the Duties arising by the Excise and Customs which are let by Cant or Auction to the highest Bidder, imply the Condition, that if within a certain time after they are adjudged to the highest Bidder, others outbid them in a certain Sum regulated by Use, they shall be put into the Place of the first Farmer. Which Usage is noways unjust; because, besides that the Persons to whom the Farms were first adjudged knew of this Usage, and had their Lease only on this condition, it hath its Equity, which is founded on the Advantage that redounds thereby to the Publick h.

h Si tempora quæ in fiscalibus auctionibus vel hastis statuta sunt, patuntur cum etiam augmentum facturam esse proventus: ad rationalem nostrum, ut iustam uberioris preii obligationem admittat. l. 4. C. de fidei cur. hast.

Tempora adjectionibus præstatura ad causam fisci pertinent. Nisi si qua civitas propriam legem habeat. l. 1. C. de vend. reb. civ.

Idem respondit, si civitas nullam propriam legem habet de adjectionibus admittendis, non posse recedere a locatione vel venditione prædiorum publicorum, jam perfecta temporaria enim adjectionibus præstata ad causas fisci pertinent. l. 21. §. ult. ff. ad municip.

This last Text confirms the Privilege which the Exchequer has in this particular, because it opposes to it the Usage of Adjudications in relation to Duties belonging to Towns, which have not this Privilege, unless the same be expressly granted to them.

The Rule explained in this Article is established by the Ordinances, which allow of the doubling and trebling the Farms of the Aids or Subsidies.

IX.

9. The Farmers, and others who contract for the said Duties, are obliged to give Security.

The Consequence of the Duties that are laid on Goods and Merchandize, and of those which are laid on Salt, make it necessary to take Security from the Farmers, or those who contract for the said Duties; and the Conditions of the Engagement of the Sureties are regulated by the Lease or Contract which contains their Obligation i.

i Qui fidejusserint pro conductore vectigalis in universam conductionem, in usuras quoque in jure

conveniuntur: nisi proprie quid in personam eorum verbis obligationis expressum. l. 2. §. 12. ff. de adm. rer. ad inst. pers.

[In England every Receiver, Collector, or other Officer is accountable to the King for any part of his Majesty's Revenue, is, before his Entry upon the Office, bound with Surety or Sureties for his true Account and Payment. Stat. 7. Edw. VI. cap. 1.]

X.

Whether it be that these Duties on Goods and Merchandize have been farmed out by Cant or Auction, or by Contract at a certain Price agreed for, the Conditions of the Farmers and Contractors, the Eases and Abatements which they may claim, and the other Consequences of the Events, are regulated either by their Contract, or by the Conditions of their Lease, if Provision has been made therein for such Cases. And if there should arise Difficulties unforeseen which may concern the Interest of the Prince, they would be adjusted by his Counsel. For the Interest which he may have in the said Matter does not divest him of the general Administration of Justice within his Dominions, and of the Right of rendering Justice, or causing it to be render'd by his Ministers even in the Causes where he himself is a Party; seeing he cannot acknowledge any other Authority besides that which God hath put into his hands, and which he dispenses either by himself, or by his Ministers l.

l This is a Consequence of the Right of Sovereignty.

SECT. VI.

Of the levying of all sorts of Publick Money.

The CONTENTS.

1. Divers sorts of Rules for levying the Publick Money.
2. The Taxes for Personal Estates affect all the Goods of the Person who is assessed.
3. The Privilege of Taxes.
4. They affect the Goods which the Person assessed has in other Places besides that of his Abode.
5. The Land Tax affects the Lands which are charged therewith, as also the other Goods of those who are in Arrear for the same.
- 6 The private Agreements between the Proprietors and Possessors of Lands cannot change the Order of levying the said Tax.
7. The

7. *The Place where the Duties on Goods and Merchandizes are levied.*
8. *This Duty is levied on the thing it self, which is seized for the Payment of it.*
9. *The Owner may relinquish the Goods for the Duty, or get it moderated.*
10. *If one defrauds the King of the Customs, the Goods are confiscated.*
11. *Ignorance does not excuse him who has defrauded the King of the Customs.*
12. *No body is compelled to assist in collecting the Imposts on Goods and Merchandizes, as they are in the Tax on Real and Personal Estates.*
13. *Punishments of the Misdemeanours of those who collect these Duties.*
14. *All the Goods of Persons owing any sort of Taxes are engaged for the same.*
15. *One ought not to be cast into Prison for not paying the Taxes.*
16. *The Taxes do not admit of any Compensation.*
17. *Taxes do not prescribe.*
18. *In doubtful Cases those who are indebted for Taxes, are favoured against the Exchequer.*

I.

1. *Divers sorts of Rules for levying the publick Money.*

AS there are three kinds of Impositions explained in the three preceding Sections, so there are three different sorts of Rules which regard the levying of each of these three kinds; and there are also some Rules common to all the three, as will appear in the Articles which follow *a*.

a See the three preceding Sections.

II.

2. *The Taxes for Personal Estates affect all the Goods of the Person who is assessed.*

As the Taxes on personal Estates are levied on the Persons on account of their Goods and the Profits which they make by their Industry, so they affect the said Goods and the said Profits. And the Collectors of the said Taxes may by the bare Effect of the Assessments signed by the proper Officers, distrain the Fruits and the moveable Effects of the Party who is assessed, without any other Obligation or Condemnation. For these sorts of Goods belonging to the Persons assessed are bound and engaged by the bare Effect of the Assessment *b*.

b Fiscus semper habet jus pignoris. l. 46. §. 3. ff. de jur. fisc.

One may for the Tax on Real and Personal Estates distrain the Moveables and all sorts of Mobiliary Effects, and also the Fruits of the Lands and Tenements, but not the Lands and Tenements themselves. For with respect to the Immoveables, it sufficeth that the Fruits thereof be hypothecated for the annual Charge of the Taxes.

[In the several Acts of Parliament in England, for granting an Aid to his Majesty to be raised by

a Land Tax, Power is given to the Collectors thereof, in case of Non-payment, to levy the Sum assessed, by Distress and Sale of the Goods and Chattels of such Persons as refuse or neglect to pay, or distrain upon the Messuages, Lands and Tenements charged with any Sum or Sums of Money. See the several Acts of Parliament for the Land Tax.]

III.

This Mortgage of the Goods of those who are assessed is privileged, and the Tax is preferred before all other Debts, except such as have some privileged Mortgage on the thing that is distrained, for some of the Causes explained in the fifth Section of the Title of Pawns and Mortgages *c*.

c Republica creditorum omnibus chirographarum creditoribus praefertur. l. 38. §. 1. ff. de reb. aut. jud. possid.

See the twenty third Article of the fifth Section of the Title of Pawns and Mortgages, and the fourth, fifth, and following Articles of the same Section in the Book of the Civil Law in its Natural Order.

IV.

Seeing the Assessments for Personal Estates are made on the foot of all the Goods which the Persons assessed are possessed of, they affect not only the Goods they have in the Places of their Habitation, but even all their other Goods, in what Place soever they are situated, are bound for the same *d*.

d Illorum qui publica, five fiscalia debent, omnia bona sunt obligata. l. ult. C. vestig. nov. inf. n. p.

V.

The Land Tax affects directly only the Lands which are charged therewith. But because it is a Charge on the Fruits, it follows those who have enjoyed them, whether they be Proprietors, Usufructuaries or others. And since their Enjoyment of the Fruits makes them Debtors for the Tax due from the Lands, their other Goods are engaged for the same for the time that they enjoyed them *e*.

e Imperatores Antoninus & Verus rescripserunt, in vectigalibus ipsa praedia, non personas conveniri, & ideo possessores etiam praeteriti temporis vectigal solvere debere. Eoque exemplo actionem si ignoraverint, habituros. l. 7. ff. de publ. et vectig.

Universa bona eorum qui censentur vice pignorum pro tribus obligata sunt. l. 1. C. in quib. caus. pign. vel hyp. sat. cont.

VI.

Seeing the Land Tax affects the Land which is charged, and regards him who reaps the Fruits thereof, nothing can be done in derogation of the said Mort-

3. *The Privilege of Taxes.*

4. *They affect the Goods that the Person assessed has in other Places besides that of his Abode.*

5. *The Land Tax affects the Lands that are charged therewith, as also the other Goods of those who are in Arrear for the same.*

6. *The private Agreements between the Proprietors*

id. *Effect-
sors of
Lands
cannot
change the
Order of
levying the
said Tax.*

gage by any Covenant between the Proprietor of the Land and other Person who has the Enjoyment of it. Thus when a Proprietor mortgages to his Creditor the Land that is subject to the said Tax, and gives him the present Enjoyment and Possession thereof, the Proprietor undertaking to pay the Tax, this Agreement would not discharge the Creditor from paying it, but he would be liable to pay the Tax because of his Enjoyment of the Fruits *f.* Thus the Purchaser of Lands or Tenements who should stipulate that the Seller should bear the Charge of the Tax, would nevertheless be answerable for it. For these private Agreements can make no change as to the Rights of the Exchequer, and they give only an Action of Relief against him who has undertaken to pay the Tax *g.*

f Inter debitorem & creditorem conveniat, ut creditor onus tributi prædii pignorat non agnosceret: sed ejus solvendi necessitas debitorem spectaret: talem conventionem quantum ad fisci rationem, non esse servandam, respondit. Pactis enim privatorum formam juris fiscalis convelli non placuit. *l. 42. ff. de pact.*

g Rei annonariæ emolumenta tractantes cognovimus hanc esse causam maxime reliquorum, quod nonnulli captantes aliquorum momentarias necessitates, sub hac conditione fundos comparant, ut nec reliqua eorum fisco interant, & immunes eos possiderint. Ideoque placuit, ut si quem constituerit hujusmodi habuisse contractum, atque hac lege possessionem esse mercatum: tam pro solius censibus fundi comparant, quam pro reliquis universis ejusdem possessionis obnoxius teneatur. Cum necesse sit eum qui comparavit, censum rei comparatæ agnoscere: nec liceat cuicumque rem sine censu comparare, vel vendere. *l. 2. C. sine cons. vel rel. fund. comp. n. p.*

VII.

7. *The
Place
where the
Duties on
Goods and
Merchan-
dizes are
levied.*

The Impositions on Goods and Merchandizes are levied on the things themselves which are subject thereto, and in the Places where the Duty ought to be paid, whether it be at their Entry into a Port, or at a Passage, or in the Places where the Goods are to be sold, or elsewhere, according to the Nature of the Imposition, and the Regulations which have been made there-
in h.

h See the second and third Articles of the fifth Section.

VIII.

8. *This
Duty is levied on
the thing
itself,
which is
seized for
the Pay-
ment of it.*

Altho the Owners of the Goods and Merchandizes which are subject to Duties do not appear, yet since the Impost is not laid on any Person in particular, but only in general on each kind of the several Goods and Merchandizes, the same is levied on every one of them according as its Nature subjects it there-

to. And this Duty is levied on the thing itself, which is seized and kept in the Place where the Duty ought to be paid *i.*

i Ad res ejus omnemque substantiam exactor cedat. *l. 2. C. de exatl. trib.*

If it is lawful to seize the Goods for all manner of Contributions, much more is it lawful to seize the things themselves which are subject to the Duty

IX.

If the Owner was present at the Entry of the Goods or Merchandizes, which he owned to be his, and that they were delivered to him upon his undertaking to pay the Duty afterwards, he would be personally bound for it, and his other Goods would be engaged for the said Duty. But if it should happen that the thing were not worth the Duty, and that the Owner should chuse rather to abandon it, than to take it, and to pay the Duty, he would be quit by abandoning the thing, if the Impost were not moderated. For it is only on account of the thing itself that this Duty is due *l.*

9. *If
Owner
may re-
linquish
the Goods
for the
Duty, or
get it mo-
derated.*

l Indictiones non personis, sed rebus indici solent. Ideo ne ultra modum earundem possessionum quas possides convenias, præses provinciarum prospiciat. *l. 3. C. de annon. & trib.*

This Text may be applied to this Rule.

X.

If the Owners of these sorts of things committed any manner of Fraud to avoid paying the Duty thereof, as if for avoiding Payment of the Customs of Goods at their Entry, they should run them, the Fraud being discovered, the Goods and Merchandizes would be confiscated. And this Confiscation would take place against the Heir or Executor; for he who had committed the Fraud, had already incurred this Penalty. And if there were other Punishments ordained by the Statutes and Ordinances, those who were guilty of the Fraud, and their Accomplices, would be liable to them *m.*

10. *If
one de-
frands the
King of
the Cust-
oms, the
Goods are
confiscated.*

m Commissa vestigialium nomine etiam ad heredem transmittuntur. Nam quod commissum est statim definit ejus esse qui crimen contraxit, dominumque rei vestigiali acquiritur. Ea propter commissi persecutio, sicut adversus quemlibet possessorem, sic & adversus heredem competit. *l. 14. ff. de public. & vestig. & com.*

Fraudati vestigialis crimen ad heredem ejus qui fraudem contraxit, commissi ratione transmittuntur. *l. 8. eod.*

XI.

We reckon as a Fraud in this matter, all the Ways which are made use of to

11. *Ignorance does not excuse him who*

has de-
frauded
the King
of the
Customs.

conceal from the knowledge of the Persons imployed to collect these Duties the things which are liable to them, whether it be that he who uses this Way does it with design to cheat, knowing well enough that they ought to pay the Duty, or whether he be ignorant of it. And his Goods and Merchandizes will be confiscated *n.* For this Duty being imposed by a publick Law, it is presumed to be known by every body; and if Ignorance were a sufficient Excuse, every one would plead it *o.*

n Licet quis se ignorasse dicat, nihilominus eum in poenam vestigialis incidere, divus Adrianus constituit. Divi quoque Marcus & Commodus rescripserunt, non imputari publicano, quod non instruxit transgredientem: sed illud custodiendum ne decipiat proficere volentis. l. 16. §. 5 & 6. ff. de public. & vestig. & comm.

o See the ninth Article of the first Section of the Rules of Law, in the first Tome of the Civil Law in its Natural Order.

XII.

1. No
body is
compelled
to assist in
collecting
the Imposts
on Goods
and Mer-
chandizes,
as they are
in the Tax
on Real and
Personal
Estate.

There is this Difference between the levying of the Imposts on Goods and Merchandizes, and that of the Tax on Real and Personal Estates, that no body is compelled to assist in levying the said Imposts, no more than to take them to farm, unless they engage therein voluntarily; and it belongs to the Farmers and others who have contracted for the Duties of this kind, to take care of levying them *p.* But in levying the Tax on Lands and Personal Estates, one may be compelled to assist therein; for it is one of the Functions of those Offices which are called Municipal, of which notice shall be taken in its due place *q.* Thus the Sheriffs or Consuls of the respective Towns and other Places, or the other sorts of Officers, or Overseers, according to the Usage of the several

p Ad conducendum vestigial inivius nemo compellitur. Et ideo impleto tempore conductionis elocanda sunt. l. 9. §. 1. ff. de public. & vestig.

Cum quinquennium, in quo quis pro publico conductore se obligavit, excessit; sequentis temporis nomine non tenetur, idque principalibus rescriptis exprimitur: divus etiam Adrianus in hac verba rescripsit, valde inhumanus mos est isti quo retinentur conductores vestigialium publicorum & agrorum si tantum locari non possint, nam & facilius inveniuntur conductores si scierint fore, ut, si peracto lustro discedere voluerint, non teneantur. l. 3. §. 6. ff. de jure fisci.

Si cum Hermes vestigial octavarum in quinquennium conduceret, fidem suam obligasti, posteaque spacio ejus tempore expleto, cum idem Hermes in conductione, ut idoneus detineretur non consentisti, sed cautionem tibi reddi postulasti, non opponere de posterius temporis periculo adstringi, compertens iudex non poterat. l. 7. C. de locat. v. l. 11. eod.

q See the first Article of the fourth Section of the sixteenth Title.

Places, are obliged to levy the said Tax. For which reason this Employment of collecting the publick Taxes has nothing in it that is mean or dishonest, and it does not any ways derogate from the Dignity which they may have by other Offices *r.*

r Exigendi tributum munus inter sordida munera non habetur. Et ideo decurionibus quoque mandatur. l. 17. §. 7. ff. ad municip. & de ma.

[In the Acts of Parliament in England by which the Land Tax is imposed, Commissioners are therein named for putting the said Acts more effectually in Execution, and they have Power to compel Persons to serve in making the several Assessments, and collecting the Sums that are assessed.]

XIII.

Since the levying of the Duties which are imposed on Goods and Merchandizes at their Entry into Ports, or at their Passage from one Place to another, or otherwise, is liable to Concussions and Violences which those Persons who are employed to collect the said Duties may commit, because of the Facility they have of turning into Violence the Force which they have in their hands, and of cheating either in the Duty itself, or in the Quality or Quantity of the things which are subject to it, or otherwise; Punishments are therefore ordained for these sorts of Concussion and Violence, and they are reprieved according to the Quality of the Fact and the Circumstances, pursuant to the Regulations which have been made therein *s.*

13. Pun-
ishment
of the Mis-
demean-
ours of
those who
collect the
Duties.

s Quante audacia, quantæ temeritatis sint publicanorum factiones, nemo est qui nesciat, idcirco prior ad compescendam eorum audaciam hoc edictum proposuit. l. 12. ff. de public. & vestig. & comm.

Prior ait, quod publicanus ejus publici nomine vi adement quodve familia publicanorum, si id restitutum non erit, in duplum, aut si post annum agatur, in simplum judicium dabo. Item si damnum injuriæ sive factum esse dicatur, judicium dabo. Si ad quos ea res pertinebit non exhibebitur, in dominos sine noxæ seditione judicium dabo. l. 1. ff. eod.

XIV.

It is common to the recovering of all the different sorts of Taxes, that all the Goods of the Persons who are indebted on that score, are engaged for the Payment of them, whether the Tax be laid on Persons, as the Tax on Personal Estates, or whether it affect certain Things, as the Tax on Lands and Houses, and the Imposts on Goods and Merchandizes *t.*

t Illorum qui publicis sine stalla debent, omnia bona sunt obligata. l. 1. ff. de public. & vestig. & comm. l. 1. ff. de locat. v. l. 11. eod.

Res eorum qui fiscalibus debitis per contumaciam satisfacere differunt, distrahantur, comparationibus data perpetua firmitate possidendi. l. 1. C. de cap. & distr. pign. trib. caus.

