

**A Legal, Constitutional, and Historical Defence of the  
Stewart Succession: A Critical Edition of Edmund  
Plowden's *Treatise of Succession* (1567)**

**Volume 2: Edition**

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## Editorial Introduction

### Manuscripts

Edmund Plowden's *Treatise of Succession* survives in six known manuscript witnesses. These texts are cited by the following sigla:

**R:** Bodleian Library, MS Rawlinson A. 124

**H:** British Library, Harleian MS 849

**D:** Bodleian Library, MS Don. c. 43

**C:** British Library, Cotton MS Caligula B IV, art. 1

**M:** Morgan Library and Museum, MS MA 0281

**Y:** Yale Law School, Lillian Goldman Law Library MssG P72, art. 1

In this exordium, I shall describe each of these witnesses in turn. I shall approximate a date for the composition of each scribal copy based on characteristic features of the handwriting and the physical properties of the codex. I shall also outline the textual relationships between the various witnesses and elucidate the transmission of Plowden's *Treatise* using a stemma. Finally, I shall also explain why witness H was selected as the copy-text for my edition and justify my editorial principles.

Before addressing these six manuscripts, it is important to acknowledge that none of the extant witnesses appear to be Plowden's autograph manuscript (or holograph). Plowden's handwriting can be examined in a letter he wrote to Sir John Thynne (1512/13–1580), the steward to Edward Seymour, duke of Somerset.<sup>1</sup> Thynne was responsible for overseeing the construction of Longleat House in Wiltshire in the mid-sixteenth century. Writing in his capacity as Treasurer of the Middle Temple in June 1562, Plowden requested that Thynne send his chief carpenter, one John Lewis, to London. Lewis was to be 'employed on the quenes highnes worke'

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<sup>1</sup> This editorial introduction covers a broad chronological period. As a result, many of the individuals named in my analysis may be unfamiliar to readers. To aid comprehension, I give lifespans (wherever possible) for all prominent persons referenced. This biographical information is generally derived from the *ODNB*.

of constructing the Middle Temple's new hall.<sup>2</sup> At least as it is evidenced in this letter, Plowden's handwriting does not resemble any of the hands found in any of the six available witnesses of his *Treatise*, all of which appear to have been copied by professional scribes.

## R

R is a copy of 'Recension 1' of Plowden's *Treatise*. In volume 1 of this thesis, I argue that Recension 1 was very likely an early version of the *Treatise*, possibly as it was composed in 1567.<sup>3</sup> R includes Plowden's preface to his *Treatise* followed by the *Treatise* proper. The *Treatise* is supplemented by Plowden's *Brief Declaration*: a ten-thousand-word postscript in which Plowden declared the invalidity of Henry VIII's will. In R, the *Brief Declaration* is complete with a short exordium which explains the purpose of the postscript. Textually, R closely resembles H: the copy-text for my edition (discussed below) and the only other witness to Recension 1 of the *Treatise*. Notably, however, R does not include many of the marginal annotations found in H and the other manuscript witnesses of the *Treatise*. R also contains several unique variants that are probably the result of scribal errors: most commonly errors of transposition and homoiarchon (the confusion of two words in close proximity that have the same beginning). Occasionally, there are also short passages missing from R that can otherwise be found in H. These omissions do not seem to be the result of a scribe's eyeskip in copying R from H, nor is there any evidence to suggest that R is directly descended from H. It is far more likely that these two witnesses simply share a common ancestor.

R is written in a single, readily legible late-sixteenth-century secretary hand. Latin quotations in Plowden's *Treatise* and occasional phrases of legal jargon are copied in an italic hand. A note in an early-eighteenth-century rounded hand appears on the flyleaf: 'This Book is

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<sup>2</sup> Longleat Archives, Thynne Papers, Records of the Building, II. p. 100. I am very grateful to Emma Challinor, the archivist at Longleat, for sending me digital photographs of Plowden's letter.

<sup>3</sup> See volume 1, pp. 15-18.

supposed to be written By Sir Anthony Brown in the year 1566 he was one of the Judges in Queen Elizabeths Reign'.<sup>4</sup> R is a folio, consisting of fifty-eight leaves which have been inconsistently foliated in pencil. Plowden's *Treatise* is not bound with any other work in this manuscript. R contains several generic watermarks common to late- sixteenth and early-seventeenth-century manuscripts, indicating that it was made up of more than one paper stock. These watermarks include: a single-handed pot topped with a fleuron and crescent; a bunch of grapes; two columns (or pillars) surmounted by grapes; and the coat of arms of Amsterdam.<sup>5</sup> Similarly generic mid- to late-sixteenth and early- to mid-seventeenth-century watermarks, including pots, grapes, and columns of various sizes and designs are found in all six extant manuscript witnesses of Plowden's *Treatise*. As these watermarks are so common, simply describing the details of their design and comparing them to catalogue reproductions is of limited practical use in this thesis. To venture an approximate date for (or location of) the production of a given stock of paper, one must also account for the distance between chain lines as well as the size and placement of the watermark relative to these chain lines, comparing these details to known examples.<sup>6</sup> As such a comprehensive analysis is beyond the scope of this thesis, I do not venture further comment on watermarks below.

Ownership of R can be traced to the antiquarian and collector, Thomas Rawlinson (1681–1725); Plowden's *Treatise* is listed in the catalogue of Thomas's vast collection of manuscripts, compiled by his brother, Richard, in 1725.<sup>7</sup> It has not been possible to discover

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<sup>4</sup> Sir Anthony Browne's involvement in the production of Plowden's *Treatise* is discussed in volume 1, pp. 41-49.