See concerning the Mortgage of the Goods of Persons owing Taxes, the Remark on the second Article as to Immoveables.

XV.

14. One ought not to be cast into Prison for not paying the Taxes.

It is likewise a Rule common to all sorts of Taxes, that no body can be imprisoned for not paying them, unless they be guilty of some Offence. For the Taxes regard the Persons of Men only because of their Goods: And they are of themselves a Burden sufficient without adding to it this Hardship, which, thro the Indiscretion of the Persons who should have this Power in their hands, might be a means to fill all the Prisons of the Kingdom.

u Nemo carcerem plumbatarumque verbera, aut pondera, aliaque ab insolentia judicum reperta supplicia in debitorum solutionibus, vel a perversis, vel ab iratis iudicibus expavefcatur. l. 2. C. de exactor. tribut.

Satis sit debitorem annonarum ad solvendi necessitatem capcione pignorum conveniri. l. 2. C. de cap. & distr. pign. trib. caus.

[According to our Usage in England, Persons refusing to pay the publick Taxes may be imprisoned. For by the Act of Parliament, which imposes the Tax on Lands and personal Estates, if any Person or Persons shall neglect or refuse to pay their Assessment by the space of ten Days after Demand, any 120 of the Commissioners are thereby authorized to commit such Person or Persons (except a Peer or Peers of Great Britain) to the common Goal, there to remain without Bail or Mainprize, until Payment be made of the Money assessed, and of the Charges for bringing in of the same. See the Act for the Land-Tax.]

XVI.

15. The Taxes do not admit of any Compensation.

It is also common to all sorts of Taxes, that they do not admit of any manner of Compensation, neither for what may be due to the Persons paying the Taxes from those who collect them, nor for what may be owing to them either by the Exchequer it self, or the Prince. For as to those who collect the Taxes, it is not to them that they are due: And as for the Prince, seeing the Taxes are destined and set apart for the publick Service, it is no ways allowable that they should be diminished on account of what the Prince may owe on another score to the Persons of whom the Tax is demanded; since they have no reason to fear the Insolvency of the Exchequer, which is always solvent.

x Ut debitoribus fisci quod fiscus debet compensetur sepe constitutum est, excepta causa tributaria & stipendiorum. l. 46. §. 4. ff. de jure fisci.

Qb negotiorum copiarum, expeditionis tempore mandatum, curatorem condemnatum, pecuniam

jure compensationis retinere non placuit: quoniam ea non compensatur. l. 20. ff. de compens.

In ea, quæ republicæ re debere fateris, compensationem ea quæ invicem ab eadem tibi debentur, is cuius de ea re nonio est, pubebit: Si neque ex Calendario, neque ex vectigalibus, neque ex frumentu vel olei publici pecunia, neque tributorum, neque alimentorum, neque ejus qui statum sumptibus servit, neque fideicommissi civitatis debitor sis. l. 3. C. eod.

Fiscus semper idoneus. l. 2. in f. ff. de fund. dot.

Nec solet fiscus satidare. l. 1. §. 18. ff. ut legat. seu fid.

See the fourth Article of the seventh Section of the fifth Title.

XVII.

Altho the Taxes ought to be levied within their proper Times, and that the Taxes on Lands and personal Estates ought to be levied every Year, and the Duties on Goods and Merchandizes ought to be collected in the Places, and at the Times prescribed by the Statutes and Ordinances for that purpose; yet all the Taxes to which a Right has been once acquired, may be levied in the subsequent Years; and there are no other Prescriptions for the Arrears of Taxes besides those which the Ordinances and the Usage of Places may have established. Thus, for example, he who should produce Acquittances for three subsequent Years of any Tax or Imposition, would be presumed to have acquitted the preceding Years, and would be discharged from them, unless there were evident Proof that he had not paid them. But the Right of the Tax it self is imprescriptible. Thus, Lands subject to the Land-Tax are not freed from it by Prescription, unless there be some Title to shew their Exemption.

17. Taxes do not prescribe.

y Justas etiam quæ locum habent fisci actiones præcipimus concremari ob hoc solum quod suis temporibus prolatae non sunt. l. 6. C. de jure fisci.

z Quicumque de provincialibus & collatoribus, decurso posthac quantolibet annorum numero, cum probatio aliqua ab eo tributariae solutionis exposcitur, si trium coherentium sibi annorum apochas securitatesque protulerit, superiorum temporum apochas non cogatur ostendere: neque de præterito ad illationem functionis tributaria coarctetur: nisi forte aut cuiuslibet publici debiti coactor, sive compulso possessorum vel collatorum habuerit cautionem, aut id quod reposci deberi sibi manifesta gestorum adfectione patefecerit. l. 3. C. de apoch. publ.

We must understand this Text, according to the Usage in France, of the Cases where the Tax is levied by one and the same Person. For if the Case were, for example, of the Taxes for several Years, which had been laid either on real or personal Estates, and had been levied by different Consuls or Collectors, every one of them having their distinct respective Years wherein they were charged with the levying of the Tax for that Year, the Payments, which had been made to three of them, would be of no prejudice to the preceding Consuls or

Collectors, whose Rolls are not indorsed, and who had given no Acquittance.

a Jubemus eos qui rem aliquam per continuum annorum quadraginta curriculum sine quadam legitima interpellatione possederint, de possessione quidem rei, seu dominio nequaquam removeri. Functiones autem, seu civilem canonem, vel aliam quamprimum publicam collationem eis impositam dependere compelli. Nec huic parti cujuscunque temporis prescriptionem oppositam admitti. l. 6. de presc. xxx. vel xl. ann.

XVIII.

18. In doubtful Cases those who are indebted for Taxes are favoured against the Exchequer.

In all sorts of Taxes and Impositions, if there arise any Difficulties which render the Cause of the Exchequer doubtful, so as that its Right appears to be uncertain, whether it be that it is not sufficiently enough established, as if some particular Merchandize were not clearly enough expressed in the Enumeration of the several sorts of Merchandizes upon which the Duty is laid, or that the Duty being sufficiently established, there be some doubt concerning the Quality of the Duty, or other such like Difficulties, these kinds of Doubts ought to be resolved in favour of particular Persons against the Exchequer. For besides that the Exchequer is in the place of the Plaintiff, and that in general every Demand ought to be clear, and well proved, the Rights of the Exchequer are entitled to Favour and Privilege only in so far as concerns the Justice of the Taxes, which makes them necessary for the publick Good, and the Facility of levying them; which is restrained to Taxes that appear to be clearly and evidently established, and does not extend to the Demands and Pretensions which the Officers employed in levying the Taxes, or the Farmers thereof, may make beyond the Bounds of the Duties and Impositions which are clearly fixed and established by the Sovereign.

b Non puto delinquere eum qui in dubiis questionibus contra fiscum facile responderit. l. 10. ff. de jure fisci.

Actore non probante, qui convenitur, etsi nihil ipse præstat, obtinebit. l. 4. in f. C. de edendo.

See the last Article of the first Session of the ensuing Title.

S E C T. VII.

Of Exemptions from the several sorts of Taxes

The CONTENTS.

1. All Persons are subject to the personal Taxes, unless they are exempted.
2. It is the same thing as to the Taxes on real Estates.
3. The Imposts on Goods and Merchandizes are limited to certain Things.
4. Three sorts of Exemptions from Taxes.
5. Exemptions from Taxes for several Causes.
6. Exemptions granted by Towns, and other Places, to certain Persons.
7. Exemptions which pass, or do not pass to the Heirs.
8. The Exemptions which go to Descendants, do not go to those of Daughters.
9. Age, Sex, Children, do not exempt. And it is necessary to have a Privilege for Exemption.
10. The Exemptions depend on the Favour granted by the Sovereign.
11. The Exchequer is exempt from all manner of Taxes.
12. The Exemptions of Things pass to all Possessors and Successors, but not the Exemptions of Persons.
13. The Privilege of the Place ceases by the Removal of one's Habitation to another Place.

I.

THE Taxes on personal Estates regard in general all Persons who are settled in the Places which are subject thereto: For there are some Places in France which are not subject to this Tax. And even in the Places which are subject to it, there may be Persons who are exempt from it a.

a Munera quæ patrimonii, publicæ utilitatis gratia, indicuntur, ab omnibus subeunda sunt. l. 2. C. de muner. patr.

Also this Text relates to other sorts of Charges, yet the Rule is with much more reason true as to the Charges of Taxes.

II.

The Taxes on real Estates or Immoveables are limited in France to such as are situated within the Provinces which are subject to the said Tax: And as for the other Provinces, it is by virtue of a Franchise or Immunity, and not

not of a Privilege, that they are exempted from the said Tax *b*. But in the Provinces which are subject to the said Tax, there are Exemptions which except certain Lands from being charged therewith; and there are also some Persons who are exempted *c*.

b In the Roman Empire, the Conditions of the Provinces were different; some of them were totally exempt. Barcenonenses immunes sunt. l. 8. ff. de censib.

Others were of an easier Condition than the generality. But in France there are but few of those Provinces where the Roman Law is most in use, which are subject to the Tax on real Estates.

c See the tenth Article.

III.

3. The Imposts on Goods and Merchandizes are limited to certain things.

The Imposts on Goods and Merchandizes are also restrained not only to the Things which are subject to the said Duties, but likewise for every one of the said Things to the Cases of their Entry, of their Passage, and others where the Duty ought to be collected. And there are two sorts of Exemptions from these Duties: One of certain Things that are not subject to the Duty, as Books. And the other of some Persons who have some Privilege which discharges them of the said Duty *d*.

d See the eighth Article of the second Section; also the tenth Article of this Section.

IV

4. Three sorts of Exemptions from Taxes.

It follows from the three preceding Articles, that the Exemptions or Immunities from Taxes are of three sorts: Some are general and common to Provinces, to Towns, and to certain Places; and others are particular and peculiar to some Persons; and there are some which except certain Things. Thus, for the general Exemptions, some Provinces have a Franchise or Immunity from the Tax on personal Estates, and most of them are exempted from the Tax on real Estates. And in the Provinces subject to the Tax on personal Estates, there are Towns and other Places which are exempted from it. And there are also some Provinces which have an Exemption or Immunity from Impositions on Goods and Merchandize, or on some kinds of them. And there are some Things which are exempted throughout the whole Kingdom.

e Quamquam in quibusdam beneficia personis data immunitatem cum persona extinguuntur, tamen cum generaliter locis, aut cum civitatibus immunitas sic data videtur, ut ad posterum transmittatur. l. 4. §. 3. ff. de censib.

One sees in this Text the Distinction between Vol. II.

personal Exemptions which are limited to certain Persons, and those which are granted to Towns and other Places, which are common to all those who are Inhabitants of those Places, and pass to those who shall be such for the future.

V.

The particular Exemptions from personal Taxes are of two sorts: One is of those which belong to some Persons by the bare Effect of their Quality, without having any Title thereto in their own private Right. Thus, Ecclesiastical Persons are exempted from this Tax, in consideration of that Quality. Thus, the Gentry in France are exempted because of their Nobility; and many Officers are entitled to this Exemption on account of their Offices. And the other is of the Exemptions granted for other particular Causes, as for certain Functions, or upon other Considerations in favour of which the Prince may grant this Privilege. And we see in the Regulations concerning this Matter many of these Exemptions of several sorts *f*.

f Quibusdam aliquam vacationem munerum graviorum conditio tribuit. l. 6. ff. de jure immuni.

Altho this Text relates to other Exemptions, yet the Rule agrees to the Exemption from Taxes.

Mechanicos, geometras & architectos, qui divisiones primum omnium, incisionesque servant, mensurisque & institutis opera fabricationibus stungant, & eos qui aquarum ductus & inventos modos docili liberatione ostendunt in pari studio docendi atque discendi nostro sermone compellimus. Itaque immunitatibus gaudeant & suscipiant docendos, qui docere sufficiunt. l. 2. C. de excus. artif.

VI.

Besides the Exemptions explained in the preceding Article, there are some which the Corporations of Towns and other Places may grant to certain Persons, to engage them to settle among them, and there exercise some Functions that are useful to the Publick. Thus, it is the Custom in some Places to encourage Physicians, and Professors of Arts and Sciences, to come and settle among them by such like Exemptions, none of which is of any prejudice to the Rights of the Crown; for the publick Taxes are not by this means diminished, and the Inhabitants of those Places bear willingly the Share of the publick Taxes which would fall upon those Persons; and they do not even thereby increase their own Assessments, which continue the same *g*.

g Exceptis qui liberalium studiorum artifices sunt, & qui medendi cura funguntur, decurionum decreto immunitas nemini tribui potest. l. 1. C. de decur. decur. sup. imm. quib. conced.

222

Nec

5. Exemptions from Taxes for several Causes.

6. Exemptions granted by Towns, and other Places, to certain Persons.

Nec iura numerum præstitum ordine invitos medicos immunitatem habere sæpe constitutum est, cum oporteat eis decreto decurionum immunitatem tribui. *l. 5. C. de profess. et med.*

Negotiatores qui annonam urbis adjuvant, item navicularii, qui annonæ urbis serviunt, immunitatem a muneribus publicis consequuntur, quamdiu in ejusmodi actu sunt. Nam remuneranda pericula eorum, quin etiam & hortanda præmiis, merito placuit, ut qui peregre muneribus, & quidem publicis, cum periculo & labore fungentur, a domesticis vexationibus & sumptibus liberentur: cum non sit alienum dicere, etiam hos reipublicæ causa, dum annonæ urbis serviunt, abesse. *l. 5. §. 3. ff. de jure imm.*

See the tenth Article of the fourth Section of the sixteenth Title of this Book.

Sometimes they give likewise Salaries to Physicians and others, besides an Exemption from Taxes. And in this Case it is the Duty of those Physicians to attend the Poor gratis. Archiatri scientes annuaria sibi commoda a populi commodis ministrari, honeste obsequi tenuioribus malint, quam turpiter servire divitibus. Quos etiam ea patiuntur accipere quæ sani offerunt pro obsequiis, non ea quæ periculantes pro salute promittunt. *l. 9. eod.*

We have no such Examples among us of Physicians, who bargain for a certain Sum of Money in case the Patient recovers: It is only Quacks and Mountebanks that practise after this manner.

VII.

7. Exemptions which pass or do not pass to the Heirs.

Among the particular Exemptions of Persons, there are some which are limited to one Person, and do not go to his Descendants; such as those which are granted in consideration of some Functions, or of some Offices, which have not the Effect to ennoble the Person. And there are some which go to the Descendants, such as the Exemption on the score of Nobility; and that of Offices which ennoble the Person, whether it be that the Office ennobles the first who is vested with it, or that it hath this effect only after it has passed from Father to Son, whose Children are intitled to the Exemption: and there may likewise be some Exemptions which upon particular Considerations pass to all the Descendants of those to whom they have been granted.

h Personis datæ immunitates hæredibus non relinquuntur. *l. 1. §. 1. ff. de jure imm.*

Quod datur personis, cum personis admittitur. *l. 1. §. 43. ff. de aq. quot.*

Sordidorum munerum excusatio delata personis, ad hæredem successoremve transire non potest. Neque enim potest esse perpetuum, quod non rebus, sed personis contemplatione dignitatis atque militie indulsisse nos constat. *l. 13. C. de excus. mun.*

See, in relation to the Exemptions which do not go to the Heirs, the third Section of the fifth Law, ff. de jure imm. which has been quoted on the foregoing Article.

i Immunitates generaliter tribuntur eo jure ut ad posteros transmittantur, in perpetuum succedentibus durant. *l. 4. eod.*

VIII.

The Exemptions which pass to Descendants are limited to those of the Male Issue, and do not go to the Children of Daughters. For these do not follow the Condition of their Mothers, but that of their Fathers.

l Generi posterisque datæ custodiæque (immunitates) ad eos qui ex sceminis nati sunt non pertinent. *l. 1. §. 2. ff. de jure imm.*

Cum legitimæ nuptiæ factæ sint, patrem liberi sequuntur. *l. 19. ff. de stat. hom.*

There are some Places in France, where the Children of Fathers who are ignoble, and Mothers who are noble, are likewise noble. It is with respect to this Usage that it is said, the Mother ennobles the issue.

IX.

There is no Exemption barely on account of Age, whether it be Infancy, or old Age, or because of Sex, or for the number of Children, or for other Causes besides those of Privileges, or Exemptions specified in the Regulations made concerning this Matter.

m Munera quæ patrimonii injunguntur vel tributones, talia sunt ut neque ætas ea excuset, neque numerus liberorum. *l. 6. §. 4. ff. de mun. et hon.*

Neque tempore ætatis, neque numero liberorum a muneribus quæ patrimoniorum sunt, excusationem quis habere potest. *l. 5. C. de mun. patrimon.*

Etiam minores ætate patrimoniorum muneribus subjugari solent. Unde intelligis te frustra plenam immunitatem desiderare cum munera, quæ impensas exigunt, subire te necesse sit. *l. 7. C. de mun. patrim.*

Patrimoniorum munera mulieres etiam sustinere debent. *l. 9. eod.*

Altho the Contributions mentioned in these Texts were different from our taxes, yet the Rule agrees to them, and it is in use with us, except in some Places, where they grant to Minors an Exemption from personal Taxes. Which may be perhaps grounded on a Law which we find in the Body of the Roman Law, where it is said, that in some Provinces the Children were exempt from the Poll-Tax, until the Males arrived at the Age of fourteen, and the Females at that of twelve, and after they were past sixty five Years. Statem in censu. do significare necesse est, quia quibusdam ætas tribuit ne tributo onerentur. Veluti in Syris, a quatuordecim annis masculi, a duodecim sceminæ usque ad sexagesimum quinquum annum tributo capitis obligantur. *l. 3. ff. de censib.* There are likewise some Regulations and Usages which grant an Exemption to those who have ten Children.

X.

The particular Exemptions from the Tax on Lands, and those from the Duties that are laid on Goods and Merchandizes, depend on the several Regulations which have made different Provisions therein, and are not the same with

8. The Exemptions which go to Descendants, do not go to those of Daughters.

9. Age, Sex, Children, do not exempt; and it is necessary to have a Privilege for Exemption.

10. The Exemptions depend on the Favour granted by the Sovereign.

with the Exemptions from the Tax on personal Estates. For Ecclesiasticks, for example, and Gentlemen who are exempt from the Tax on personal Estates, are not exempt from the other Taxes. Thus, the said Exemptions depend on particular and different Grants, which may be easily learned from the several Regulations in these Matters *u*.

** The Privileges and Exemptions depend on the Favours granted by the Prince, which those who lay claim to them must verify and instruct.*

XI.

11. The Exchequer is exempt from all manner of Taxes.

Whatever belongs to the Sovereign on the score of his Demesnes, and all Goods and Merchandizes destined for his Use, and for his Household, or for the Army, is subject to no manner of Contribution *o*.

o Fiscus ab omnium vectigalium præstationibus immunus est. *l. 9. §. ult. ff. de public. & vectig.*
Res exercitui paratas præstationi vectigalium sub-
jici non placuit. *D. l. §. 7.*

XII.

12. The Exemptions of Things pass to all Possessors and Successors; but not the Exemptions of Persons.

There is this Difference between personal Exemptions and the Exemptions of Things, that these pass al^l of them to all those whom the Contributions may affect, Heirs, Purchasers, or others: And the Exemptions of Persons are limited to those to whom they are granted, and do not go to the Heirs except in the Cases explained in the seventh Article *p*.

p Et datur interdum prædis, interdum personis. Quod Prædis datur, extincta persona non extinguitur: quod datur Personis, cum personis amittuntur. Ideoque neque ad alium dominum prædiorum, neque ad hæredem, vel qualemcumque successorem transit. *l. 1. §. 43. ff. de aqu. quot.*

Rebus concessam immunitatem non habere inter-
cidere rescripto Imperatoris nostri ad Pelignianum recte expressum est. Quippe personis quidem data immunitas cum persona extinguitur: rebus, nunquam extinguitur. *l. 3. §. 1. ff. de censibus.*

Privilegia quædam causæ sunt, quædam personæ. Et ideo quædam ad hæredem transmittuntur, quæ causæ sunt: quæ personæ sunt, ad hæredem non transeunt. *l. 196. ff. de reg. jur.*

See the Texts quoted on the seventh Article.

XIII.

13. The Privilege of the Place ceases by the Removal of one's Habitation to another Place.

Seeing there are Places exempt from certain Contributions, the Inhabitants of those Places enjoy the Exemption only during the Time that they live there; and if they go and settle in another Place that is not exempt, they cannot enjoy that Privilege there *q*.

q Qui originem ab urbe Roma habent, si alio loco domicilium constituerunt, onera sua sustinere debent. *l. 3. ff. de mun. & hon.*

Incola & his magistratibus parere debet, apud quos incola est: & illis, apud quos civis est. Nec tantum municipali jurisdictioni in utroque municipio subjectus est, verum etiam omnibus publicis muneribus fungi debet. *l. 29. ff. ad municip.*

S E C T. VIII.

Of the Functions and Duties of those who have any Office or Employment about the publick Revenue.

The CONTENTS.

1. Two sorts of Receipts, of two sorts of publick Monies.
2. The Method and Order of laying on the Tax on real and personal Estates.
3. In what manner the Taxes ought to be distributed in the several Divisions and Districts of the Kingdom.
4. The Changes which happen in Places, change the Proportions of the Taxes.
5. The Distribution of the Taxes ought to be made without respect of Persons.
6. The Officers who settle the Proportions of the several Places, ought to receive no Presents.
7. The Duty of the Assessors, who regulate the Assessments of particular Persons.
8. They ought to regard no other Recommendation besides that of Justice.
9. The Assessors cannot lessen their own Assessments, nor those of their Relations.
10. They cannot impose either more or less than what is ordained.
11. Drivers Persons appointed for levying the Taxes.
12. Duty of the Receivers.
13. Another Duty of Receivers.
14. Duty of the Collectors.
15. Those who are Receivers and Collectors ought to give diligent Attendance, and not to delay those who come to make Payments.
16. Several other Duties of those who are employed in imposing and levying the publick Taxes.
17. Duties of those who are employed in levying the Duties on Goods and Merchandizes.

IT is necessary to distinguish two sorts of Monies which compose the publick Revenue: Those which are raised on Persons, or on Lands, such as the Tax which is laid on the real and personal Estates *a*; and those which are

1. Two sorts of Receipts of two sorts of publick Monies.

a Stipendium a stipe appellatum est, quod per stipes id est modica ara colligatur. Idem hoc etiam

are levied on Goods and Merchandize &c. And it is also necessary to distinguish the different Functions which respect the levying of these several sorts of Money's. For as to the Tax on Lands and personal Estates, there is the Function of the Persons who are concerned in distributing and ascertaining the several Proportions that particular Places and Persons are to pay of the general Tax; and the Function of the Persons who collect it. And altho these two sorts of Functions may chance to be sometimes confounded in the same Persons, as shall be hereafter observed, yet they are distinct in themselves, and oblige the Persons to Duties of different sorts. And as to the Money's which are raised on Goods and Merchandizes, there is no other Function besides that of levying them. For as to the Imposition thereof, which is nothing else but the Taxation of the Duties which are to be paid for each kind, it depends on the Regulation which the Prince makes therein.

etiam tributum appellari Pomponius ait. Et sane appellatur ab imtributione tributum, vel ex eo quod militibus tribuatur. l. 27. §. 1. ff. de verb. signif.

Census fundi. l. 2. C. sine cens. vel rel. fund. comp. non poss. toto titulo. ff. de censibus.

b Ex prestatione vectigalium nullus omnino nomine quicquam minuitur, quin octavas more solito constitutas omne hominum genus quod commercis voluerit interesse, pendat. l. 7. C. de vectigal. & comm.

II.

2. The Method and Order of laying on the Tax on real and personal Estates.

The Tax on real and personal Estates is imposed and laid on in France by five different Degrees. The first is the Order of the King, by which he regulates the Sum which he intends shall be raised throughout the Kingdom on all those who are subject to the said Tax. The second is a second Order, which allots to the several Provinces the Proportion of the said Tax which each Province is to bear; which is made by Generalities. The third is that of the Distribution, which is made by the Officers of each Generality among the several Divisions or Elections which depend on the said Generality. The fourth is the Allotment which the Officers of the respective Divisions or Elections make of the Proportion that is to be bore by the respective Towns, Boroughs, and Parishes of each Division or Election. The fifth and last is that of the Assessments which are made in each Town, and in each Place of the several Inhabitants within the same, by those who are employed in that Func-

tion, whether they be called Sheriffs, Consuls, Assessors, or by other Names &c.

c Delegatio qua ab amplissima prefectura in diversas Provincias ex more quotannis emittitur. l. ult. Cod. de can. larg. titul.

See the fortieth, forty first, and forty second Articles of the Regulation in January, 1634.

[The Method observed in England for raising and levying the Tax on Lands and personal Estates is thus: The Parliament fixes the Sum Total that is to be raised throughout the Kingdom; as also the Proportions thereof which each County, City, Borough, Town, or other Place, is to pay; and likewise ascertains the Pound Rate which all real and personal Estates within the Kingdom are to be charged with towards raising the said Sum. And the Act of Parliament appoints Commissioners for the respective Counties, Cities, and other Places within the Kingdom, for the more effectual raising and levying the said Tax. And the said Commissioners at their first general Meetings, do ascertain and set down in Writing the several Proportions which are to be charged up in every Hundred, Lathe, Wapentake, Rape, Ward, or other Division, towards making up the whole Sum charged upon the whole County, City, or other Place for which they are appointed Commissioners. And they likewise appoint Assessors for each Parish, Township, or Place within their respective Divisions, who are with all Care and Diligence to assess the full Sum given them in charge respectively, by an equal Pound-Rate upon all real and personal Estates within the Limits, Circuits, and Bounds of the respective Parishes or Places for which they are appointed Assessors. And the said Assessors when they carry in their Assessments to the Commissioners, do at the same time also return the Names of two or more able and sufficient Persons living within the Limits and Bounds of the said Parishes, Townships, and Places, to be Collectors of the Money's which have been assessed; for whose Fidelity the Parish or Place in which they are employed as Collectors is answerable. The said Collectors pay in the Money's which they collect and levy to the Receiver-General, or his Deputy; who pays the same into the Exchequer. See the Act for the Land-Tax.]

III.

The Duties of the Officers who are charged with the Distribution of the several Proportions of the General Tax which each Place is to be charged with, consist in taking as exact an Information as is possible, of what Share every Town, and every Parish is able to bear of the Sum Total that is to be raised. Which depends on the Number of its Inhabitants, on their Professions and Employments, their Goods, their Trade, the Number of those who are exempt, the Extent of their Territory, its Quality, and on other Considerations which may help to regulate the Share which every Place ought to bear of the General Tax, in proportion to its Conveniences and Inconveniences, and to the common Charge that is laid upon the whole &c.

d It is by this Proportion that the Charge of each Place ought to be regulated.

3. In what manner the Taxes ought to be distributed in the several Divisions and Districts of the Kingdom.

IV.

IV.

4. The Changes which happen in Places, change the Proportions of the Taxes.

Since there often happen divers Changes which may increase or diminish the Advantages of one Place in respect of another, and cause in some Places Losses which may entitle them to an Easement in the Taxes, or Changes which may give occasion to augment their Charge; it is the Duty of the said Officers to inform themselves every Year of the said Changes: As if there have happened in some Places great Damages by Hail, by Frost, by Inundations, by Barrenness, or other Losses which have destroyed the whole Crop, or a part of it; if there have been any Distempers that have swept away great numbers of the People; if many of the Inhabitants, or some of the wealthiest among them, have left the Place, or if on the contrary they have had an Accession of new Inhabitants; if there be any Persons who have a Right of Exemption, or who claim it right or wrong, if any new Grant has been made to the Place, whereby its Trade is increased, such as that of holding Fairs or Markets, and of all other Changes of the like nature, that they may alter the Proportions of the Taxes, and may either ease or lay a heavier Charge on the Places according as the Changes which have happened to them may require.

e Since every Place bears its Charge in proportion to the Goods, and the Conveniences and Inconveniences of the Inhabitants, the Charge ought to be lesser or greater, according as considerable Changes may give occasion thereto, and in order to have an exact Information thereof, the proper Officers who are elected for that purpose ought to visit the several Parishes.

See the third and fourth Articles of the Regulation in March 1600, and the fortieth and forty third Articles of the Regulation in January 1634.

V.

5. The Distribution of the Taxes ought to be made without respect of Persons.

It is also a Duty of the said Officers not to augment or diminish the Proportion of any Parish on account of any Advantages which may redound to themselves thereby, either in consideration of their own Interests, or of those of their Relations, or of their Friends, or of other Persons whom they are desirous to serve; as if they themselves, or any of their Relations or Friends had any Lands or Goods in a Parish, or if they had any particular Interest to have its Proportion of the Taxes diminished. For the Liberty which the said Officers have to regulate the several Proportions of the respective Places,

is not to make them to depend wholly on their Will and Pleasure, but that they may regulate the Charge of every Parish in proportion to what the Inhabitants of that Parish ought in justice to bear.

f This Duty, as all the others of the said Officers, is of the Law of Nature, which obliges Persons to render Justice without respect of Persons; and it is part of their Oath.

See the hundred thirty sixth Article of the Ordinance of Charles V. in the Year 1379.

By the Roman Law exemptions which were obtained by unfair Means were punished by Fire.

His nostræ serenitatis edictis, civitatum tabularum erit flamma supplicium, si cujusdam fraude, ambitu, potestate, injustam cujuspiam profiteantur immunitatem: ac non secundum præcedentem definitionem omnes omnino, absoluta specialium immunitatum gratia, necessitas tributariæ functionis, firmata censitorum peræquationumque Provincialium judicium peræquatione constiterint. l. 1. C. de immunit. nem. conced. v. l. 2. eod.

VI.

Seeing the settling and ascertaining the Proportions of the Tax with which the several Places are to be charged, is an Act of Justice, the Abuse of which turns to the Prejudice of those who are over-rated by means of an unjust Easement granted to others; it is therefore expressly forbidden to those who exercise these Functions to take any Presents of what nature soever they may be. And the Persons who are found to have their hands polluted with such Filthiness will incur the Punishments which the Laws have provided in that Case, and which the Circumstances may deserve.

g There needs no express Law to prohibit an Abuse of this kind: But seeing it has been frequently practised, the same is provided against by the hundred and fifty second Article of the Ordinance of Orleans, which prohibits all Officers any ways employed in the Taxes and Aids to demand or take any Present whatsoever, whether it be in Money, Venison, Wild Fowl, Cattle, Grain, Hay, or other thing whatsoever, directly or indirectly, upon pain of forfeiting their Salaries, without any Abatement or Mitigation thereof to be made by the Judges.

VII.

After that the Proportion which each Place is to bear of the said Tax has been settled and adjusted, the Persons who are appointed to distribute the same among the several Inhabitants of the said Place, ought to regulate their Assessments. And their first Duty is to write down in a Roll or List the number of the Persons who are liable to be taxed, to inform themselves exactly of those who have Exemptions, or who have been discharged from their Assess-

7. The Duty of the Assessors, who regulate the Assessments of particular Persons.

Assessments, or a part thereof, to enquire into the Changes which have augmented or diminished the Number of the Inhabitants, into the Losses that every one may have sustained, or the Accession of Goods which they may have had by some Succession or otherwise. And they ought to receive and examine the Memorials and Writings which are offer'd to them by any one, as Proofs of the Facts which may oblige them to moderate his Assessment; and they ought to regulate all the several Assessments according to Equity, without regard to the Credit or Authority of any Person, or to other Considerations that may induce them to favour some more than others: but their Assessments ought to be settled in such a manner as that the Burden laid upon the Rich may diminish that of the Poor, and that every one may bear his Part of the Burden in proportion to his Estate and his Industry, and according as his Condition and the State of his Family render his particular Charges greater or lesser *b*.

The Taxes ought to be distributed, and the Assessments made, on the foot of this Proportion. And this is what is called in the Ordinances, the Strong helping out the Weak, or the Rich the Poor.

See the Ordinance of Orleans, Art. 123. and that of Blois, Art. 341.

Quoniam tabularum civitatum per collusionem potentiorum sarcinam ad inferiores transferunt, jubemus ut quisquis se gravatum probaverit, suam tantum pultinam professionem agnoscat. l. 1. C. de censib. & censitor.

Altho this Text relates to Taxes on Lands, yet it may be applied to the Case of this Article.

By a Law of the Theodosian Code, those who had been over-rated in their Assessments had a right to get them moderated and regulated according to Equity.

Qui gravatos se a peræquatoribus conquesti sunt, & injusto oneri impares esse proclamant, competitionis habeant facultatem, ut quid remissum gratia, quid interceptum fuerit haude, convincant: & ex eo levamen accipiant, quod per deformia, & criminosa commercia sibi impositum esse deplorant, ut alius demoveatur. Sed in eo tempus placuit definiri, ne plures iustitia libus premerentur, si nullis intercepta mens affectu tolleretur. l. 4. C. Theod. de cens. per aq. & inspec.

VIII.

2. They ought to regard no other Recommendation besides that of Justice.

This general Duty of those who settle the Assessments of particular Persons implies that of having regard to no other Recommendation besides that which every particular Person may have from the Condition of his Estate and of his Affairs, and of discharging or easing no body whatsoever but with this view. For otherwise they would do an Injustice to those whose Assessments should be increased by this Diminution *i*.

3 This is a Consequence of the preceding Article.

IX.

If the Assessors should have just cause to demand some Easement in their own particular Assessments, or if any of their near Relations should have just Cause to apply for the same Ease and Relief in their Assessments; they could not do justice to themselves, nor to their Relations. But as for their own proper Assessments, they ought to apply to a Court of Justice for Redress therein; and their Relations ought to make the same Application for what concerns them, according to the Usages and the Regulations in such Cases *l*.

9. The Assessors cannot lessen their own Assessments, nor those of their Relations.

1 Seeing it is a kind of Judicial Function which they exercise in this Case, they cannot administer Justice to themselves, nor to their Relations.

See the tenth Article of the Regulation of the Tax for the Year 1600.

[In England the Assessors are always assessed by the Commissioners within their respective Divisions. And in case any Persons think themselves over-rated in their Assessments, they may appeal to the Commissioners within six Days after Demand, and such Appeals being once heard and determined by the Commissioners, are final, without any further Appeal upon any pretence whatsoever. See the Acts of Parliament for the Land Tax.]

X.

We may set down as another general Duty, and which is common to all those who are concerned in settling and adjusting the Proportions and Assessments, either of the respective Divisions, or of particular Persons, that they ought to regulate the same in such a manner as that there be no Imposition of any greater Sum than what they are charged with, and likewise that there be no Deficiency of the Sum to be raised for want of having assessed the respective Divisions and the several Inhabitants of each Division at a full Proportion of the Sum Total that is to be raised. And if they should add to the Sums that are ordained to be levied, either Impositions of another kind, or greater Sums, it would be a Misdemeanour that would be punishable according to the Quality of the Fact, and the Circumstances *m*.

10. They cannot impose either more or less than what is ordained.

m It is prohibited to the Assessors and other Officers of the Taxes, upon pain of Death, to impose any more Money than what is contained in the Warrants and Commissions, and that which is allowed for collecting the Monies, and making up the Rolls, and for the other Charges.

See the Ordinance of Lewis XII. of the eleventh of November 1508.

XI.

As there are divers Officers who regulate the Proportions of the Taxes

11. Divers Persons appointed for levying where the Taxes.

wherewith the Generalities and the Elections are to be charged, and other Persons who in each Place or Division settle the Assessments of the particular Inhabitants; so there are also several Officers who receive the Monies levied in each Generality, and in each Election; and other Persons who levy and collect the Monies which are assessed in each particular Place. And these Receipts and Collections oblige those who are charged therewith to the different Duties, which shall be explained in the Articles which follow *n*.

n See the following Articles.

XII.