<sup>5</sup> Many comparable examples, if not exact parallels, for these watermarks can be found in the usual repositories. See C.M. Briquet, *Les Filigranes: Dictionnaire Historique des Marques du Papier dès leur apparition vers 1282 jusqu'en 1660*, ed. A.H. Stevenson (4 vols., Amsterdam: Paper Publications Society, 1968); W. A. Churchill, *Watermarks in Paper in Holland, England, France, etc, in the XVII and XVIII centuries and their Interconnection* (Amsterdam: M. Hertzberger, 1935); Edward Heawood, *Watermarks, mainly of the 17th and 18th centuries* (Hilversum: Paper Publications Society, 1950).

<sup>6</sup> Allan Stevenson, 'Paper as Bibliographical Evidence', *Library*, 27 (1962): 197-212.

<sup>7</sup> Bodl. MS Rawlinson D. 885, f. 3r (item 174). '174' was also written on the diamond-shaped paper label on the spine of R.

how or when Thomas Rawlinson obtained Plowden's *Treatise*, although it is plausible that the manuscript was acquired by Rawlinson whilst studying at Plowden's former inn, the Middle Temple.<sup>8</sup> The tanned calfskin binding of R is characteristic of the first third of the eighteenth century and is likely to be the manuscript's first binding. It is therefore very possible that R was bound for Rawlinson. There are two key indicators that suggest R had not previously been bound. First, the edges of the main text leaves have not been trimmed and retain all their deckle edges. Second, the endleaves are extremely dirty, likely indicating that they served as a loose wrapper around the main leaves when stored in a dusty environment.

## H

H is also a copy of Recension 1 of Plowden's *Treatise*. It includes Plowden's preface to the *Treatise*, the *Treatise* proper, and Plowden's *Brief Declaration* (complete with an exordium to that postscript, only otherwise found in R). Whilst H closely resembles R, there are numerous instances in which passages found in H are erroneously omitted from R. Moreover, R does not include several of the marginal citations of legal sources found in H and other witnesses of the *Treatise*. Thus, H is the more complete of the two copies of Recension 1. Of the six witnesses, H was likely produced closest to the initial composition of the tract in 1567. The hand in H demonstrates many of the characteristics of mid-sixteenth-century secretary scripts such as strongly right-bending t's and thickly shaded strokes. Throughout H, the first few words of chapter headings, as well as the first few words of each chapter and the chapter number, are written in an engrossing hand. The scribe commonly italicises quotations in Latin, as well as some proper nouns and legal terminology. Marginal annotations are also commonly written in an italic hand. On the first folio of the manuscript, a note appears in a contemporary italic hand

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<sup>8</sup> Rawlinson also owned a manuscript copy of the 1580s succession tract, *Certain errors*, written by another Middle Templar, William Fleetwood, in response to Plowden's *Treatise*. See Bodl. MS Rawlinson D 885, f. 7r (item 394).

indicating that the *Treatise* was written at the behest of ‘S<sup>r</sup> Anth: Browne Justice’. H is a folio, consisting of thirty-eight leaves which have been foliated in what appears to be the same hand as that in which the *Treatise* proper was copied. Plowden’s *Treatise* is not bound with any other work in this manuscript. H was rebound by the British Library on 16 February 1967. Robert Harley’s bookplate is gold-stamped on the upper and lower covers, and the spine is inscribed in gold: ‘ON THE SUCCESSION’.

Ownership of H can be traced to Edward Stillingfleet (1635–1699), bishop of Worcester; Plowden’s *Treatise* is listed in Stillingfleet’s 1685 library catalogue.<sup>9</sup> In 1707 Stillingfleet’s manuscripts, including his copy of Plowden’s *Treatise*, were purchased for £175 by Robert Harley (1661–1724).<sup>10</sup> The Harleian collection was sold to the British Museum later in the eighteenth century. It has not been possible to discover when Stillingfleet acquired Plowden’s *Treatise*, nor from whom. However, it is unsurprising that Stillingfleet should have obtained a copy, given the scope of his private library — reportedly unparalleled in England — and his particular interest in matters of legal and constitutional controversy.<sup>11</sup> Stillingfleet held posts at the Temple Church and at Serjeants’ Inn and was ‘brought into acquaintance and great esteem with all the judges and gentlemen of station’ in the legal profession.<sup>12</sup> Notable among Stillingfleet’s legal acquaintances was Sir Matthew Hale (1609–1676), Chief Justice of the King’s Bench, who also owned a copy of Plowden’s *Treatise* (discussed below). Stillingfleet owned two copies of Plowden’s *Commentaries* and his advice was frequently sought on matters of legal and constitutional debate.<sup>13</sup>

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<sup>9</sup> C.E. Wright, *Fontes Harleiani: a study of the sources of the Harleian collection of manuscripts preserved in the Department of Manuscripts in the British Museum* (London: British Museum, 1972), p. 316.

<sup>10</sup> *The Diary of Humfrey Wanley 1715-1726*, ed. C.E. Wright and Ruth C. Wright (2 vols., London: The Bibliographical Society, 1966), I. xix.

<sup>11</sup> Barry Till, ‘Stillingfleet, Edward (1635-1699)’, *ODNB*.

<sup>12</sup> Till, ‘Stillingfleet’, *ODNB*.

<sup>13</sup> Stillingfleet’s copies of Plowden’s *Commentaries* are extant in Marsh’s Library, Dublin.