12 Duty of the Receivers.

The principal of these Officers are the Receivers General, who are charged with the Receipt of all the Monies collected on account of the Taxes within a Generality, and which ought to be paid into their hands by the particular Receivers of the respective Elections. And it is to these particular Receivers that the Collectors are to pay in the Assessments of the particular Persons living within the Bounds and Limits of the Places for which they are appointed Collectors. Thus the first Duties of the Receivers General and Particular are to receive the Sums that ought to be paid in to them in the manner that is prescribed them, and to convey or remit the Monies which belong to their Receipts: to wit, the Particular Receivers ought to transmit the Monies which they receive to the Office of the Receivers General; and the Receivers General ought to pay the said Monies into the King's Exchequer within the time that is prescribed *a*, without detaining in their hands on any pretence whatsoever any part of the Monies which they have received; whether it be that there was a greater Sum levied than ought to have been, or that they represent some Persons as being insolvent, altho they have received the Payments made by them, and conceal them, or by other ways. For these

a *Diu minime penes ipsos susceptores maneat facta collatio; sed statim quodcumque a provincialibus fuerit exolutum, sacris thesauris inferatur. l. 7. C. de suscept. preap. et arcar.*

Omnem summam auri vel argenti, & reliquarum specierum quæ sacris largitionibus ex more penduntur. Statim ut exactio fuerit celebrata, ad thesauros uniuscujusque provincie, vel ad proximos referri sub obsignatione tabularii cæterorumque quos sollicitos esse debere præcedentia jussa decreverunt, & thesaurorum præpositis consignari præcipimus; ut exinde ad sacrum comitatum integer omnium titulum numerus diligatur. l. 1. C. de can. larg.

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Misdemeanours are a kind of Crime, of which notice shall be taken in its due place.

XIII.

The Duty of the Receivers, and more especially of the particular Receivers in the several Divisions, obliges them to join to the Care and Vigilance their Function requires, the Temperaments of Humanity, and not to use any Violence, which may make the legal Ways of Constraint which they are allowed to use, more harsh and severe than is necessary; whether it be by the too great Frequency of Seizures, Executions, Imprisonments, and other ways of Compulsion used at unseasonable Times, or by Law-Suits, with a view only to occasion Charges, or by other vexatious ways *p*.

p See the following Article, and the Text that is quoted on it.

XIV.

As to those who are charged with levying the Assessments of particular Persons, Consuls, Collectors, or others, whether they be the same Persons who make the Assessments, or different Persons, they are obliged in making this Collection to use all the Moderation that is consistent with their Duty, and not to proceed to the Distress and Sale of Goods, and to the other compulsory Means which they are impower'd to use, except when they find themselves necessarily obliged to have recourse to these Ways for procuring Payment; and not to make use of them, as many do, with a view only to multiply Charges, and to reap Profit thereby, and to make the Expenses so much the greater, as the Conjunction of the Time, or other Circumstances, may render the Payments more difficult *q*. And it is likewise their Duty not to seize or distrain the things that are necessary for Food and Raiment, for the Culture of Lands, for the Exercise of the Trade or Profession of the Persons who are assessed, according as the Laws and Ordinances have prohibited the distraining of these sorts of things; and

14. Duty of the Collectors.

q See the hundred and twenty second Article of the Ordinance of Orleans.

Non acerbum se exactorem, nec contumeliosum præbeat, sed moderatum, & cum efficacia benignum, & cum instantia humanum. l. 33. ff. de usur.

r Vestis relinquenda est debitori, & ex mancipiis quæ in eo usu habebat, ut certum sit, eum pignori daturum non fuisse. l. 6. ff. de pign. et hyp.

Res quas neminem credibile est pignori specialem daturum fuisse, generali pacti conventionem quæ

and they ought to abstain from all manner of Concussion and Violence, and not to exact any thing of the Persons assessed beyond the Sum at which they are assessed, whether it be under pretext of making the Payment thereof easy to them, or as Interest for the Delay they grant them, or upon any other pretence whatsoever. But they ought on the contrary to facilitate the Payments, either by receiving smaller Sums upon account, or waiting till Harvest-time, or for other convenient Seasons, when the Persons who are assessed may be able to raise Money. And as to the Payments which the Collectors are bound to make to the Receivers, their principal Duty consists in not detaining in their hands the Monies which they have collected; which happens more readily and more frequently to these sorts of Persons than to the Receivers: For the Collectors being for the greatest part Men of less Wealth and Substance than the Receivers, some of them apply the King's Money to their own particular Affairs, and run in Debt to the Publick.

de bonis tuis facta est, in causa pignoris non fuisse rationis est. l. 1. C. qua res pign. obl. poss. vel non.

Executores a quocumque iudice dati ad exigenda debita, ea quæ civiliter possunt; servos aratores, aut boves aratorios, aut instrumentum aratorum pignoris causa de possessionibus non abstrahant. *l. 7. C. eod.*

Pignorum gratia aliquid quod ad culturam agri pertinet, auferri non convenit. *l. 8. eod.*

If thou at all take thy Neighbour's Raiment to pledge, thou shalt deliver it to him by that the Sun goeth down. For that it is his Covering only, it is his Raiment for his Skin, wherein shall he sleep. Exod. 22. 26, 27.

No Man shall take the Netter or the Upper Millstone to pledge; for he taketh a Man's Life to pledge. Thou shalt not pervert the Judgment of the Stranger, nor of the Fatherless, nor take a Widow's Raiment to pledge. Deuter. 24. 6, 17.

They drive away the Ass of the Fatherless, they take the Widow's Ox for a Pledge. They reap every Man his Corn in the Field, and they gather the Vintage of the Wicked. They cause the Naked to lodge without Clothing, that they have no Covering in the Cold. They pluck the Fatherless from the Breast, and take a Pledge of the Poor. Job 24. 3, 6, 7, 9.

When there is a necessity to proceed by Distress and Execution, there shall be left to the Persons upon whom the Distress is made, one Cow, three Ewes or two She-Goats, to help to maintain them, unless it be that the Debt for which the Distress is made, arises from the Sale of the same Beasts, having lent the Money to buy them; And besides there shall be left to the Person upon whom the Distress is made, a Bed to lie on, and a Suite of Cloths to wear. Ordinance of 1667. Title 33. Art. 14.

See the fifteenth and sixteenth Articles of this Title, and the Ordinance of Orleans, Art. 28. that of Blois, Art. 37. the Edict of the sixteenth of March 1593, and other Regulations.

XV.

It is a general Duty, and common to all those who are employed in levying and receiving the Publick Monies, to be diligent and assiduous in their Function, and not to delay those who have any Payments to make, and who by their Delay may be put to Expences on account of their stay, or suffer some other Damages. And if the Delay should be with design to put the Persons who were come to pay, to Charges, this Misdemeanour would be punished according to the Circumstances. And if those Persons who should have a Payment to make would prevent any bad Consequences that might arise from their Non-Payment, they may guard against any Inconvenience of this kind by making a Tender of the Money in due Form.

15. Those who are Receivers and Collectors ought to give diligent Attendance, and not to delay those who come to make Payments.

Susceptores publicos absque omni mora aurum censemus suscipere, ne quis per hanc occasionem sumptus facere compellatur. Nam si solvere volens a suscipiente fuerit contemptus, testibus adhibitis contestationem debeat proponere ut, hoc probato, & ipse securitatem debitam, commissi nexu liberatus, cum emolumentis accipiat: & qui suscipere neglexerit, ejus ponderis quod debebatur, duplum fisci rationibus per vigorem officii piasidis inferre cogatur. l. 1. C. de suscept. prap. & arcar.

Humanitatis necessitate commou. l. 9. ff. eod.

Aurum sive argentum quodcumque a possessore confertur, arcanus vel susceptor accipiat: ita ut provincie moderatores, ejusque Officium ad cimen suum noverit pertinere, si possessoribus ullum tueri ex aliqua ponderum iniquitate illatum dispendium: & quidquid ex provincia ad nostrum dirigitur ararium, id ad illustres viros ararii nostri comites relatione deferatur. *l. ult. C. eod.*

XVI.

Besides these general Duties of all these Persons who are charged with the Distribution and Collection of the Publick Taxes, there are others of several sorts which relate to the manner of exercising their Functions. Thus the Officers who settle the Proportions of the respective Places or Divisions, have their Rules prescribed to them as to the manner in which they are to proceed, and how they ought to visit the several Parishes when there is occasion for their so doing, as in the Cases explained in the fourth Article, and for other sorts of Functions. Thus the Receivers have also their Rules laid down to them how to govern themselves in their Receipts, as to the Forms of the Acquittances which they are to give; the manner of making up their Accounts, and other Matters of the like nature. And there are also other Rules which relate to the Functions of those who settle the Assessments

16. Several other Duties of those who are employed in imposing and levying the Publick Taxes.

ments of the several Inhabitants, or who collect the Money that is assessed. But these sorts of Rules which are established by the Ordinances, and the Edicts, and Declarations published concerning these Matters *t*, not having the Character of the Rules that are to be explained in this Book, as has been already observed in another Place *u*, they ought not to be set down here, and it is easy for the Reader to find them in the said Edicts and Ordinances.

t The Detail of these Rules is contained in the Ordinances.

See that of Francis I. in the Year 1517. Art. 45, 49. in 1535. Art. 11, 29. in 1517. Art. 47. See that of Lewis XII. in 1508. See the States of Orleans, Art. 140. See that of Charles VII. in the Year 1388. Art. 208.

Neminem suscepcionis munere functum ad idem munus adstringi, nisi se prius vinculo sollicitudinis superioris absolverit. Nam neque eos qui placuerint gravare, iusti est, neque eos qui displicuerint tenere, prudentis est. *l. 4. de suscept. prop. & arcar.*

One may judge by this Text how great the Care and Vigilancy is which is required in those who are employed in distributing and levying the Publick Taxes.

u See the End of the Preface.

XVII.

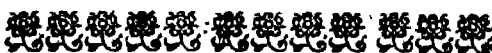
17. Duties of those who are employed in levying the Duties on Goods and Merchandizes.

The Duties of the Officers, and other Persons who have the Charge of levying the Impositions which are laid on Goods and Merchandizes, and who are employed in gathering in the Duties on Salt, the Excise on Liquors, the Customs on Goods imported and exported, and other Imposts of the like kind, are of a less Extent than the Duties of the Officers and other Persons who are employed in the Distribution and Collection of the Taxes on Lands and Personal Estates. For as, to those other kinds of Contributions, the Imposition consists in the Tax which the Prince lays upon each kind of Goods and Merchandizes, and it is paid out of the things themselves in the Places where the Duty ought to be paid. Thus the Duty of the Persons who are concerned in levying the said Imposts, whether they be the chief Commissioners, or others employed under them, consists in not committing any Abuses, in not exacting any greater Sum than what is due, in giving diligent Attendance at their Offices, that they may not delay those who have Payments to make, in visiting the Merchandizes in the presence of the Owners, without spoiling them, disordering them, or causing any manner of Damage to them, and finally in observing in the discharge of their Functions the Rules which are

prescribed them by the Ordinances *x*.

x Exact no more than that which is appointed you. Luke 3. 13.

The Opportunities and the Conveniency which those Persons who are employed in collecting these Imposts have of exercising Violence and Extortion, oblige those who have the naming of them, and the Officers who are their Judges, to watch narrowly their Conduct, and to keep them within the Bounds of that Moderation which their Function requires, and which may be very consistent with their Duty, as St. John told the Publicans who consulted him. It was because of these Abuses, which went even the length of Robbery, that the Romans made particular Laws for repressing them. Quanta audacia, quanta temeritatis sint Publicanorum factiones, nemo est qui nesciat. Idcirco Prætor compescendam eorum audaciam hoc edictum proposuit. Quod familia Publicanorum furtum fecisse diceretur, item si damnum injuria fecerit, & id ad quos ea res pertinet, non exhibeant: in dominum sine noxæ deditione iudicium dabo. *l. 12. ff. de public. & vettig. & comm.*



T I T L E VI.

Of the Demesnes of the Sovereign.

B E F O R E we proceed to explain what is meant by this Word, the Demesnes of the Sovereign, it is necessary to observe that the Prince may have two sorts of Goods; those which he has in the Quality of Sovereign, and which depend on the Sovereignty, and those which properly belong to his Person independently of his Title of Sovereign. Thus in *France* the Lands which are annexed to the Crown are the first of these two sorts; thus the Lands and other Goods which the Prince acquires by Succession are of the second.

If by the Word, the Sovereign's Demesnes, were to be understood in general all the Estate and all the Rights which he may have, the Demesnes would comprehend the Goods of both these kinds; and in this case it would be necessary to distinguish two sorts of Demesnes; that which we call in *France* the Demesnes of the Crown, and that of the Estate belonging properly to the Person of the Prince independently of his Quality of Sovereign, in the same sense that we give sometimes to the Word Demesne, when we speak of the Possessions of particular Persons.

If on the contrary we will take this Word, the Demesnes of the Sovereign, in the Sense which it seems to have in the Ordinances, it will be understood

only of the Demefnes of the Crown; for they declare whatever is Part of the King's Demefne to be inalienable, excepting in the Cafes which fhall be hereafter mentioned *a*. Which reftrains the Senfe of this Word to the Goods which depend on the Crown, feeing it is only thofe which the Ordinances have forbid to be alienated, and that nothing hinders the Sovereign from difpofing as he pleafes of the Goods which belong to him as his own by any other Title; unlefs it be that the faid Goods have been annexed to the Crown by the way which the fame Ordinances have eftablifhed, and of which notice fhall be taken in its proper place *b*.

This Word, the Demefnes of the Sovereign, fignifies therefore commonly with us the Goods which depend on the Sovereignty, and not thofe which belong to the Prince as his own private Property by fome other Title, and which we may call if we pleafe his private Demefne. Thus in *France* we commonly underftand by the King's Demefne, not only the Lands annexed to the Crown, but alfo the Rights of another nature, fuch as the Right of Forfeiture, that of Succeffion to the Eftates of Aliens, as alfo to the Eftates of thofe who die without any Heir, the Right to the Succeffions of Baffards; and we likewife comprife therein other Rights, fuch as the Excife and Customs, which the Ordinances themfelves feem to place in the number of the Goods belonging to the King's Demefnes, feeing there are Edicts which have ordained fome of the Goods of the Demefne to be alienated, and have comprehended therein the Alienation of the Excife. According to this Meaning, which takes in the Excife and Customs as Part of the Demefnes, it would feem that we might likewife comprife in it all the other forts of Rights which compofe the Publick Revenue, and which have been explained in the foregoing Article, feeing they are Rights which depend on the Sovereignty, and which augment the Goods, and the Revenues thereof, and make as it were a Patrimony for the Prince, according to the Exprefion of the *Roman Law*, where they call by the Name of Patrimonial Lands, thofe which belong to the Prince by virtue of that Quality *c*.

Befides the Rights of the Sovereign which bring him in a Revenue, and which for this reafon are naturally a part of his

a See the 24th Article of the 1st Section.

b See the 24th Article of the 1st Section.

c Fundi Patrimoniales, &c. qui ex emphiteutico jure

Demefne, we reckon commonly in *France* among the Rights of the Demefne thofe which are called the Rights of Juftice, altho' there be only fome of the faid Rights which bring in any Revenue, the others producing none at all; which obliges us to diftinguifh here thefe two different kinds of Rights of Juftice.

We call in general Rights of Juftice, certain Rights which are either a part of the Right of adminiftring Juftice, or which are Confequences of it. Thus the Rights of appointing Officers for the Adminiftration of Juftice, of having Courts of Juftice, Prifons, Pillories, Gibbets, of reaping the Profit of Confifcations and of Fines, are Rights that are called Rights of Juftice, and which do naturally belong only to the Sovereign, as that of adminiftring Juftice does. But fince it is the Ufage in *France*, that many Lords have the Rights of Juftice which the Kings have granted them within the Bounds of their Lands, they have alfo thefe forts of Rights which we have juft now mentioned, but in a different manner; for we diftinguifh three kinds of Juftice or Jurifdiction, the higheft, the middlemoft, and the loweft, which have their different Rights, and which it is not our Bufinefs to explain here, feeing this Matter, which depends on Custom and Ufage, does not come within the Design of this Book. We fhall only obferve here, that thefe Rights of Juftice being of two forts, one of thofe which produce no Revenue, fuch as the Right of having Courts, or other Places, for the Adminiftration of Juftice, Pillories, and Gibbets; and the other of thofe which produce a Revenue, fuch as the Right to Forfeitures and Fines: we fhall fet down in this Title among the Rights of the Demefne of the Sovereign, only the Rights of Juftice which produce fome Revenue, taking this Word Demefne in the Senfe which fignifies properly the Patrimony of the Prince, that is to fay, his Goods, his Rights, and his Revenues. Thus what fhall be faid in this Title of thefe forts of Rights muft be underftood to be within the Bounds of the Lands which belong to the King, and of which the Jurifdiction has not been alienated from

ad domum noſtram diverſis generibus, devoluti ſunt, ſic eis, qui eos popoſcerint, cedunt, ut committimus eſſe non poſſit. Neque enim magis commodamus noſtra, quam tradimus ea jure domini: ita tamen, & ea quæ in noſtra poſſeſſione poſſi præſterint, & in poſterum ſilveant. l. 4. C. de fund. patrim. V. T. l. 1.

the Crown. For in the Lands belonging to the Lords of Mannors who have a Jurisdiction within themselves, the said Rights belong to them.

It follows from all that has been said of the Goods and Rights of the Demefne, that it is necessary to distinguish the Meaning of these two Words, *Goods* and *Rights*. For the Word *Goods* is more general, and every thing that is a Right of the Demefne is also part of the Goods thereof. But there are Goods of the Demefne which ought not to be comprehended under the Name of Rights. Thus the Crown-Lands are Goods but not Rights of the Demefne. But seeing these two Words *Goods* and *Rights* are often taken in one and the same Sense, and that it is easy to distinguish that which is only part of the Goods, from that which is properly speaking a Right, we shall make use of these two Words in this Title, in such a manner as to avoid all Equivocation which may render the Sense dubious.

It remains only that we should distinguish the Matters which are to compose this Title, which we have divided into eight Sections. The First, where we shall explain the Nature and the Kinds in general of the Rights of the Demefne. The Second, where we shall treat particularly of the Right of Forfeiture. The Third shall be of the Right of Succession to Persons who have no Heir, of vacant Goods, and of Waifs. The Fourth shall be of the Right of Succession to the Estates of Aliens. The Fifth of the Right of Succession to Bastards. The Sixth shall contain the Rules common to the several sorts of Goods and Rights of the Demefne. The Seventh shall contain the Privileges of the Exchequer. And the Eighth shall treat of that which the Sovereign may have independently of that Quality, and as his private Patrimony or Demefne.

SECT. I.

Of the Nature and Kinds in general of the Rights of the Demefne.

THE CONTENTS.

1. Definition of the King's Demefne.
2. The Demefne is different from the private Patrimony of the Prince.
3. Three sorts of Goods of the Demefne.
4. The first is of Lands and Immoveables.

5. The second is of the Publick Revenue.
6. The third is of several other Rights in divers kinds.
7. Goods comprised under the first kind.
8. Other Goods which come under the same kind.
9. Another Revenue of the same kind, the Mines.
10. Other Goods of the second kind.
11. Another Revenue of the same kind.
12. The Goods of the Demefne are inalienable.
13. There are some Goods of the Demefne inalienable in their own Nature, and others only because of the Privilege of the Sovereign.
14. It is lawful to alienate the Goods of the Demefne, in two Cases.
15. A kind of Alienation of the Goods of the second sort.
16. Alienations of the Goods of the Demefne are made with the Charge of Reversion.
17. Alienations made for the Necessities of the War, are made with a Reservation of a perpetual Faculty of Redemption.
18. The Appennages are made on condition of Reversion in case of Failure of Male-Issue.
19. The Goods of the third kind are also inalienable.
20. The Demefne is imprescriptible.
21. There are some Rights which can belong only to the Demefne, and others which become Part of the Demefne by Changes.
22. How Lands that were not a part of the Demefne may become so.
23. The Prince disposes of the Goods not yet annexed to the Demefne.
24. How the private Goods of the Prince become part of the Demefne.
25. Two Ways of uniting and incorporating Lands into the Demefne.
26. In doubtful Cases the Cause of the Exchequer is not favoured.

I.

THE Demefne of the Sovereign consists of the Goods and of the Rights which he possesses by virtue of that Quality a.

a. Sacrum patrimonium. l. ult. C. de iudic. ex comm.

Omnes omnino quocunque titulo possidentes, quod delegatio super iudici nomine videtur, amplexa velut canones cogantur inferre ut ne qua sit dybbitas, hac aperta definitione decernimus, ut id potius canonis vocabulo possideatur. Nulla igitur domus vel sacri patrimonii vel emphyteutici iuris vel hominum privatorum, etiam si privilegium aliquod habere doceatur ab hac necessitate sejuncta sit: quæ jam non extraordinarium, ut hactenus, sed ipsis facientibus canonicum nomen accepit. l. 1. C. de iudic.

II. This

II

2. The Demefne is different from the private Patrimony of the Prince.

This Demefne is diftinguifhed from that of the Goods and Rights which the Sovereign may have by any other Title, and which may be called his private Demefne *b*, of which we fhall treat in the eighth Section.

b Privatum patrimonium. l. 2. C. de off. com. rer. p. rrv.

Quodvis alicui colonorum agrum privati patrimonii noſtri placuerit venumdum; non unus tantum, qui forte conſortibus ſuis gravis ac moleſtus exiſtat, ſed alii quoque duo vel plures ex ſimili origine ac jure venientes in ſupradicta emptione ſocientur. l. ult. C. de agris. et dom. vel fiſc.

III.

3. Three ſorts of Goods of the Demefne.

The Demefne of the Sovereign, which belongs to him in that Quality, is compoſed of three different kinds of Goods, which are explained in the three following Articles *c*.

c See the following Articles.

IV.

4. The firſt ſort of Lands and Immovables.

The firſt ſort of Goods of this Demefne, are the Immovables which belong to the Sovereign, either by the Eſtabliſhment of the Eſtate, or by Conqueſt, or by other ways *d*, as is explained in the 22d and following Articles. And we muſt comprehend under this firſt kind, the Lands which the Sovereign may have acquired by a private Title, ſuch as Succeſſion, Donation, or otherwiſe, when the ſaid Lands have been annexed to the Crown in the manner which ſhall be explained in the ſame Articles.

d Fundi patrimoniales & qui ex emphyteutico jure ad domum noſtram diverſis generibus devoluti ſunt. l. 4. C. fund. patrim. V. T. h. T.

Varie cauſe ſunt, ex quibus nuntatio ad fiſcum fieri ſolet. Aut enim ſe quis quod tacite relictum eſt, proſicitur capere non poſſe, vel ab alio preſentis deſertur, vel quod mors ab hæredibus non vindicatur; vel quod indignus quis hæres nunciatur; vel quod princeps hæres inſtituitur, &c. l. 1. in princip. ff. de jure fiſc.

V.

5. The ſecond ſort of the publick Revenue.

The ſecond ſort of the Goods of the Demefne are the ſeveral Duties and Impoſitions which compoſe the publick Revenue of the State, ſuch as thoſe which have been treated of in the preceding Title *e*.

e Tributa, Vectigalia, &c. See the ſecond Section of the preceding Title.

VI.

6. The third ſort of

The third ſort of the Goods of the

Demefne comprehends all the other different Rights of the Prince, ſuch as the Rights of Forfeiture, of Succeſſion to thoſe who have no Heirs, of Succeſſion to the Eſtates of Aliens, of Succeſſion to Baſtards; the Rights of Frank-Fees, of new Acquiſitions, of Mortmain; the Rights of the Sovereign on the Seas, to Foreſts, Hunting, Fiſhing, the Rights of Juſtice which bring in ſome Revenue, according to the Remark which has been made in the Preamble of this Title; the Duties and Revenues which the King draws from the Offices belonging to his Demefne; ſuch as thoſe of Registers and Notaries Publick; the Casualties of other Offices, and other Duties and Revenues of the Demefne, which have almoſt all of them this in common, that the Revenues of this third ſort depending on uncertain Events, are a kind of casual Revenue *f*.

f See concerning the Rights of Forfeiture, of Succeſſion to thoſe who leave no Heir behind them, of Succeſſion to the Eſtates of Aliens, and of Succeſſions to Baſtards, the four following Sections; touching the Rights of Frank-Fees, of new Acquiſitions, and of Mortmain, the ſixteenth Article of the ſecond Section of the ſecond Title. And as to the Rights of the King on the Seas, to Foreſts, Hunting, and Fiſhing, ſeeing they contain a Detail of arbitrary Rules which are to be found in the Ordinances, and which do not come within the Deſign of this Book, we ſhall not make any Collection of them here, and it ſufficeth to remark in general the Order of the ſaid Rights. But ſeeing there are Rules of Policy relating to the Matters of the Seas, of Foreſts, of Hunting and Fiſhing, which are within the Deſign of this Book, we ſhall explain them in the eighth Title. And as for the Rights of Juſtice, it is a Matter which does not belong to the Deſign of this Book; becauſe, as has been ſaid at the End of the Preamble of this Title, theſe Rights belonging to the Lords of the Manor, who have the Juriſdiction within their own Bounds, are regulated by Cuſtom and Uſage, and thoſe of the King, which may come within the Deſign of this Book, ſuch as Forfeitures, Fines, and others, are explained each of them in their proper Place.

VII.

We muſt comprehend under the firſt kind of Goods of the Demefne certain other Immovables beſides Lands, ſuch as Houſes, Shops, Stalls, and other Buildings in publick Places, or Places vacant, and having no Owner, and which have been granted by the Prince, in conſideration of a certain Rent, by Alienations or Engagements which have been made thereof; ſuch as are in Paris, the Shops in the Palace, and in the Market-Places *g*. But we muſt not take in under this firſt ſort of Goods of the De-

g This is a Conſequence of the fourth Article.

meſne

meſne the publick Places, the Highways, and the other Things of this kind, which are out of the Commerce of particular Perſons, and deſtined to the Uſe of the Publick. For theſe ſorts of Immoveables producing no manner of Revenue, are not reckoned in the number of Goods; and the Rights which the Publick and the Sovereign have in them are of another Nature than the Rights which Property gives *b*.

b See the ſecond and third Articles of the firſt Section of Things.

VIII.

8. Other Goods which come under the ſame kind.

It is neceſſary likewiſe to comprehend under this firſt kind of Immoveables belonging to the Demefnes, the Lands which are waſte, that is to ſay, which have never been cultivated, and which have no Owner: And alſo the Iſlands which are formed in the great and navigable Rivers, Tolls, Paſſages, Bridges, Ferry Boats, Fiſheries, Mills, and other Things which depend on the Right to Rivers, and to the Highways *i*.

i Inſula qua in flumine publico nata eſt, publica eſſe debet. *l* penult. ruſ. ff. de acq. rer. dom.

This Text ſeems to be contrary to others of the Roman Law, which ſay, That the Iſlands growing in Rivers do belong to the Proprietors of the neighbouring Grounds, according to their Proximity to the ſaid Iſlands, and in proportion to the Extent of their Ground.

Inſula quæ in mari nata eſt, (quod raro accidit) occupantis fit: nullus enim eſſe creditur. At inſula in flumine nata (quod frequenter accidit) ſiquid mediam partem fluminis tenet, communis eſt eorum qui ab unaque parte fluminis prope ripam prædia poſſident: pro modo (ſcilicet) latitudinis cujuſque fundi quæ prope ripam ſit. Quod ſi alteri parti proximior ſit, eorum eſt tantum qui ab ea parte prope ripam prædia poſſident. §. 22. inſt. de rer. diviſ. l. 7. §. 3. ff. de acq. rer. dom.

Inſula eſt nata in flumine contra frontem agri mei, ita ut nihil excederet longitudo regionem prædii mei. Poſtea auſta eſt paulatim, & proceſſit contra frontes & ſuperioris vicini, & inferioris. Quaeritur quod adiecit, unum meum ſit, quoniam nunc adjectum eſt, an ejus juri ſit, cujus eſſet, ſi initio ea nata ejus longitudo fuiſſet? Proculus reſpondit, flumen idem, in quo inſulam contra frontem agri tui eam ita eſſe ſcripſiſti, ita ut non excederet longitudinem agri tui, ſi alluvionis juſ habet, & inſula initio proprio fundo tuo fuit, quam ejus, qui trans flumen habet, tota tua facta eſt, & quod poſtea et inſulae alluvione acceſſit, id tuum eſt etiam ſi ita acceſſit, ut procederet inſula contra frontes vicinorum ſuperioris atque inferioris, vel etiam ut proprio eſſet fundo ejus qui trans flumen habet. l. 56. eod.

It would ſeem that in this laſt Law ſave one, de acqu. rer. dom. a Diſtinction ought to be made of two ſorts of Rivers, thoſe which were for the Uſe of the Publick, and other leſſer Rivers. And likewiſe the Ordinances which reckon theſe Iſlands a part of the Demefnes of the King, are reſtrained to thoſe which grow in great and navigable Rivers.

So that it may be ſaid, that the Authors who are of opinion that theſe Ordinances are contrary to the Roman Law, have not made Reflection on this Text which we have juſt now quoted.

See the King's Edict of the Month of April, 1683, in which the ancient Ordinances are mentioned.

IX.

We may alſo comprehend under the Goods of this firſt kind, the Revenues which the Sovereign draws from Mines, and which are regulated to a tenth Part *l*.

9. Another Revenue of the ſame kind, the Mines.

l This tenth Part is regulated pursuant to the Roman Law by the Ordinances of Francis the Second, bearing Date the 29th of July, 1560; of Charles the Ninth, dated the 26th of March, 1563; and others.

Cuncti qui per privatorum loca ſaxorum venam laborioſis effoſſionibus perſequuntur, decimas ſiſco, decimas etiam domino repræſentent: cætero modo propriis ſuis deſideriis vindicando. l. 5. C. de metall.

See the nineteenth Article of the ſecond Section of the ſecond Title.

X.

If under the ſecond kind of Goods belonging to the Demefne, which are the publick Revenue, we ſhould take in every thing that is called in France the King's Money, we might place in that Rank the Tenths which the Clergy pay to the King, the Impoſitions which are laid on in ſome Provinces by the name of Free Gift, the Money which is raiſed for the Maintenance of the King's Guards, the Subſiſtence of the Houſhold, and all the other Revenues of the like kind *m*.

10. Other Goods of the ſecond kind.

m Noſtrum ærarium. l. ult. C. de quadr. præſer.

Res ſiſci noſtri. §. 1. inſt. de uſucap.

XI.

We may likewiſe, with much more reaſon, place in this ſecond kind the Profits and Revenues which the Right of coining Money may produce, whether it be by raiſing the Value of the Bullion that is coined into Money, or by raiſing the Value of the Species. For the Right of coining Money belongs to the Sovereign alone *n*.

11. Another Revenue of the ſame kind.

n Si quis nummos falſa fuſione formaverit, univerſas ejus facultates ſiſco noſtro præcipimus addici. In monetis enim ſantummodo noſtris cudenda præſentia ſtudium frequentari volumus; cujus obnoxii, majeſtatis crimen committunt. Et præmio accuſatoribus propoſito, quicumque ſolidorum adulter poterit reperiri, vel a quocunque fuerit publicatus, illi co omni dilatione ſummora, flammæmarum exuſtionibus mancipetur. l. 2. C. de falſ. monet. V. tit. C. de muril. & gynac.

XII.

12. The Goods of the Demefne are alienable in their own Nature.

There is this in common to all the Goods of the Demefne of these three sorts, that they are all of them inalienable, but in different Respects. For there are some of them which of their own Nature, and by their Quality are inalienable; and there are others which are inalienable only because of the Privilege of the Sovereign, when he is become Master of them. We shall see in the Articles which follow this Distinction, and these different Effects in the three sorts of the Goods of the Demefne o.

o See the Edict of the 30th of June, 1539.

Intellecto jamdudum quod charissimus in Christo filius noster Hungaræ Rex illustris alienationes quasdam fecerit in præjudicium regni sui & contra Regis honorem. nos eidem Regi dirigimus scripta nostra, ut alienationes prædictas, non obstante juramento si quod fecit de non revocandis eisdem, studeat revocare. Quia cum teneatur, & in sua coronatione juraverit, jura regni sui & honorem coronæ illibata servare: idcirco profecto fuit, si præstiterit non revocandis alienationibus hujusmodi juramentum & propterea penitus non servandum. *Cap. intellecto extra de jure jur.*

Nulli jam in posterum licere præcipimus patrimoniales seu limotrophos, vel saluantes fundos qui per tractum orientis positi sunt, ad jus transferre privatum; five dempto, five salvo canone juri fundorum immutatio postuletur, &c. l. 13. C. de fund. patr.

See the twentieth Article of this Section.

XIII.

13. There are some Goods of the Demefne inalienable in their own Nature, and others only because of the Privilege of the Sovereign.

Of all the different sorts of Goods of the Demefne, those which by their Nature belong to the Sovereign, and cannot belong to other Persons; such as the publick Taxes, the Right of coining Money, and others, are naturally inalienable. And those which in their own Nature might have belonged to other Persons, such as the Crown-Lands, are inalienable only because they have passed to the Possession of the Sovereign, and because of his Privilege, and of their being appropriated to the Uses of the State p.

p This Distinction results from the Nature of these several sorts of Goods.

XIV.

14. It is lawful to alienate the Goods of the Demefne in two Cases.

Altho the Goods of the Demefne be inalienable, yet if it happens that the Good of the Publick requires they should be alienated, the Prince may alienate them. But that happens only in two Cases: One is, that of Necessity in a Time of War. And the other is in order to give to the younger Sons of the Sovereign a Patrimony, which is called

an Appennage q, and which it is just to take out of these sorts of Goods for the said younger Sons and their Male-Issue, who may in process of time succeed to the Crown. But this Alienation is made only on the Conditions explained in the sixteenth and eighth Articles.

q The Demefnes of the Crown of France cannot be alienated, except in two Cases only: One is, for an Appennage to the younger Sons of the House of France; in which Case they revert again to the Crown, if the said younger Sons die without Male-Issue, in the same Estate and Condition they were in at the time of the said Grant, notwithstanding any Disposition, Possession, or any other Act, express or tacit, that may have past or happened during the time of the Appennage. The other, for the raising of ready Money for the necessary Expences of a War, after Letters Patens have assued for this Purpose, and been register'd in the Parliaments of France, in which Case there is a perpetual Power of Redemption. Ordinance of February, 1566, Art. 2.

See the Ordinance of Blois, Art. 329. See the twenty third Article of the second Section of the second Title.

XV.

Altho the Goods which can belong to none but to the Sovereign be inalienable in their own Nature, such as the Tax on real and personal Estates, the Excise, the Customs, and others, yet a sort of Alienation is made of them when the King creates Rents or Annuities, which he sells and assigns on the said Revenues as occasion requires; and these sorts of Alienations are limited to the Sums regulated by the Edicts which ordain them, and affect those Revenues only till the Redemption of the said Rents: But the Fund of the said Revenues remains always the King's, so that the annual Impositions of the said Revenues, even for the Years in which the Purchasers of these Annuities have the Benefit of them, are nevertheless collected as usually in the King's Name, and by his Orders; and the Monies are returned into the hands of the Officers appointed to pay the said Rents or Annuities r.

r See the Ordinances of April 1574, of September 1591, of February 1594, and others.

It is of this kind of Rents or Annuities that those are which are paid at the Town-House of Paris, which are assigned on the Subsidies, and several other Funds.

XVI.

The Goods of the Demefne cannot be alienated but upon condition of their reverting to the Crown whensoever the Case falls out; and this Reversion is different, according to the Cause sion,

15. A kind of Alienation of the Goods of the second sort.

16. Alienations of the Goods of the Demefne are made with the Charge of Reversion.

Cause of the Alienation, as shall be explained in the two following Articles.

ner as the other Rights of the Lands given them for their Appennage v

XVII.

17. *Alienations for the Necessities of the War, are made with a Reservation of a perpetual Faculty of Redemption.* In the Case of alienating the Immoveables of the Demefne for the Necessities of the War, the Goods alienated revert to the Sovereign, he reimbursing the Purchasers of the Price of their Purchases. Thus, these Alienations are never made but with the Charge of a perpetual Faculty of Redemption: For which Reason the Purchasers are looked upon to be a sort of Mortgagees, and are obliged to preserve the Goods and the Rights in their good Condition t.

t See the Ordinances cited on the 14th Article.

XVIII

18. *The Appennages are made on condition of Reversion in case of Failure of Male Issue.* In the Case of an Alienation for an Appennage, the Reversion has not place, except when the Cause of the Alienation and the Appennage comes to cease. Which happens only in the Case where the Persons on whom the Appennage was first settled, or their Male Successors, die without Issue Male. And the said Lands which were granted as an Appennage, ought in this Case to be restored in the same Condition in which they were at the time of making the Settlement, free from all the Charges and Debts of the Person on whom they were settled, for otherwise it would be in his power to annul the Right of Reversion u

u See the Ordinances quoted on the 14th Article.

XIX.