## D

D is a presentation copy of Plowden's *Treatise*, very likely commissioned in the first decade of the seventeenth century by Edmund Plowden's son, Francis, for presentation to King James VI and I. D includes a unique title page, followed by a dedication 'to the kinges most excellent majestie' signed by Francis Plowden.<sup>14</sup> D then includes a significantly revised version of Plowden's preface to his *Treatise*, followed by a copy of 'Recension 2' of the *Treatise* proper. When and why Plowden was moved to revise his *Treatise* — producing Recension 2 — is examined in volume one of this thesis.<sup>15</sup> D also includes a copy of the *Brief Declaration* — albeit Plowden's exordium to that postscript (found in H and R) is omitted in D. The *Treatise* and *Brief Declaration* are individually paginated in a contemporary hand. Between the *Treatise* and *Brief Declaration* in D is an emblem, depicting a fork-tongued serpent entwined around a cross. A comparable emblem appears in George Wither's *Collection of Emblemes* (1635), which depicts a serpent wound about a letter 'T', aspiring towards a crown.<sup>16</sup> Wither describes this emblem as a 'Christian-Morall' for the necessity of embracing suffering in pursuit of one's ambition.<sup>17</sup> Although the emblem in D does not include the crown later depicted by Wither, the allegorical meaning suggested by Wither might still be instructive — the triumph over suffering and adversity in pursuit of one's aspirations is certainly apposite in a tract advocating for the Queen of Scots' succession, dedicated to her son who had recently been crowned as the King of England.<sup>18</sup> A second emblem appears after the *Brief Declaration*, depicting what appears to be an elaborate empty frame or possibly a mirror.<sup>19</sup>

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<sup>14</sup> For an edited transcription of this dedication, see appendix 2.

<sup>15</sup> See volume 1, pp. 52-55.

<sup>16</sup> George Wither, *A Collection of Emblemes, ancient and modern: quickened with metricall Illustrations, both morall and divine* (London, 1635), p. 47.

<sup>17</sup> Wither, *Emblemes*, p. 47.

<sup>18</sup> It is of course possible that the emblem in witness D is entirely unconnected with Wither's emblem and may instead simply be an unknown mark of ownership.

<sup>19</sup> No comparable emblem appears in Wither.

D is written in a compact and easily legible secretary hand, which includes many features characteristic of mid-sixteenth-century scripts. This is striking given that the manuscript was prepared for or after James I's accession in 1603. It is possible that the use of an earlier hand is a deliberate archaicism, as though to present the *Treatise* as an historic document.<sup>20</sup> Indeed, the chapter headings and initial words of each chapter are elaborately decorated throughout D in imitation of illuminated medieval manuscripts. Such arabesque display initials are rare in manuscripts from this period and their inclusion in D signifies the effort (and likely expense) that went into the production of this presentation copy. Although D was rebound in the nineteenth century, making it impossible to judge how sumptuously or otherwise the folio was previously bound, the golden gilded edges of the leaves are likely original. Edge gilding using gold leaf, introduced to English binding practices in the mid-sixteenth century, is generally indicative of upmarket codices.<sup>21</sup> Meanwhile, the prefatory materials in this manuscript are written in two markedly different, if contemporary hands, to that found in the main body of the *Treatise*. The title page and dedication to King James, although signed by Francis Plowden, appear to be the work of a different professional scribe when compared to the main body of text. The prologue found in D is written in a different hand again, with a much more slanting ductus and a far greater number of slashing descenders. Despite these differences, it is probable that the manuscript was produced as one coherent whole, with all aspects commissioned by Francis Plowden with the aim of presenting a copy of his father's *Treatise* to the new king.

Several letters, pasted to the flyleaves of the manuscript, give some indication of the previous ownership of D — if only as far back as the mid-nineteenth century. The earliest known owner is one John Higginbottom, who purchased a profitable colliery and estate in

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<sup>20</sup> We must also admit the possibility that the archaism is not deliberate. That is, the scribe commissioned to copy the *Treatise* simply favoured a style that was outdated by the start of the seventeenth century.

<sup>21</sup> David Pearson, *English Bookbinding Styles 1450-1800: A Handbook* (London: British Library, 2005), p. 112.

Pensax, Worcestershire, in the 1860s. It is possible that D was included in the sale of Pensax Court when it passed to Higginbottom, for I can find no record of his otherwise being interested in antiquarian matters. In 1866, Higginbottom wrote to his member of parliament, Sir Thomas Winnington (1811–1872), seeking an appraisal of the manuscript. Winnington’s reply indicates that the manuscript was ‘very valuable’ and that he would investigate whether other copies were extant. Winnington enquired whether the British Museum or any other public library held a copy of Plowden’s *Treatise in Notes and Queries* and received a reply in the same.<sup>22</sup> A lawyer, Ralph Thomas, replied to say that he had been unable to locate any other extant witnesses of Plowden’s *Treatise* in either the British Museum or in the Inns of Court libraries — the authorship of witnesses H and C at the British Library being then unknown — but suspected that copies would be extant in private libraries and that the *Treatise* had very likely been printed.<sup>23</sup> Following Winnington’s enquires, Plowden was recognized as the author of a treatise on the succession in the *Dictionary of National Biography*.<sup>24</sup> For his part, Higginbottom, gave the manuscript to the vicar in Bewdley, Worcestershire, in whose family it remained until the 1930s. It was purchased by the Bodleian in 1934 for £33. It was not until the 1970s, when D was rediscovered by Rodney Fisher and compared to C and H at the British Library and to R at the Bodleian, that it became apparent that these manuscripts were all witnesses of the same treatise, written by Plowden.<sup>25</sup>

## C

C is likely the earliest extant copy of Recension 2 of Plowden’s *Treatise*. At least with respect to the *Treatise* proper, C closely resembles D, and it is very likely that the two witnesses share a

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<sup>22</sup> Thomas E. Winnington, ‘Edmond Plowden’, *Notes and Queries*, Volume 10, Issue 253 (1866), p. 353.

<sup>23</sup> Ralph Thomas, ‘Edmond Plowden’, *Notes and Queries*, Volume 11, Issue 270 (1867), p. 184.

<sup>24</sup> Thompson Cooper, ‘Plowden, Edmund (1518–1585)’, *ODNB* (entry originally published in 1895).

<sup>25</sup> Marie Axton, ‘The Influence of Edmund Plowden’s Succession Treatise’, *Huntington Library Quarterly*, 37 (1974): 209–226, at p. 209, n. 1.

common ancestor. However, C does not include Plowden's preface to his *Treatise*, nor the *Brief Declaration*: both of which can be found in D. Amongst the endpapers in witness C, a note in a twentieth-century hand describes this manuscript witness as a 'somewhat careless copy' of Plowden's *Treatise*. This proves an accurate description of the text, which contains more scribal errors than any other witness. It is important to note that the omitted and duplicate passages in C do not appear to be the result of eyeskips from copying witness D.

Plowden's *Treatise* has been copied in two interchanging hands in C. The change between the two hands occurs arbitrarily within the text; on folio 54r, for instance, the hand changes in the middle of a sentence. I am unable to provide any rationale for such erratic changes. The main hand in which C is written can be approximately dated to the turn of the seventeenth century, although it should be noted that it incorporates some features commonly found in mid-sixteenth century handwriting. As with other manuscript witnesses of Plowden's *Treatise*, an italic hand is used for words and quotations in Latin as well as for some proper nouns and technical terms. Until the start of chapter VII, part I of Plowden's *Treatise*, the margins of witness C are entirely blank. The copyist(s) have not reproduced the marginal citations common to the other manuscript witnesses of Plowden's tract. However, from folio 30r onwards, C is heavily annotated in several (regrettably unidentifiable) hands. These annotations range from glosses on Plowden's text and numberings of his argument, to identification of his sources, to symbols (including asterisks, manicules and elaborate 'N's, signifying 'Quod Nota') denoting points of interest. Plowden's *Treatise* has also been frequently underlined in black ink as well as pencil from folio 30r onwards. As the annotations in C are so frequent — and are evidently later additions made by readers of this witness — I do not reproduce them in my edition.

C is the first article (folios 2r-94v) in a composite folio volume of correspondence, records, and historical tracts relating to Mary Queen of Scots and Anglo-Scottish relations.<sup>26</sup>

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<sup>26</sup> The hands found in C (in both the main body and in the annotations) do not appear to correspond with the hands in any other of the manuscript tracts found in this composite volume

Although there is not scope here to explore the relationship between Plowden's *Treatise* and these other manuscript tracts relating to the Queen of Scots, such an investigation would certainly be valuable. The volume was rebound on 5 April 1962 in a British Library half-leather binding. Robert Cotton's bookplate is gold-stamped on the upper and lower covers, and the spine is inscribed in gold thus: 'PAPERS RELATING TO MARY QUEEN OF SCOTS, ETC.'.

The provenance of C can only be traced back so far as Sir Robert Cotton (1571–1631). Cotton's collecting practices and antiquarian interests in the late-sixteenth and early-seventeenth century are too vast to broach in any detail here.<sup>27</sup> Moreover, the opportunities for Cotton to have discovered a copy of Plowden's *Treatise* are too numerous, given the extent of his influence and his access to official collections and state papers, to suggest any specific pathway by which he acquired (or perhaps commissioned) this copy of Plowden's tract. Nonetheless, we might speculate whether Cotton became aware of Plowden's *Treatise* via the Howard family — by whom he was patronized — or via William Fleetwood; manuscripts belonging to both the Howard family and Fleetwood frequently passed through Cotton's hands.<sup>28</sup> Moreover, as volume one of this thesis demonstrates, Thomas Howard, the fourth duke of Norfolk, and Fleetwood had both almost certainly read the *Treatise* during Plowden's lifetime.

On the evidence of Cotton's notebook of loans made after Christmas 1604, Colin Tite has argued that Cotton MS Caligula B IV was loaned by Cotton to Henry Howard (1540–1614), earl of Northampton, and to Richard Cecil (1570–1633), the politician and grandson of William Cecil.<sup>29</sup> If Tite is correct in suggesting that the manuscript was indeed Caligula B IV, then it is likely that Plowden's *Treatise* was already owned by Cotton and was part of this manuscript by

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— several of which have been identified as being written in the hands of Robert Cotton and Ralph Starkey. See Colin G.C. Tite, *The Early Records of Robert Cotton's Library: Formation, Cataloguing, Use* (London: British Library, 2003), p. 116.

<sup>27</sup> The best account of Cotton's career and collection is by Kevin Sharpe, *Sir Robert Cotton, 1586-1631: History and Politics in Early Modern England* (Oxford: Oxford University Press, 1979).

<sup>28</sup> Sharpe, *Robert Cotton*, pp. 64-65.

<sup>29</sup> Tite, *Cotton's Library*, pp. 73-74.

Christmas 1604: Cotton's composite manuscripts did not tend to be loaned if not already complete.<sup>30</sup> We might therefore take 1604 as the terminal date at which C was produced.

## M

Like D, M is a seventeenth-century presentation copy of Plowden's *Treatise*. So much can be deduced from the physical properties of the manuscript, as well as the paratextual materials found in this witness. Plowden's *Treatise* does not appear alongside any other text in this folio volume, comprised of 116 total leaves. The three exposed edges of these leaves have been coloured a rich green.<sup>31</sup> The manuscript is bound in a contemporary vellum binding (very likely original), which has been elaborately decorated with gold tooling in a style characteristic of the first four decades of the seventeenth century.<sup>32</sup> There is also some decorative tooling on the spine. The upper and lower covers of the vellum binding have been tooled with the initials 'N.P'. Whilst it is likely that 'N.P' refers to the individual for whom this presentation copy was prepared, their identity remains a mystery. None of Plowden's seventeenth-century relatives had these initials, so the 'P' is unlikely to refer to a 'Plowden'. I am also unaware of any notable contemporary innsmen or statesmen who might have been interested in Plowden's *Treatise* with these initials. The earliest known owner of this presentation manuscript is John Scott (1830–1903), the shipbuilder and renowned antiquarian.<sup>33</sup> Scott possessed one of the most outstanding private libraries in Victorian Scotland, which included nearly three hundred items relating to Mary Queen of Scots.<sup>34</sup> In 1896, Scott compiled a bibliography of printed texts relating to

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<sup>30</sup> I am very grateful to Dr Andrea Clarke, lead curator of medieval and early modern manuscripts at the British Library, for her guidance on Cotton's composite manuscripts.