19. *The Goods of the third kind are also inalienable.* The Alienations which have been spoken of in the preceding Articles, do not concern the Rights and casual Revenues which have been explained in the sixth Article; for those Rights are inseparable from the Sovereignty: And moreover, they do not agree with the two Causes which are the Foundation for alienating the Goods of the Demefnes; but some of the said Rights depending on the Right of Justice, such as the Right of Forfeiture, and the Right of Succession to those who die without Heirs, they have passed to Lords of Manors, who have a Jurisdiction within their own Lands; and they belong also to the younger Sons of the Royal Family, who have Appennages settled on them in the same man-

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XX.

The same Reasons which make the Goods of the Demefne inalienable, render them likewise imprescriptible; since they would be alienated, if they could be acquired by Prescription. Thus, no particular Person can acquire the Property of them by the bare Effect of a long Possession: For besides the Consequence of preserving the Demefne for the Good of the State, the Quality of the Sovereign making it impossible for him to look narrowly to the Preservation of all the particular Goods belonging to his Demefne, Prescription ought not to run against him y.

y See Art. 12. of this Section, and Art. 2. of the 5th Section of Possession, and of Prescriptions in the Book of the Civil Law in its Natural Order.

The Goods of the Demefne are declared to be imprescriptible by the Edit of Francis the First, of the 30th of June, 1539. even altho they had been possessed for a hundred Years; altho by the Roman Law, the Funds belonging to the Exchequer, and to the Prince's Demefne, might have been prescribed by a Possession of forty Years.

Nullum jus privatum vel publicum in quacunque causa, vel quacunque persona, quod prædictorum quadraginta annorum extinctum est jugi silentio moveatur. l. 4. C. de præscr. 30. & 40 an.

Subemus omnes qui in quacunque Diceffi, aut in quacunque Provincia, vel quolibet saltu (vel civitate) fundos patrimoniales, vel templorum, aut agnotherici, seu relevatorum jugorum, vel cujuscunque juris per quadraginta jugiter annos (possessione scilicet non solum eorum qui nunc detinent, verum etiam eorum qui antea possederant, computanda) ex quocunque titulo, vel etiam sine titulo hæcenus possederunt, vel postea per memoratum quadraginta annorum spatium possederint, nullam penitus super dominio memoratorum omnium fundorum vel locorum vel domorum a publico actionem, vel molestiam, aut quamlibet inquietudinem formidare, sed impositum canonem, pro qualitate juris, cujus prædia sunt vel loca, per singulos annos solventes, pro certo habeant suum esse quod possident, vel postea possederint. Ita ut omnibus ad excludendam omnem quolibet modo ex publico movendam questionem, nuda ex quocunque titulo, vel etiam sine titulo corporalis quadraginta annorum jugis possessionis exceptio possit sufficere; hoc etiam adjiciendo, ut illi quoque qui adempto canone hujusmodi fundos ab initio principali jussione datos sibi fuisse confirmant: si per quadraginta annos adempti canonis beneficium jugiter possederunt: nec canonem cujus ademptionem quadraginta (sicut dictum est) annorum, possessio testatur, possint penitus profligari: eo quod nostræ pietati placuit in utroque casu, id est tam salvo, quam adempto canone, possessorum nostrorum jura in eo statu in quo per quadraginta annos, sicut dictum est, jugiter manserunt, absque ulla innovatione durare. l. ult. C. de fund. patrim.

It was only the Tribute or Tax upon the Land that was unpreſcriptible.

Jubemus eos qui rem aliquam per continuum annorum quadraginta curriculum ſine quadam legitima interpellatione poſſederint, ne poſſeſſione quadam rei ſeu dominio nequaquam removeri; functiones autem, ſeu civilem Canonem, vel aliam quampiam publicam collationem eis impoſitam dependere compelli, nec huic parti cujuſcunque temporis præſcriptionem oppoſitam admitti. l. 6. C. de præſcr. 30 vel 40 ann. For it is a Right whereof the Uſe and Cauſe do never ceaſe.

XXI.

21. There are ſome Rights which can belong only to the Demefne, and others which become part of the Demefne by Changes.

It reſults from the preceding Articles, that of all theſe ſorts of Goods of the Demefne, there are ſome which have never belonged to any other but to the Demefne, ſuch as the Excife, the Cuſtoms and other Impoſts, which could never belong to particular Perſons, and are in uſe only for the benefit of the Publick, and by virtue of the Authority of the Powers who are veſted with the ſupreme Government, and have the Right of impoſing them; and there are others of the ſaid Goods which have been in the Commerce of particular Perſons, and are become Part of the Demefne by Changes, ſuch as Lands annexed to the Crown &c.

¶ This is a Conſequence of the different Natures of theſe Rights. See the following Article.

XXII.

22. How Lands that were not a part of the Demefne may become ſo.

The Lands united to the Crown are of three ſorts. The firſt is of thoſe which are part of the antient and original Demefne appropriated to the Kings for their Uſe and for their Expences; and we may put down in this number that which has been added to the Crown by Conqueſt. The ſecond is of thoſe which the Kings have acquired by Forfeitures, by the Death of Perſons dying without Heirs, by inheriting the Eſtates of Aliens, or by ſucceeding to Baſtards. And the third is of the Lands which have fallen to them by Succeſſion, or other Titles. And theſe two laſt ſorts of Goods become part of the Demefne by the Union which incorporates them into the Demefne, as ſhall be explained in the 24th and 25th Articles a.

a See the three following Articles.

XXIII.

23. The Prince diſpoſes of the Goods not yet annexed to the Demefne.

The Goods which the King acquires by any one of the Ways explained in the preceding Article, are not united immediately to the Demefne; for thoſe which ariſe from the Rights of Forſei-

ture, of Succeſſion to thoſe without Heirs, of Succeſſion to Eſtates of Aliens and of Baſtards ing Profits and Revenues which King might diſpoſe of, they are conſidered as a Capital which becomes immediately a part of the Poſſeſſion the Demefne; but the King diſpoſes of them as he thinks fit, either by giving them away, or by keeping and uniting them to the Demefne in the manner plaind in the two following Articles

b By the Roman Law the Prince diſpoſed of Goods belonging to what they called his private patrimony.

Fundi patrimoniales, & qui ex emphyteutico jure ad domum noſtram diverſis generibus devoluti ſunt, ſic eis, qui eos poſpoſcerint, cedunt, ut commiſſi metus eſſe non poſſit. Neque enim magis commodamus noſtra quam tradimus ex jure domini; ita tamen, ut ea quæ in noſtra poſſeſſione poſiti præſtiterint & in poſterum ſolvant. l. 4. C. de fund. patrim. V. T. b. T.

Since it often happens that the Goods which fall to the King by Forfeiture, by the Death of Perſons who leave no Heirs behind them, by the Death of Aliens and of Baſtards, are Goods ſubject to Rights which the Lords of Mannors have to them, the King parts with them, that he may not be ſubject to the ſaid Duties, or to make any amends for the ſame to thoſe Lords of the Mannor to whom they ſhould be due. And to juſtify this, they quote an Ordinance of Philip the Fair, which directs this Courſe to be taken, and that the King ſhould rid his hands of theſe Eſtates within a Year and a Day.

XXIV.

The Goods which the King has acquired by particular Titles, and thoſe which are fallen to him by ſome of the Titles mentioned in the preceding Article, become part of the Demefne, when they have been held and poſſeſſed in the ſame manner and on the ſame Conditions on which he holds and poſſeſſes the Goods of the Demefne. Thus all the Goods which are expreſſy ſet apart, annexed and incorporated for the uſe and benefit of the Crown, or which have been poſſeſſed and managed by the Receivers and Officers of the King, for the ſpace of ten Years, and enter'd into their Books of Accounts, are reputed, and are in reality the Goods of the Demefne c.

c Theſe are the Words of the 2d Article of the Ordinance of February 1566, touching the Demefne. And in the 13th Article of the ſame Ordinance it is ſaid, that the foregoing Articles ſhall be held as a Law and Ordinance, as well for the antient Demefne of the Crown, as for other Lands ſince accrued and fallen to the King.

Filius cum in privati juſ ſuccedit, privati jure pro anterioribus ſue ſucceſſionis temporis utitur: ceterum poſteaquam ſucceſſit habebit privilegium ſuum. Sed unum ſtatim atque accepti ad eum perſuere ſolent, an vero poſteaquam convenis debitorum, an poſteaquam relatum eſt inter nomina debitorum qua-

24. How the private Goods of the Prince become part of the Demefne.

ritur

rius — Puto tamen exinde privilegio esse locum, ex quo inter nomina debitorum relatum nomen est. l. 6. ff. de jure fisci.

This Text agrees with the said Ordinance.

XXV.

25. Two
ways of
uniting
and incor-
porating
Lands into
the De-
mesne.

It follows from the preceding Article, that there are two ways of uniting and incorporating into the Demesne Lands and other Immoveables. The one is express, when the King declares that he unites and incorporates into the Demesne the Lands which he might have otherwise disposed of: and the other is tacit, when he suffers the Lands, which it was in his power to give away, and which were not annexed to the Demesne, to be annexed and incorporated in it in the manner explained in the 24th Article d.

d Rerum nobis nomina intumetur, ut jussu nostro vacantia vel alia res nomine occupentur arari. Quæ forma etiam in parte bonorum vel in una alterave re seu actione una vel etiam pluribus servetur. l. ult. C. de bon. vac. & incorpor.

Si quando aut alicujus publicatione, aut ratione juris aliquid rei nostre addendum est rite atque solemniter per comitem rerum privatarum, deinde per rationales in singulis quibusque provinciis commorantes incorporatio impleatur, & diligens stilus sigillatim omnia adscribat. l. 3. eod.

See the foregoing Article.

XXVI.

26. In
doubtful
Cases the
Cause of
the Exche-
quer is not
favoured.

It may be remarked as a last Rule of the Rights of the Demesne, that altho the said Rights be very favourable in their nature, and by reason of their being set apart for the Publick Good, altho they be inalienable, altho they be imprescriptible, and that it is of Importance to the State that the said Rights should be preserved; yet this Favour does not reach so far as to extend these Rights beyond their just bounds. And it is on the contrary for the Good of the Publick, and agreeable to Equity, that in the Cases where upon due consideration the Cause of the Exchequer may appear doubtful, one should incline to the other Side. For the Favour of the Cause of the Exchequer does not go so far as to prefer a doubtful Pretension of the Officers of the Exchequer to the Interest of particular Persons, which are found to be an equal Balance with those of the Exchequer, and which may have Equity on their side e.

e Non puto delinquere eum, qui in dubiis questionibus contra fiscum facile responderit. l. 10. ff. de jure fisci.

Tantum etenim nobis superest clementiæ, quod scientes etiam fiscum nostrum ultimum ad caducorum vindicationem vocari, tamen nec illi pepercimus, nec auctoritate privilegii exerceamus: sed

quod communiter omnibus prodest, hoc rei private nostre utilitati præferendum esse censuimus, nostrum esse proprium subjectorum commodum imperialiter existimantes. l. un. §. 14. in f. C. de caduc. tol.

See Art. 18. of the 6th Section of the preceding Title, the Remark on Art. 3. of the 5th Section of this Title, and Art. 14. of Sect. 7. of this Title.

SECT. II.

Of the Right of Forfeiture.

THE Reader may see concerning the Subject Matter of this Section, the 12th Article of the 2d Section of Persons; the 11th, 20th, 25th, 33d, 34th, 35th, and 36th Articles of the 2d Section of Heirs and Executors in general, and the Remarks there made upon them; the 5th Article of the 4th Section, and the 1st Article of the 13th Section of the same Title, and the 14th Article of the 2d Section of Testaments.

The CONTENTS.

1. Definition of Forfeiture.
2. Two sorts of Forfeitures.
3. Fines.
4. In what manner Forfeitures and Fines are acquired.

I.

Forfeiture is a Punishment, which is called by that Name, because it deprives those who have incurred it of all their Goods, and applies them to the Exchequer a.

1. Defi-
nition of
Forfeiture.

a Damnatione bona publicantur, cum vita adimitur aut civitas. l. 1. ff. de bon. dam.

II.

We must distinguish two kinds of Forfeitures. The first is of all the Goods; such is that of Persons condemned for Crimes which deserve this Punishment; as are in France the Crimes of those who are condemned either to Death, or to the Gallies for ever, or to perpetual Banishment out of the Kingdom b. The second, of certain kinds

2. Two
sorts of
Forfeitures.

b Cum vita adimitur aut civitas. l. 1. ff. de bon. dam.

Qui rei capitalis damnati sunt. l. 13. ff. de bon. poss.

Qui rei postulat, vel qui in scelere deprehensus, metu criminis imminens mortem sibi constituerunt: heredem non habent. Papinianus tamen libro sexto decimo responsorum ita rescripsit, ut (ut) qui rei criminis non postulat, manus sibi intulerint: bona eorum fisco non vindicentur. Non enim facti sceleritatem esse obnoxiam, sed conscientie metum in reo velut confesso teneri, placuit. Ergo

of things which are acquired to the Exchequer by contravening the Ordinances and Regulations which have established this Penalty. Thus for example, Goods and Merchandizes are confiscated when the Owners have defrauded the Publick of the Duties they were to have paid for them *c.*

aut postulat esse debent, aut in scelere deprehensi: ut si se interfecerint, bona eorum confiscantur. Ut autem divus Pius rescriptit, ita demum bona ejus qui in reatu mortem sibi conscivit, fisco vindicanda sunt, si ejus criminis reus sit, ut si damnaretur, morte aut deportatione addiciendus esset. l. 3. ff. de bon. eor. qui.

See Sect. 2. Art. 11. of Heirs and Executors, and the Ordinance of 1673. Art. 29. of Defaults. c. Poena commissi. l. 3. C. de vestig. & com.

III.

3. *Fines.* We may place in the rank of Forfeitures the Condemnations of Persons in Fines of certain Sums of Money for divers sorts of Crimes and Offences, or for having defrauded the Prince of his Due. For these Fines being adjudged to him by the Sentences of Condemnation, they belong to him as well as the Forfeitures *d.*

d Multarum severa compendia arario nostro protinus esse querenda nullus ignoret: nisi ipse iudex id, quod ad poenam admitti facinoris excusatur, vel publicis openbus, vel cursui publico, vel aliis necessariis causis specialiter deputaverit. l. 5. C. de modo mult.

The Judges may adjudge the Fines either to the King, or to the Lord of the Manner within his Lands, or to Hospitals, or to Prisoners.

IV.

4. *In what manner Forfeitures and Fines are acquired.* Seeing Forfeitures and Fines are Punishments, they are not due till after a Sentence of Condemnation from which there lies no Appeal *e.*

e Provocationis remedio condemnationis extinguitur pronuntiatio. l. 1. §. ult. ff. ad Senat. Turpill.

S E C T. III.

Of the Right of Succession to Persons who leave no Heir behind them, of vacant Goods, of Waifs, and of Treasures.

The CONTENTS.

1. Definition of the Rights of Succession to Persons who leave no Heir.
2. Definition of vacant Goods.
3. The Right of Succession to Persons dying without Heirs, takes in all the Goods, Moveable and Immoveable.

4. Another sort of vacant Goods.
5. Lands recovered from an Enemy.
6. Waifs or Strays.
7. Treasures.

I.

BY the Right of Succession to Persons who leave no Heir behind them, is meant the Right which Prince has to all the Goods of who die without lawful Heirs, without making a Testament; for the Goods having no Owner, pass to Publick, and are acquired to the Prince who is the Head of it *a.*

a Scire debet gravitas tua, Intestatorum res sine legitimo naeide decesserint, fisci nostri rationibus vindicandas: Nec civitates audiendas quæ sibi earum vindicandarum jus veluti ex permisso vindicare nituntur: & deniceps quæcunque intestatorum bona civitatibus obtentu privilegiorum suorum occupata esse compereris, ad officium nostrum eadem revocare non dubites. l. 1. C. de bon. vac. & incorpor.

Vacantia mortuorum bona iunc ad fscum jubemus transferri, si nullum ex qualibet sanguinis linea, vel juris titulo legitimum reliquerit intestatus hæredem. l. 4. eod.

II.

By vacant Goods are meant Goods of Persons who die without Heirs, which is the Case explained in the foregoing Article; and the said Goods are acquired to the Exchequer, if they are not claimed by Creditors: And there are likewise other sorts of vacant Goods, which shall be taken notice of in the 4th Article *b.*

b Vacantia mortuorum bona. l. 4. C. de bon. vac.

III.

The Right of Succession to Persons who die without Heirs, comprehends all sorts of Goods, Moveables and Immoveables, Rents, Debts due to the Deceased, and in general all Goods and Effects of all kinds which did belong to him who dies without Heirs; and all these sorts of Goods are acquired to the Prince *c.*

c This is a Consequence of the first Article.

IV.

We may consider as a kind of vacant Goods; those which for other Causes besides the Death of Persons who leave no Heir behind them, are without an Owner, such as Lands and Houses unoccupied and claimed by no body *d.*

d These sorts of Goods are of the same Condition as Goods vacant by the Death of one who leaves no Heir behind him.

V. We

V.

We must not reckon in the number of vacant Goods, the Lands which having been for some time in the possession of Enemies, by an Usurpation, or a wful Conquest, which had stript the ancient Proprietors of them, had been acquired to those who by that Event were come Masters of them. And if the country thus conquer'd is restored either by a Conquest, or by a Treaty of Peace, every Proprietor enters again to his Lands, as if he had always retained the Property of them.

e Verum est, expulsis hostibus ex agris quos ceperint, dominia ad priores dominos redire: nec aut publicari aut prædæ loco cedere. Publicatur enim ille ager qui ex hostibus captus sit. l. 20. §. 1. ff. de capt. & possim. revers.

VI.

6. Waifs, or Strays. Neither ought we to place in the number of vacant Goods, Moveable Things, which being lost by their Owners, fall into the hands of those who find them; for if they cannot discover the Owner, the things belong to the Finders, pursuant to the Rule explained in the 10th Article of the 2d Section of Possession. But we must except from this Rule the Usage in France as to Cattle which are lost, and which we call Strays, which by the Customs and Usage of France belong to the King as a Right of Justice, and to the Lord of the Mannor who has the Rights of Justice.

f See the 10th Article of the 2d Section of Possession.

§ This Distinction between Cattle and other things lost, may be founded upon this, that Cattle are more easily lost than other sorts of things which it is easier to keep, and that therefore care ought to be taken to keep those Cattle for their Masters, from whom they have strayed; which is done with greater Fidelity, and with more Ease, by the Aid of Publick Justice than by particular Persons. It is for this reason that the Customs of France do not adjudge those Strays to the King, or to the Lords of the Mannor, till a certain time after they have been proclaimed, in order to find out the Owners, and to deliver to them their Cattle, they paying the Expence of their keeping, and other Charges, if there be any.