<sup>31</sup> Pearson describes green leaf edges as relatively rare for this period and to be indicative of an upmarket binding. See *Bookbinding Styles*, p. 112.

<sup>32</sup> Pearson, *Bookbinding Styles*, pp. 64–66.

<sup>33</sup> J.H. Baker, *English Legal Manuscripts in the United States of America: A Descriptive List* (2 vols., London: Selden Society, occasional publication, 1985–1990), II. 327.

<sup>34</sup> Betty Cooper, *Catalogue of the Scott Collection of Books, Manuscripts, Prints and Drawings* (London: Royal Institution of Naval Architects, 1954).

Mary.<sup>35</sup> As a manuscript tract, Plowden's *Treatise* does not feature in this bibliography.

Significantly however, Scott does mention other manuscript works relating to the Queen of Scots (if only in passing and in relation to printed works) in his bibliography; for instance, Scott notes that John Leslie's 1569 *Defence* was written as a rebuttal of the influential manuscript tract written by the militant Protestant MP John Hales.<sup>36</sup> Accordingly, we might speculate that Scott was perhaps yet to acquire Plowden's *Treatise* in 1896.

M contains a distinct, decorative title page which attests to Plowden's authorship of the *Treatise*. The title page is followed by a table of contents, complete with folio numbers: a unique addition among the extant witnesses. M follows Recension 2 of Plowden's *Treatise* and is complete with the revised version of Plowden's preface which also appears in D and Y. Neither M nor Y includes Plowden's *Brief Declaration*: both manuscripts conclude at the end of chapter IV, part II with a declarative '*Finis*' and a brief assertion that 'this treatise was compiled by Edmund Plowden. Esquier of the Middle Temple'.

Interestingly, M and Y are textually almost identical, save for a very small number of scribal errors. Together, these two witnesses contain several substantial variants from the other witnesses of Recension 2 of Plowden's *Treatise*, D and C. Largely, these are syntactical changes, making Plowden's argument more comprehensible, but there are occasionally shared errors in common between M and Y; for instance, in chapter II, part II of Plowden's *Treatise*, both witnesses state that Mary Stewart was the English not the Scottish monarch. Furthermore, there are several instances in which passages found in witnesses H, R, D, and C are omitted from M and Y, confusing the sense of Plowden's argument.

Despite the textual similarity between M and Y, there are two crucial distinctions. Firstly, Y does not include the title page and table of contents found in M. Secondly, there is a

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<sup>35</sup> John Scott, *A Bibliography of Works Relating to Mary Queen of Scots: 1544-1700* (Edinburgh: Edinburgh Bibliographical Society, 1896).

<sup>36</sup> Scott, *Bibliography*, p. 21.

significant scribal error in the composition of M that does not appear in Y. Halfway through chapter VIII, part I of the *Treatise* as it appears in M (folio 41r), the scribe jumps forward to material which should be included much later in the *Treatise*: in chapter I, part II. A note, seemingly in the same hand as the main body of text, indicates this error and encourages the reader to jump ahead to folio 49r where chapter VIII resumes. When the reader reaches the point at which the material mistakenly included in chapter VIII should occur (folio 81r), a note refers the reader back to the earlier part of the manuscript. Such an error almost certainly came about owing to the scribe being unfamiliar with Plowden's text and copying the *Treatise* from unbound leaves. This mistake is not replicated in Y.

Both M and Y are copied in exceptionally similar mid-seventeenth-century mixed secretary hands. The ductus is remarkably similar in both manuscripts, and the chapter headings and majuscule letters are indistinguishable across the two. Whilst it is plausible (and tantalising to imagine) that both manuscripts were copied by the same individual, there are a few telling differences between the hands which makes it more likely that they were both copied from a common ancestor by two scribes with similar styles and training. For instance, M favours more secretary letter forms — such as a characteristic backwards-slashing minuscule 'd' — by comparison to Y. When closely comparing the two hands, we also find markedly different terminal 'f's and 's's. As there is no compelling evidence to suggest that the errors and omissions in M are the result of eyeskips copying from Y, I favour the hypothesis that both manuscripts were copied from a common ancestor, rather than M being copied from Y.<sup>37</sup> Whilst then, it seems unlikely that M and Y were copied by the same scribe, the similarity between the two hands is still striking and there was evidently some concerted effort on the part of both scribes to ensure that these witnesses closely resembled the textual ancestor from which they were both copied.

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<sup>37</sup> The unique omissions in M mean that Y could not have been copied directly from it.

As I have already discussed the textual configuration of Y and the handwriting found therein in relation to M, these details need not be repeated here. Instead, it is pertinent to acknowledge that Y, unlike M, is bound with other legal texts: a scribal copy of Richard Lane's (1584–1650) *Reports on Cases in the Court of Exchequer from 1605 to 1612* as well as a series of Kings' Bench reports (c. 1633) in the same hand.<sup>39</sup> This composite folio volume is bound in vellum. Unlike the vellum binding of M, the upper and lower covers of Y do not display any decorative gold tooling. However, the spine of this manuscript has been inscribed in a mid-seventeenth-century mixed hand: 'Plowden de successione reports in Exchequer' (horizontal); 'Plowd de suc & Lanes Rep' (vertical). A further inscription on the upper vellum cover of this manuscript indicates the ownership of this volume: 'Matthew Hale'. Hale's autograph also appears on the flyleaf of the manuscript and on the first page of Plowden's *Treatise*. Before the discovery of his manuscript copy of Plowden's *Treatise*, Hale was already known to have read Plowden's tract, citing 'Mr. Plowden's learned tract touching the right of succession of *Mary* queen of *Scotland*' in his *Historia Placitorum Coronae*.<sup>40</sup> It is difficult to deduce what Hale made of Plowden's text on the evidence of his manuscript copy, which has not been annotated. It is also unclear when Hale acquired this copy of Plowden's *Treatise*. It is possible that Y was commissioned for Hale's use in the 1630s or 1640s; Hale entered Lincoln's Inn in November 1629, and soon thereafter established a close friendship with John Selden, with whom he shared an interest in antiquarian research.<sup>41</sup> Although Y was very likely produced in the early part of Hale's career, then, it would be unsurprising to

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<sup>38</sup> I am very grateful to Dr Kathryn James, the Rare Book Librarian at the Lillian Goldman Law Library, for providing me with digital images of this manuscript. Y is the only manuscript witness of Plowden's *Treatise* that I was unable to consult in person.

<sup>39</sup> Lane's reports were posthumously published in 1657.

<sup>40</sup> Matthew Hale, *Historia Placitorum Coronae* (2 vols., London, 1736), I. 324.

<sup>41</sup> See Gilbert Burnett, *The life and death of Sir Matthew Hale. kt., sometime Lord Chief Justice of His Majesties Court of Kings Bench* (London, 1682), pp. 6-7, 14.

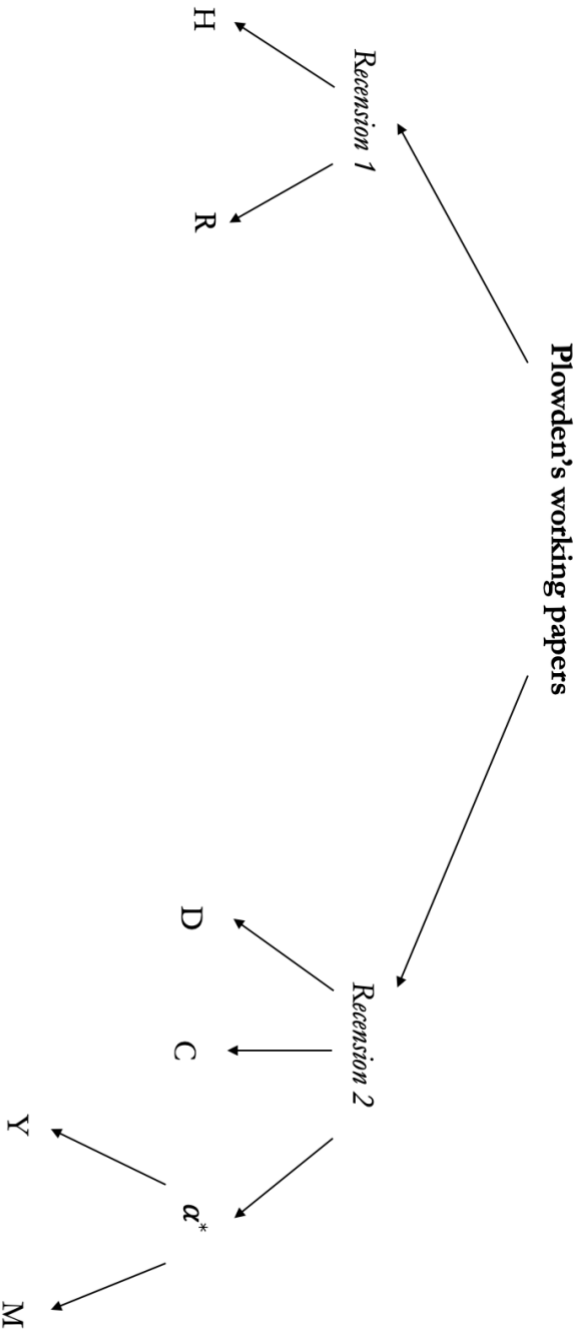
discover that Hale had commissioned a copy of Plowden's *Treatise*, possibly under advice from Selden or other antiquaries at the Inns of Court.

### Synopsis

The table below summarizes the key textual differences between Plowden's *Treatise* as it appears in each scribal copy:

<b>Sigla</b>	<b>Which recension of Plowden's <i>Treatise</i> does this witness follow?</b>	<b>Is a copy of Plowden's preface to his <i>Treatise</i> included?</b>	<b>Is the <i>Brief Declaration</i> included?</b>	<b>Are there any additional paratextual materials in this witness?</b>
R	Recension 1	Yes	Yes (with preface)	No
H	Recension 1	Yes	Yes (with preface)	No
D	Recension 2	Yes	Yes (without preface)	Title page; address to King James I of England by Francis Plowden
C	Recension 2	No	No	No
M	Recension 2	Yes	No	Title page; table of contents
Y	Recension 2	Yes	No	Title page

The stemma on the following page elucidates the potential textual relationship between these six witnesses as described above.



\*Where  $\alpha$  represents a lost common ancestor (or ancestors)

Stemma

## Editorial Principles: “Blessed be the amending hand”<sup>42</sup>

In preparing my edition of Plowden’s *Treatise*, I have adopted H as my copy-text. As outlined above, H represents the most complete text of the six extant witnesses of the *Treatise*. It is unique in including Plowden’s preface, the *Treatise* proper (complete with marginal citations to Plowden’s sources), as well as Plowden’s *Brief Declaration* (supplemented by an exordium to that postscript, otherwise exclusive to R).<sup>43</sup> It is important to acknowledge that H is a copy of Recension 1 of Plowden’s *Treatise* and very likely represents an earlier version of the text than that witnessed in any of the copies of Recension 2 (D, C, M, or Y). A case could therefore be made that these four manuscripts, and the revised version of the *Treatise* copied therein, potentially represent Plowden’s final intentions for his text more closely than the two witnesses of Recension 1. However, whilst it is very likely that Recension 2 is Plowden’s own work (and the revisions are regarded as authorial throughout this thesis), definitively establishing his authorship of these revisions has not been possible. I therefore believe that it is more valuable to adopt witness H as my copy-text: not only as the most complete text but also as the closest representation of the *Treatise* as originally prepared by Plowden in early 1567.