It may be observed on the word

Strays, that by the antient Usage in France they gave the name of Strays to Strangers or Aliens, perhaps for this reason, that no body knew whence they came, as no body knows from whence Cattle that are strayed do come.

[The time limited by the Law of England for acquiring a Right of Property in Strays, is a Year and a Day. And therefore it is that if a Horse is taken as a Stray, the Lord of the Mannor who took him has no right to work him within the Year; for until the Year and a Day be expired, he has no Property in him. Rolls 1. Abridg. pag. 579.]

VII.

We may put down Treasures in the number of Goods that are vacant, and which have no Owner; for Treasures consist of Money or other precious things, which are discovered in secret Places where the Owners had deposited them for Safety, and of which there is no Proof to shew to whom they belong. Thus these Treasures being without any Owner, our Usage in France has given to the King a Right in them, and has fixed this Right at a third Part, giving the other two thirds, the one to the Finder, and the other to the Owner of the Ground where the Treasure was found.

g Thesaurus est vetus quædam depositio pecuniæ, cujus non extat memoria, ut jam dominum non habeat: sic enim fit ejus, qui invenit, quod non aliter sit. l. 31. ff. de acquir. rer. dom.

§ We see by this Article that Treasures, for want of Owners, have three assigned them; every one of whom has his third part, but in a different manner. The Proprietor of the Ground, in which the Treasure is found, being Master of the Ground, seems to be likewise Master of all that is in the Ground, and he is in a manner in possession of it, altho he is ignorant that the Treasure is in his Ground, and that in order to possess it it seems necessary to have an Intention so to do. Neratius & Proculus (C) solo animo non posse nos adquirere possessionem, si non antecedit naturalis possessio. Ideoque si thesaurum in fundo meo positum sciam, continuo me possidere, simul atque possidendi affectum habuero: quia, quod desit naturali possessioni, id animus implet. Cæterum quod Brutus & Manilius putant, eum qui fundum longa possessione cepit, etiam thesaurum cepisse, quamvis nesciat in fundo esse, non est verum. Is enim, qui nescit, non possidet thesaurum, quamvis fundum possideat. Sed & si sciat, non capiet lon-

ga possessione quia scit alienum esse. Quidam putant, Salva sententiam verorem esse nec ab eis cuique scit, possidere, nisi si loco motus sit, quia non sit sub custodia nostra. Quibus consentio. l. 3. §. 3. ff. de acquir vel amitt poss.

Some antient and able Lawyers have been of opinion, as appears from this Law, that the Possessor of a Ground in which a Treasure is, acquires by a long Possession both the Ground and also the Treasure. And it is most certain, that on one hand the Treasure hath no other Possessor, and on the other hand that every Possessor has a general Intention to possess every thing that is in his Grounds. And whether he has acquired them by a legal Title or by a long Possession, he has always an Intention, even an express one, to possess, and to have to himself all the Rights which are annexed to his Right to the Ground; and this implies the Right to the Treasure. So that it seems strange, that in one of the Customs in *France*, where mention is made of Treasures, they are adjudged to belong to the King in his own Grounds, or to the Lord of the Mannor in his, without saying any thing of the Proprietor of the Ground, or even of the Finder of the Treasure. Thus the Right which the Proprietor of the Ground has to the Treasure found in it, seems to admit of no Difficulty.

Next to the Right which the Proprietor of the Ground has to the Treasure, that of the Finder is wholly natural, and built upon two Foundations; one is the divine Providence which directs and orders the said Events, and which by putting into his hands that which is found in the Treasure, seems to give it him; and this Event is called *Dei beneficium*, in that single Law of the Code de thesauris: And the other is, because that if it were not for the Finder, the Right of the Proprietor of the Ground would be altogether useless to him: so that it is but just that the Finder should have a share in the Treasure. *Nemo in posterum super requiramus in suo, vel alieno loco thesauro, vel super invento ab alio, vel a se, effugis precibus pietatis nostra benignas aures audeat molestare. Nam in his quidem locis unicuique, dummodo sine sceleratis ac puniendis sacrificiis, ut alia qualibet arte legibus odiosa thesaurum (id est condita ab ignotis Dominis tempore vetustiori: mobilia) quarere, & invento uti, liberam tribuimus facultatem: ne ulterius Dei beneficium invidiosa calumnia persequa-*

tur, ut superfluum sit hoc precibus postulare, quod jam lege permixtum est: & imperatoria Majestatis videatur prævenire liberalitas postulanda. In alienis vero terrulis nemo audeat invitis, immo nec volentibus, vel ignorantibus dominis opes abditas suo nomine perscrutari. Quod si nobis super hoc aliquis crediderit (esse) supplicandum, aut præter hujus legis tenorem in alieno loco thesaurum scrutatus invenerit (locum) hoc locorum Domino reddere compellatur: & velut temerarius legis saluberrime puniatur. Quod si forte vel arando, vel alias terram alienam colendo, vel quocunque casu, non studio perscrutandi, in alienis locis thesaurum invenerit; id quod repertum fuerit, dimidia retenta, altera dimidia data, cum locorum domino partiatur. Ita enim eveniet, ut unusquisque suis finiatur & non subiet alienis. l. un. C. de thes.

As for the Right of the Exchequer, the Foundation upon which it is built is neither so clear nor so natural; and this Right was not so much as known in the antient Roman Law, which gave nothing to the Prince besides the Treasures found in his own Grounds, leaving all the other Treasures, one half to the Finder, and the other half to the Owner of the Ground. It is true, there were some Constitutions of the Emperors which established the Right of the Exchequer to Treasures *a*; but they were abolished by the Emperor *Leon*, who restored the antient Law by that Law of his, which is the only one in the Code de thesauris. And *Justinian*, who has inserted into his Code only that Law, confirms thereby the antient Law, and even ratifies it expressly in his Institutes, and by many Texts of the antient Lawyers, which

a Quicumque thesaurum invenerit, & ad fiscum sponte devulerit, medietatem consequatur, inventi alterum tantum fisci rationibus tradat: ita tamen, ut citra inquietudinem quaestionis omnis fiscalis calumnia conquiescat. Haberi enim fidem fas est his qui sponte obtulerint, quod invenerint. Si quis autem inventas opes offerre noluerit, & aliqua ratione proditus fuerit: a supradicta venia debebit excludi.

Quisquis thesauros & condita ab ignotis dominis tempore vetustiore, monilia quolibet casu repererit, sine vindicet potestati, neque calumniae formidinem, fiscali aut privato nomine ullis deferentibus pertimescat. Non metalli qualitas, non reperti modus sub aliquo periculum quaestionis incurrat. In hac tamen naturali æquitate animadverimus quoddam temperamentum adhibendum, ut si, qui in solo proprio hujusmodi congerit, integro id jure præsumat, qui in alieno in quartam repertorum partem eum, qui loci dominus fuerit, admittat. Ne tamen per hanc licentiam quisquam aut aliena effodiat aut in locis non sui juris per famam suspecta sineatur. C. Theod. de thes.

he has collected in his Digests *b*.

b *Theſaurus quos quis in loco ſuo invenerit, Divus Hadrianus naturalem equitatem ſecutus, ei conceſſit, qui eos invenerit. §. 39. inſt. de rer. div.*

At ſi quis in alieno loco non data ad hoc opera, ſed fortuito invenerit; dimidium domino ſoli conceſſit, & dimidium inventori. Et convenienter, ſi quis in Cæſaris loco invenerit, dimidium inventoris & dimidium eſſe Cæſaris ſtatuit. Cui convenienter, ut ſi quis in ſiſcali loco, vel publico vel civitatis invenerit, dimidium ipſius eſſe debeat, & dimidium ſi vel civitatis. *d. §.*

P. l. 7. §. 12. ff. ſolut. marr.

Si in locis ſiſcalibus, vel publicis, religioſiſve, aut monumentis theſauri reperti fuerint; Divi fratres ſtituerunt, ut dimidia pars ex his ſiſco vindicaretur. Item ſi in Cæſaris poſſeſſione repertus fuerit, dimidium æque partem ſiſco vindicari; deferre autem ſe nemo cogitur, quod theſaurum invenerit, niſi ex eo theſauro pars ſiſco debeat: qui autem cum in loco ſiſci theſaurum invenerit, & partem ad ſiſcum peruenientem ſuppreſſerit, totum cum altero tanto cogitur ſolvere. *l. 3. §. penult. ex ult. ff. de jure ſiſci.*

Quæ quidem lex cum olim lata fuerit, victa autem poſt modum a cupiditate quæ multas egregias res labefactat, ad eademque ſuo vigore privata ſit; nunc ab imperatoria noſtra majeſtate in integrum reſtitutum. Jubebat autem illa ut qui in deſoſſum theſaurum incidifſet, ſi prædium in quo inventus eſſet, ad principem perlineret, alioquin publicum eſſet, illum ex æquo cum ſiſco partiretur. Si vero locus, unde theſaurus in lucem prodiiſſet, neque ad principem perlineret, neque publicus, ſed alterius cujuſpiam eſſet, is æqualibus partibus inter inventorem prædique dominum divideretur: denique ſi inventoris prædium eſſet, ipſi res inventa univerſa cederet. Atque hæc quidem lex illa ſancit. Verum perverſa cupiditas haud ſcio quomodo illa circumſcripta, iniquoque lucro ſiſco donato, illi in huncuſque diem inventum theſaurum attribuit, legemque onofam reddidit, ad quid hinc contingit. Qui alcubi reconditos latere theſauros ſciunt, dum alios laboribus ſuis gaviſuros, ſe autem truſtia illos ſubiuros, quin & interdum acerbis examinationibus ſubjiciendos conſiderant, illos investigare negligunt, itaque in perpetuum recondita manent & perierunt, quæ in lucem producta magnam hominibus erunt utilitatem allatura. Jubemus ergo, uti deinceps ſecundum veteris legiſequitatem judicetur: & quando theſaurus aliquis inventus fuerit, ſi locus ubi inventus fuerit, in publicis Imperatoriſve fundis ſit, inventor illum cum ſiſco partiat: ſi vero alterius cujuſpiam ſit, ſimili modo ipſum & inventor, & loci, in quo theſaurus inventus, dominus inter ſe dividant. *Nov. 51. Leonis.*

Altho the Novels of the Emperor Leon be not received nor collected in the Body of the Roman Law, yet there are two things remarkable in this Novel of his. One is, that the Emperor ſeverely condemns thoſe the Avarice and the want of Charity in theſe Perſons, who inſtead of giving to the Poor hoard up Treasures; which is not to be excuſed to Caſes which oblige People to uſe this Precaution, as in a time of War, or other Danger, which may give a juſt occaſion for laying up things of Value in Safety. And the other is, that he

But altho we have not in *F. ant.* any Ordinance which expreſſly gives to the King a Share in Treasures, yet the Officers of the Demesnes have begun many Law-Suits in relation to this Matter, which have been attended with Judgments and Decrees, whereby one third part of the Treasure is given to the King, or to the Lord of the Mannor, a third to the Finder, and a third to the Owner of the Ground. Which is conformable to the Cuſtoms that have regulated this Matter; the greateſt part of them giving to the King, or to the Lord of the Mannor, one third of the Treasure, another third to the Finder, and the other third to the Owner of the Ground; and a Moiety of the Treasure to the Lord of the Mannor, when the Finder is the Owner of the Ground. But there is one Cuſtom which in this Caſe gives to the Finder two thirds; and nothing can be more juſt and equitable, ſeeing he ought to have one third as Finder, and another third as Proprietor of the Ground where the Treasure was found.

We ſhall not enlarge here on the Diſtinction which is made by ſome between Treasures which conſiſt of Gold, and others. In order to eſtabliſh the King's Right to thoſe which conſiſt of Gold, they quote an Ordinance of St. Lewis, which others ſay never was, and which in effect is not to be met with: So that that Thought is without Foundation.

charges alſo thoſe with a criminal Covetouſneſs, perverſa cupiditas, who had invented the Right of the Prince to Treasures, contrary to the Tenour of the antient Laws which have been juſt now cited.

[The antient Common Law of England in relation to Treasures, ſeems to have been the ſame with the Roman Law, which gives all Treasures to the Finders, but afterwards the ſame were appropriated to the uſe of the King, as it were by conſent of all Nations. *Cum igitur theſaurus in nullius bonis ſit, & antiquitus de jure naturali eſſet inventori, nunc de jure gentium efficitur ipſius Domini Regis.* Bracton de legibus Angliæ, lib. 3. cap. 2. §. 4. Briton, fol. 26. They diſtinguiſh between Treasures found at Land, and thoſe found in the Sea; and ſay, that if a Treasure be found in the Sea, the Finder ſhall have it. And this Diſtinction is alſo taken notice of by my Lord Coke in his 2d Inſtit. pag. 166. where he ſays, that if Treasure be found in the Sea, the Finder ſhall have it at this Day. But he allows Wrecks of the Sea to belong to the Crown. *Ibid.* pag. 167.]

S E C T. IV.

Of the Right to the Estates of Aliens.

WE shall not repeat here what was necessary to be explained concerning the Right to the Estates of Aliens in the Matters of Succession, which the Reader may see in the several Places where the same is mentioned, viz. Art. 11. of the 2d Section of Persons; the 9th, 18th, 23d, and 31st Articles of the 2d Section of Heirs and Executors in general; the 2d Article of the 13th Section of the same Title; and the Remark on the 31st Article of the 2d Section, and the 13th Article of the Preface to the 2d Part of the Civil Law in its Natural Order, which treats of Successions.

The CONTENTS.

1. Definition of the Right to the Estates of Aliens.
2. Who are Aliens.
3. There are some Countries who enjoy the Right of Naturalization in others.
4. Particular Strangers are naturalized by the King's Letters Patent.
5. Exception as to the Right of Succession to Aliens.
6. Another Exception.

I.

1. Definition of the Right to the Estates of Aliens.

The Right to the Estates of Aliens, is that Right by which the Prince acquires the Estates left in his Dominions by Aliens who were not naturalized *a*.

a Peregrini capere non possunt (hereditatem) l. 1. C. de hered. inst. l. 6. §. 2. ff. eod. Nec testari. l. 1. in verba cives Romani. ff. ad leg. fals.

II.

2. Who are Aliens.

Strangers, who are likewise called Aliens, are those, who, being born in another Country, and Subjects of another Kingdom than that of which they are Inhabitants, have not been naturalized *b*.

b See Art. 9. of the 2d Section of the 2d Title.

III.

3. There are some Countries which enjoy

We do not reckon in the number of Strangers or Aliens in a Kingdom, whose Estates fall to the Crown, those

who are Subjects of another Country, to which the said Kingdom has granted the Right of Naturalization *c*.

the Right of Naturalization in a pers.

c Sciendum est esse quasdam colonias Juris Italici. l. 1. ff. de censib.

Antoninus pius cognominatus (ex quo etiam ad nos appellatio hæc pervenit) jus Romanæ civitatis prius ab unoquoque subjectorum petens, & taliter ex iis qui vocantur peregrini, ad Romanam ingenuitatem deducens, hoc ille omnibus in commune subjectis donavit. Nov. 78. C. ult.

Altho these Texts do not respect the Naturalization granted to Strangers, but other Rights granted to Provinces to which they did not belong; yet we may apply the Example thereof to this Article.

IV.

Particular Strangers, who have not the Privilege explained in the preceding Article, may be naturalized in a Kingdom by Letters Patent of the Prince, which have the Effect of making them to be of the same Condition with those who are born in it *d*.

4. Particular Strangers are naturalized by the King's Letters Patent.

d See Art. 9. of the 2d Section of the 2d Title.

[We have already observed, that there is a great difference made by the Law of England between Denization, which is by the King's Letters Patent, and Naturalization, which is by Act of Parliament. For if he who is enfranchised or denized by the King's Letters Patent, had Issue in England before his Denization, that Issue is not inheritable to his Father. But if his Father be naturalized by Act of Parliament, such Issue shall inherit. Coke's 1 Instit. fol. 129. a.]

V.

The Children of Strangers, born in a Kingdom in which their Father was an Alien, having their Origin in that Kingdom, are Subjects thereof; and they have in it the Rights of Naturalization, as if their Father had been naturalized a Subject of it, and they succeed to him, altho he dies an Alien *e*.

5. Exception as to the Right of Succession to Aliens.

e See Art. 3. of the 4th Section of Heirs and Executors in general. The same Equity requires that the other Relations of Strangers should be admitted to succeed to them, if they are natural born Subjects of France. And the Reason of not suffering the Wealth that is within the Kingdom to go to Strangers, ceases with respect to them.

See the same 3d Article of the 4th Section of Heirs and Executors in general, and the 31st Article of the 2d Section of the same Title, and the Remarks there made upon it.

[By an Act of Parliament in England, made 11 & 12 Guil. 3. cap. 6. the Children of Aliens who are born within any of the King's Realms or Dominions, are enabled to inherit the Estates of their Ancestors, either Lineal or Collateral, notwithstanding their Father or Mother were Aliens.]

VI.

Altho the Goods of Strangers who die in France, belong to the King, *f*

6. Another Exception.

and what they leave behind them cannot go to their Heirs; yet the Kings of France have excepted from this Rule foreign Merchants who come to certain Fairs in the Kingdom; and they leave the Goods which they may chance to have in France at the time of their Death, either to their Heirs of Blood, or their Heirs by Testament f.

f See Art. 3. of the fourth Section of Heirs and Executors in general, and the Remark there made upon it; as also the Ordinances of March 1463, and March 1583.

the want of Heirs which makes the Estates of Bastards to go to the Prince, for they not having named any Testamentary Heirs or Executors, which they might have done if they were under no other Incapacity, they cannot have any Heirs of Blood, except the Children begotten by them in lawful Wedlock. And if they have no Children, their Estates being without an Owner, they go to the Exchequer b.

b Bastards having no Heirs, if they have not made a Testament, their Estates go to the Exchequer.

III.

When Bastards are legitimated by the subsequent Marriage of their Father with their Mother, they are considered as legitimate; and their Estates are not subject to this Right of Succession to Bastards, but they pass to their Heirs of Blood; and they have also the Right of succeeding to them c.

c See, concerning this manner of Legitimation, Art. 17. of the 2d Section of Heirs and Executors in general, and Art. 22. of the same Section.