Wherever practicable, my edition of Plowden’s *Treatise* conforms to the usual practices and conventions adopted in the definitive editions of legal literature published by the Selden Society. J.H. Baker’s edition of *The Reports of Sir John Spelman*, R.H. Helmholz’s edition of *Three Civilian Notebooks, 1580-1640*, and D.E.C. Yale’s edition of Sir Matthew Hale’s *The Prerogatives of the King* provide particularly instructive prefatory accounts of the various editorial methodologies

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<sup>42</sup> According to Sir Edward Coke, the aphorism ‘blessed be the amending hand’ was frequently used by Plowden. *The Fourth Part of the Institutes of the Laws of England* (London, 1644), ‘Epilogue’, p. 366.

<sup>43</sup> Steven W. May suggests that ‘choosing the longest or most complete text’ is valuable to both the editor and reader of a critical edition; ‘Collating Multiple Copies of Renaissance Texts’, in *A Handbook of Editing Early Modern Texts*, ed. Claire Loffman and Harriet Phillips (London: Routledge, 2018): 84-89, at p. 86.

that might be adopted in producing an edition of early modern legal literature.<sup>44</sup> Generally, I have adhered to the principles set out in these three publications. However, in several instances, the constraints of a DPhil thesis consisting of an edition have meant that it has been preferable to follow an alternative method.

H has always been used as the copy-text for this edition. Only substantial variants — defined as any alteration that affects the reader’s understanding of the copyist’s meaning — have been recorded in the textual notes.<sup>45</sup> The textual notes at the foot of each page take the form ‘lemma] variant reading, siglum: foliation’. For instance, ‘valoure] ‘vigor’, R: 27r’. In rare instances where all five other witnesses agree against H, I employ an asterisk in place of the various sigla. When multiple witnesses agree against H, I only give the variant reading once (ignoring any trivial differences in spelling), usually quoting from witness D as the most legible of the extant witnesses. For example, ‘nature] ‘majesty’, D: 13r; C: 13r; M: 15v; Y: 16r’.

Words or passages occurring in Recension 1, but not in the witnesses of Recension 2, are placed within angle brackets: <...>. Words or passages entirely unique to H — i.e., they do not also occur in R — are indicated in the notes. Words or passages interpolated by the present editor in H from other manuscript witnesses of the *Treatise* are placed within square brackets ([...]), and the source(s) of the interpolation given in the notes. Interlineated words and passages in H have been interpolated as close as possible to the text where they are written and are placed within angle brackets with a superscript ‘i’: ‘<...><sup>i</sup>’. Deleted words or passages in witness H have been recorded in the footnotes. The foliation of witness H is indicated in the body of the text in emboldened text within square brackets, i.e. ‘[f. 24r]’.

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<sup>44</sup> *Reports of Sir John Spelman*, ed. J.H. Baker (2 vols., London: Selden Society, annual series, xciii-xciv, 1976-77), pp. xxxii-xxxvii; *Three Civilian Notebooks 1580-1640*, ed. R.H. Helmholz (London: Selden Society, annual series, cxxvii, 2010), pp. vii-x; Matthew Hale, *The Prerogatives of the King*, ed. D.E.C. Yale (London: Selden Society, annual series, xcii, 1975), p. lvii.

<sup>45</sup> This definition of ‘substantial variants’ is derived from the definition given by Helmholz in his editorial exordium to *Three Civilian Notebooks*, p. ix.

Marginal notes and citations of sources from H — presumed to be authorial and to be part of the original text — are interpolated close to the text to which they refer and are placed within angle brackets with a superscript ‘m’: <sup>m</sup><...><sup>m</sup>. At least within the main body of my edition, I have not expanded or altered the abbreviations found in the marginal annotations of H. However, in my footnotes, I verify Plowden’s citations, providing more detailed references to modern editions wherever possible, and correcting Plowden in some instances. These editorial interventions are emboldened and placed within braces: {...}.

There are several legal works to which Plowden frequently refers in his marginal citations. Unless otherwise indicated, all Year Book cases and references to the *Liber Assisarum* are cited from the 2007 reprint of the 1678-1680 Vulgate edition of Year Books with introductory material and tables by David J. Seipp and Carol F. Lee, published by The Lawbook Exchange. When citing Year Book cases, I include references — by ‘Seipp Number’ — to David J. Seipp’s invaluable digital *Index and Paraphrase of Printed Year Book Reports, 1268–1535*.<sup>46</sup>

In several instances, the marginal citations in H indicate a specific source for a Year Book case in Anthony Fitzherbert’s abridgement.<sup>47</sup> For example, ‘*m. 8. R. 2 & in Fitz. t. continual claym. pl. vltio*’. In such instances, I provide both a Year Book reference (wherever possible) as well as a reference to Fitzherbert. All references to Fitzherbert are from the 2013 reprint of the 1577 edition of *La Graunde Abridgement* with a new introduction and tables by David J. Seipp, published by the Lawbook Exchange. References to Fitzherbert’s abridgement are given by heading and entry, followed by part and folio, thus: ‘Fitz. Abr. Continuall claime 13. 1: 180v’.