[This manner of legitimating Bastards by a subsequent Marriage of their Father with their Mother, mentioned in this Article, altho the same was approved both by the Civil and Canon Law, and has been received in most other Countries, yet it has never taken place in England. And when it was proposed in Parliament by the Bishops in the Reign of Henry the Third, as being agreeable to the Laws of the Church, the same was rejected by the unanimous Consent of all the Lords Temporal in Parliament. Stat. 20 Hen. 3. cap. 9. Coke's 2 Inst. pag. 98.]

¶ We have restrained the Rule explained in this Article to Bastards legitimated by a subsequent Marriage of their Father with their Mother. For the Legitimation by Letters Patent of the Prince has not the same Effect, and doth not make Bastards capable of Succession, as has been remarked on Art. 10. of the 2d Section of the 2d Title. But it might be started as a Question, Whether a Bastard, legitimated by Letters Patent of the Prince, leaving Goods behind him, without disposing of them by Will, his Goods will fall to the King by virtue of his Right of Succession to the Estates of Bastards, or if they will go to the nearest Relations of the Father or Mother of the said Bastard. The Difficulty lies in this, That by the Letters of Legitimation it is said, that the King and his Successors shall not pretend, by virtue of the Right of Succession to Bastards, to the Goods of the Bastard who is thus legitimated; which seems to leave the said Goods to those to whom

SECT. V.

Of the Right of Succession to Bastards.

WE ought to make here the same Remark which has been made in the foregoing Section, That we shall not repeat here what has been said concerning the Succession to Bastards in the Matters of Succession, which the Reader may have recourse to. See Art. 3. of the 1st Section of Persons; the 12th Article of the Preface to the 2d Part of the Civil Law in its Natural Order; and the 8th, 17th, 22th, and 30th Articles of the 2d Section of Heirs and Executors in general.

The CONTENTS.

1. Definition of the Right of Succession to Bastards.
2. Right of Succession to Bastards, is a sort of Succession to Persons who have no Heirs.
3. The Legitimation of a Bastard by a subsequent Marriage of his Father with his Mother, sets aside any Claim which the Crown may have to his Estate on the score of Bastardy.

I.

1. Definition of the Right of Succession to Bastards.

By the Right of Succession to Bastards, is meant the Right by which the Sovereign acquires the Estates of Bastards who die without leaving behind them any Children lawfully begotten, and without making a Testament a.

a See the Article cited in the Preamble of this Section.

II.

2. Rights of Succession of Bastards.

The Right of Succession to Bastards is, as it were, a kind of Succession to Persons who have no Heirs. For it is

whom they would have belonged, if the said Person had not been a Bastard, or had been legitimated by the Marriage of his Father with his Mother.

Upon this Question, it might be urged in behalf of the Relations of the Father and Mother of the Bastard, that the King having by his Letters of Legitimation renounced his Right, that Renunciation could be only in their favour. And to support the King's Right, it might be said, That the Stile of the Letters of Legitimation ought not to change the Nature of the Right of the Prince to the Succession of Bastards, which gives to the Prince the Estates of Bastards, when they have not disposed of them by Will; and that the said Letters not having made any legal Relation between the said Bastard and the Relations of his Father and those of his Mother, they have no manner of Title to be his Heirs at Law, unless it may be said that that Clause of the Letters of Legitimation is to them instead of a tacit Grant which the King makes them of the Goods of the Person whom he had legitimated in this manner.

If this Question did admit of any doubt, it would seem that it might be decided by the Rule explained in the last Article of the first Section of this Title *a*, which declares, that in doubtful Cases it may be decided against the Exchequer. Which ought more particularly to take place in the Cases which, as the present Case does, happen very seldom, and where it is the Will and Intention of the King himself that his Right should cease, unless that should happen which is hardly possible, that no one of those to whom the Estate of the Bastard should go by virtue of the Renunciation made by the King, would accept the said Succession on the score of Relation. But if they incline to accept of the Succession, it would seem that for the Reasons just now remarked, they ought to exclude the King; and in this Case it happens that the Right of Succession would not be reciprocal to the Bastards, and to the Relations of their Father and Mother; for whereas in this Case the Relations of the Bastard would succeed to him, if he should die intestate, he on his part could not succeed to any one of them by the same Title, and he would be excluded from their Successions by the other lawful Relations.

a See the last Article of the 7th Section of this Title, and the 28th Article of the 6th Section of the preceding Title.

SECT. VI.

Rules common to the several sorts of Goods and Rights of the Demesne.

WE have explained in the foregoing Sections the different of the said Goods and Rights, and Rules peculiar to every one of the and seeing there are Rules common all these kinds of Goods and Rights, they shall be the Subject-matter of this Section.

The CONTENTS.

1. *Distinction between the Goods and the Rights of the Demesne.*
2. *The Rights of the Demesne are inalienable, and imprescriptible.*
3. *Two sorts of Goods arising from the Rights of the Demesne.*
4. *Dispositions of the moveable Effects arising from the Rights of the Exchequer.*
5. *Dispositions of the Immoveables arising from the Rights of the Exchequer.*
6. *Difference between the Rights and Immoveables of the Demesne as to what concerns their Alienation.*
7. *Privilege of the Exchequer.*

I.

Altho it may seem that the Goods and the Rights of the Demesne are one and the same, yet it is necessary for the Use of the Rules of this Section to make a Distinction between them, which consists in this, That the word Goods is more general than that of Rights. For whereas all the Rights of the Demesne are in effect Goods belonging to it, there are Goods of the Demesne which are not reckoned in the Number of Rights, such as Lands. And it is not usual to call a Dutchy, or other Land, that is annexed to the Crown, a Right of the Demesne; but the Meaning of this Word, Right of the Demesne, is restrained to these sorts of Rights which are otherwise called Rights of the Exchequer, such as the Rights explained in the preceding Sections. The Use of this Distinction will appear in the following Articles *a*.

a This Distinction results from what has been said in the foregoing Sections, touching the Goods and Rights of the Exchequer.

See the End of the Paragraph in the Title

II.

2. The Rights of the Demefne are inalienable and impreſcriptible.

There is this common to all the Rights of the Demefne, ſuch as the Taxes, Subſidies, Conſiſcations, the Right of Succeſſion to thoſe who leave no Heir behind them, and other Rights, that they are inalienable and impreſcriptible. For theſe Rights are in their own nature eſſential to the Sovereignty, and do not enter into Commerce; in the ſame manner as the Power of the Government, of which they are Conſequences and Acceſſories, which cannot be ſeparated from it. Thus, neither Preſcriptions nor Alienations can put them out of the hands of the Prince; but it is not the ſame thing as the Lands of the Demefne, as ſhall be ſhewn in the 6th Article.

b See Sect. 2. of the 2d Title, and Art. 12, 15, 19, and 20. of the 1ſt Section of this Title; and the Remark made on the 19th Article concerning the Rights of Forfeitures and Succeſſion to thoſe who die without Heirs.

III.

3. Two ſorts of Goods ariſing from the Rights of the Demefne.

Seeing the Rights of the Demefne produce Profits and Revenues, which are ſo many ſorts of Goods, it is neceſſary likewiſe we ſhould diſtinguiſh the Goods ariſing from thoſe Profits into two kinds; one of Immoveables, and the other of Moveables. Thus, the Rights of Forfeiture, of Succeſſion to Perſons dying without Heirs, of Succeſſion to Aliens, and to Baſtards, acquire to the Prince the Moveables, and the Immoveables of Perſons condemned, of Perſons dying without Heirs, of Aliens, and of Baſtards. And we muſt diſtinguiſh in theſe two ſorts of Goods, the ſeveral Uſes which the Prince makes of them, which depends on the following Rules.

c This is the natural Effect of theſe Rights, and of the Diſtinction of theſe two ſorts of Goods.

IV.

4. Diſpoſitions of the moveable Effects ariſing from the Rights of the Exchequer.

The Moveables and mobiliary Effects, other than the Monies ariſing from the Rights of Forfeiture, of Succeſſion to Perſons dying without Heirs, to Aliens, and to Baſtards, are in effect Goods of the Demefne, ſince they belong to the Exchequer. But ſeeing there is not any one of theſe ſorts of Goods which would belong to the Exchequer, if they remained in their own nature, unleſs there were among them Jewels or other Moveables of ſuch Price and Value, as to deſerve to be ranked among the Moveables of the Crown; there are

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three Ways to diſpoſe of them. One by ſelling them, in order to apply the Money to the Payment of the Debts, and of the other Charges of the Goods which fall to the Prince by virtue of theſe Rights, and to give the Overplus to the Prince, paying the Moneys into the hands of the Receivers of the Revenues of the Demefnes. A ſecond is, by leaving theſe mobiliary Effects to the Farmers of the Revenue, if they are comprized in their Leaſe, with the Charge of acquitting the Debts to which the ſaid Goods are ſubject. And the third, by delivering over theſe Goods, with the ſame Charge of acquitting the Debts to which they are liable, to the Perſons to whom the Prince gives a Grant of them.

d It is in one of theſe three Manner that, according to the Uſage in France, the King exerceſ his Right on theſe Moveables.

We muſt diſtinguiſh from the mobiliary Effects ariſing from the Rights mentioned in this Article, the Goods and Merchandizes acquired by the Conſiſcations, whereof mention has been made in the 10th Article of the 6th Section of the 5th Title.

V.

The Immoveables acquired by the ſame Right, are likewiſe in one ſenſe Goods of the Demefne, ſeeing they are as it were Fruits and Revenues thereof, and that all Revenues are the Goods of the Patrimony of the Perſon who has right to enjoy the Fund out of which the ſaid Revenues iſſue, but they have not for all that the Nature of the Goods of the Demefne, which are part of the Patrimony of the Sovereign, ſo as to be inſeparable from it, and to be in all reſpects in the ſame Condition with the other Immoveables annexed to the Crown, and which make a part of the Demefne. For ſince theſe Immoveables, which proceed from the Rights of the Exchequer, are Profits and Revenues, of which the Sovereign may diſpoſe as he thinks good, he may either give them away, in which Caſe they will never become part of the Demefne; or he may unite and incorporate them into it, as has been ſaid in the 23d and following Articles of the 1ſt Section. And in this Caſe they will be of the ſame Condition with the other Immoveables of the Demefne.

e See Art. 23, &c. of the 1ſt Section.

VI.

The Immoveables of the Demefne, whether they be part of the antient Demefne, or newly annexed to it, are not ſo abſolutely inalienable, as the Immoveables of the

Ccc 2

Rights

Demesne, as to what concerns their Alienation.

Rights of the Demesne are: For whereas the Rights being essential to the Sovereignty, they cannot be separated from it, the Immoveables not being of the same nature, may be alienated in the Cases explained in the 14th Article of the 1st Section.

f See the 2d Article.

VII.

7. Privilege of the Exchequer.

There is this likewise common to the Goods and to the Rights of the Demesne, that as for the Recovery, the Preservation and the Use of the said Goods and Rights, the Demesne of the Sovereign hath divers Privileges, which are called Privileges of the Exchequer, which shall be the Subject-matter of the following Section g.

g See the following Section.

SECT. VII.

Of the Privileges of the Exchequer.

THE CONTENTS.

1. Difference between the Rights and Privileges of the Exchequer.
2. Two sorts of Privileges of the Exchequer.
3. First Privilege of the Exchequer, that its Rights are inalienable and imprescriptible.
4. Another Privilege, that the Exchequer is always reputed solvent.
5. The Exchequer is exempt from all Contributions.
6. It has the Pre-emption of Metals.
7. The Exchequer has always a tacit Mortgage.
8. The Exchequer is preferred to prior Creditors on the Goods acquired by the Debtors after its Credit.
9. There is no Peremption of a Suit begun at the Instance of the Exchequer.
10. The Causes of the Exchequer are renewed upon producing new Deeds or Writings.
11. When Goods of the Exchequer are adjudged to the highest Bidder, others are allowed to out-bid them within a certain time.
12. The Exchequer warrants not the Defects of the Things it sells.
13. The Exchequer is discharged from the Debts due from the Goods it sells, and the Creditors have their recourse against the Purchaser.
14. The Exchequer is not favoured in doubtful Cases.

I.

WE must not confound the Rights of the Exchequer with its Privileges. For whereas the Rights of the Exchequer are natural Consequences of the Sovereignty, and belong to the Prince by virtue of his Title of Sovereign; the Privileges of the Exchequer are only Consequences of the said Rights, which relate to the Preservation of them, or the ways of exercising them. Thus, the Rights of Forfeiture, of Succession to Persons who die without Heirs, of Succession to Aliens and to Bastards, of levying Taxes, and all the other Rights of the Sovereign, which have been explained in the 2d Section of the second Title, and in the first Section of this Title, are not Privileges, seeing they belong naturally to the Sovereign; but the manner of levying the Taxes on personal Estates by Distress of Goods, preferably to other Creditors, is a Privilege a.

a This Difference results from the Nature of the Rights, and from that of the Privileges.

II.

The Privileges of the Exchequer are of two sorts: One is of those which arise naturally from the Quality of the Rights of the Exchequer. And the other is of those which have not that Character, but derive their Origin from some Laws, and some Usages. Thus, for example, the Privilege which the Exchequer has of being reputed always to be solvent, as shall be shewn in Art. 4. is a natural Consequence of a Rule which distinguishes the Condition of the Exchequer, from that of all sorts of private Persons, as to what concerns Solvency, or Insolvency. For whereas every private Person may either be already or become insolvent, it is impossible that the Exchequer should become insolvent, since it hath always by means of the publick Money, and out of the Goods of all the Subjects, the necessary Funds for all the Charges thereof. Thus, on the contrary, the Privilege of the Exchequer, which gives it the preference before Creditors, who have Mortgages of a prior Date to that of the Exchequer, in the Case which shall be explained in Art. 8. is not a Privilege which follows naturally from the Rights of the Exchequer; but it is an Exception to the Rule, which assigns to Creditors who have Mortgages their Rank

Rank according to the Dates of their respective Mortgages, even prior to the Exchequer. And this Exception has been established in favour of the Exchequer, by a Law which may be termed arbitrary. For it was not essential to the Condition of the Exchequer to have this Right, or this Privilege *b*.

b The Distinction of these two sorts of Privileges results from their Causes, and from their Characters, as will appear by the Articles which follow.

III.

First The first of the Privileges of the Exchequer, among those of the first of the two sorts explained in the preceding Article, is that which renders inalienable and imprescriptible the Rights of the Exchequer, mentioned in the 2d Article of the foregoing Section. For it is a Privilege of the said Rights, that they cannot be alienated; and this Privilege, which distinguishes the said Rights from those of private Persons, is a necessary Consequence of the Nature and Use of the said Rights, which are appropriated to the Prince for the Good of the Publick *c*.

c As this Privilege is a part of the Nature of those Rights mentioned in Art. 12, 13, &c. of Sect. 1. so we have there explained in what Sense the Goods and Rights of the Exchequer are inalienable and imprescriptible. To which we must add what is said touching the Goods and Rights of the Exchequer in the preceding Section, and particularly in Art. 5, and 6. of this Section.

IV.

4. Another It is likewise by a Privilege of the same nature and of the first kind, that the Exchequer is always reputed to be solvent, and is never obliged to give Security in the Cases where private Persons, even the most substantial, are obliged to do it. Thus, if Legataries being desirous to make sure of their Legacies, which ought to be paid in hand, should hinder the Executor from touching the Goods of the Inheritance, he would be obliged either to pay the Legacies, or to give the Legataries Security for their Payment. But if the Prince were Heir to a Succession charged with the like Legacies, or that in the Case of a Succession, the Goods whereof had fallen to the Exchequer by Right of Forfeiture, or Succession in default of Heirs, or Succession to Aliens, or Bastards, or in other Cases, there should be any such like Cause which would oblige a private Person to give Security; the Exchequer in all these Cases would be exempt from it.

For it cannot happen that the Exchequer should become insolvent, as has been explained in the 2d Article *d*.

d Semper satisdare cogitur cuiuscunque sit dignitas, vel facultatum quancunque heres. l. 1. §. 1. ff. ut legat. seu fideic. serv. caus. cau.

Si ad fiscum potius hereditatis pervenerit, cessabit ista stipulatio, quia nec solet fiscus satisdare. d. l. 8. §. 18.

Fiscus semper idoneus successor & solvendo. l. 2. in f. ff. de fund. dot.

V.

We ought to place likewise in this Rank the Exemption of the Prince from all Contributions on account of the things which are for his Use, and for the Use of the Exchequer. Thus the Lands belonging to the Crown do not contribute to the Land-Tax. Thus the Farmers of the Excise and Customs cannot demand any Duties for the Goods and Merchandizes which are destined for the use of the Prince, or of the Exchequer. And this Exemption is not so much a Privilege as a Franchise or Immunity naturally belonging to the Sovereignty, which cannot be subject to Charges imposed only for its Use and Benefit *e*.

e Fiscus ab omnium vestigalium prestationibus immunis est. l. 9. §. ult. ff. de public. & vectig.

Privata rei nostrae privilegia permanentibus, nihil extra ordinem pradia jure perpetuo consignata sustineant: neque adjectis sapientius ac præter primum delegationis canonem postulat afficiatur impendens, quandoquidem neque aurario canonis sub privilegio assumato, aliquid ex ea jubentibus nobis præbitionum diversitate decutitur: & pari cum cæteris æstimari forte non convenit, quis præter annonarias functiones æstimatas perpetua pensionum prærogativa nexuerunt. l. 10. C. de excus. mun.

Evidenter atque absolute jubemus ne fundi ad patrimonium nostrum pertinentes, seu conductionis titulo seu perpetuo jure teneantur, aliquid præter ordinem superindicti vel pæti nomine de sordidis quibuscunque muneribus agnoscant. Nam & hoc a divis principibus imperatum est, & a nostra serenitate reparatum. l. 15. eod.

VI.

We may likewise reckon in the number of the Privileges of the first kind, that which the Prince hath to be preferred before all private Persons in the buying of Metals which may be necessary for his Service, such as Gold, Silver, Copper, Iron, Lead, and other Metals, for coining Money, for Artillery, and other Uses. Thus, when the Rights of the Demesne in Mines are not sufficient for all the said Uses, the Metals which remain to the Proprietors of the Lands where the Mines are, are naturally appropriated to the said Uses for the Good of the Pub-

6. It has the Pre-emption of Metals.