I have adhered to the general practice of Selden Society editors in silently extending abbreviations and contractions. In doing so, I have endeavoured to extend words according to

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<sup>46</sup> <https://www.bu.edu/phpbin/lawyearbooks/search.php>

<sup>47</sup> Fitzherbert’s *La Graunde Abridgement* was first published (if not by that title, nor bearing any mention of the author’s name) was first published in three volumes between 1514–16. Editions of *La Graunde Abridgement* were reprinted in 1565 and 1577. See F.L. Boersma, *An Introduction to Fitzherbert’s Abridgement* (Abingdon: Professional Books, 1981), pp. 31–36.

examples written out in full elsewhere within the copy-text. I depart from this practice when dealing with contractions that are now ubiquitous. For example, I do not expand ‘Mr’ to ‘Mister’. It should be noted that the scribe in H commonly drops the terminal ‘e’ from ‘the’ and adds ‘th’ to the start of the next word, for instance, ‘thbodie’. I have silently amended this throughout. Whilst i/j, u/v, and c/t (when used before i) have been treated as interchangeable and accordingly amended to suit modern convention, and it has occasionally been necessary to capitalise the initial letter of new sentences, spelling has otherwise not been standardized in this edition.<sup>48</sup>

Contrary to the usual Selden Society practice, I retain the punctuation found in H with no attempt at modernization or standardization. The reason for this is twofold. Firstly, I believe that the punctuation in witness H does not present a substantial barrier to understanding Plowden’s text. In fact, any adjustment of the punctuation, however cautious on the part of the editor, may well introduce undue ambiguity. Secondly, I was strongly advised that emending the punctuation of an early modern text, especially one of some fifty-one thousand words, is an endeavour beyond the scope of a DPhil thesis consisting of an edition.<sup>49</sup>

In italicising words and passages in Plowden’s text, I follow the practice of the copyist in H, who commonly italicises quotations in Latin, as well as some proper nouns and terms of art. I do not offer any English translation of Plowden’s Latin in my edition. Similarly, no attempt has been made to provide information about the individuals named in Plowden’s *Treatise*, since this is readily available in accessible secondary works. Finally, I also do not offer a glossary of technical terms but recommend *Jowitt’s Dictionary of English Law* as an authoritative dictionary of English legal terminology.<sup>50</sup>

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<sup>48</sup> On the interchangeability of these letters, see Giles E. Dawson and Laetitia Kennedy-Skipton, *Elizabethan Handwriting 1500-1650: A Guide to the Reading of Documents and Manuscripts* (London: Faber, 1968), pp. 13-16.

<sup>49</sup> I am very grateful to Professor Henry Woudhuysen for this advice.

<sup>50</sup> *Jowitt’s Dictionary of English Law*, ed. Daniel Greenberg and Klara Banaszak (5th edn., 2 vols., London: Sweet and Maxwell, 2019).

**Appendix 1: Edition of Edmund Plowden's *Treatise of Succession* (1567)**

[1r] A treatise proving that if our Sovereigne Lady quene Elizabeth (whom god blesse with long lyffe & many children) shoulde dye without issue, that the Quene of Scottes <by her birth in Scotlande> is not disabled by the lawe of England to receive the Crowne of Inghlande by discent.

The prologue conteyninge the causes of the wryting of this present treatise.

There came to myn handes a printed boke conteyninge among other thinges certaigne allegations and reasons subposed to be the commen lawe made in disability of the quene of Scottes to receive the Crowne of England if it shoulde chaunce our soveraigne Lady the quene (to whom god grante long lyffe and many children) to dye without issue: by reason that the same Quene of Scott is a stranger borne out of the ligaince of the Crowne of Inghlande as that boke purporteth.

There came also to myn handes, and that verie lately, the boke of Mr Hales in whiche boke emongest other thinges<sup>1</sup> he treatith of the same matter and concludeth of the disabilitye of the Scottishe Quene, by reason of her forrayn birthe even as the other dothe. And it semeth to me that Mr Hales boke was the first made, and the other is his follower muche relying upon his reasons. Whiche bokes when I had readd I coulde not but marveill at the audacytie<sup>2</sup> of their authores who semed to me to be verie insufficient in learning of the lawe of this realme to treat of that matter & yet very bolde to take it inhande. So as I knowe not whether were greater their audacitye or their ignorance. And albeit to the learned their ignorance is well perceived, yet <sup>i</sup><to><sup>i</sup> the unlearned (to whose handes also the said bokes come) it is not so, and therefore in this case as in many others many be made ignorant<sup>3</sup> by the ignorant. Therefore I thought it shoulde be very well done of him whosoever he were that being learned in the lawes of the realme woulde

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<sup>1</sup> thinges] 'discourses', D: 3r; M: 1r; Y: 1r.

<sup>2</sup> audacytie] 'presumption', D: 3v; M: 1v; Y: 1v.

<sup>3</sup> made ignorant] 'led into ignoraunce', D: 3v; M: 1v; Y: 1v.

with learning confound that opinion.<sup>4</sup> And as I was thinking upon this matter <sup>i</sup><there was  
delyvered me><sup>i5</sup> a wrytten treatise made in confutation of the printed boke upon the reading  
wherof I conceived that the man that made it was furnished with muche good learning in other  
sciences, howbeit he seemed to me to lacke sufficient knowledge in our temporall lawe. And  
therefore I thought it nedfull (if the said boke shoulde be throughly confuted) that it were taken  
in hande by some temporall lawier, sithence the matter is a pointe of the Lawe of the Realme.  
And being in <sup>i</sup><this><sup>i</sup> thought your earnest <sup>i</sup><request><sup>i</sup> came to me of whom you (highly  
learned) have conceived an opinion of learning in the temporall lawe greater then there is cause,  
earnestly moving me to shewe unto <sup>i</sup><you><sup>i</sup> myn oppinion in the said pointe and that my  
knowledge might helpe you to conceive the righte way in this darke myste: And that for the  
more conceiving therof I woulde wryte to you the causes and reasons of the lawe approving the  
opinion I shoulde conceive.<sup>6</sup> Your Request being so earnest, your frendshipp so great, and your  
leisure to study the poynte so lytle<sup>7</sup> made me nowe in this vacation tyme having some leisure to  
take delyberation therupon<sup>8</sup>: and finally I resolved so to do and the rather because I have interest  
in the matter my selffe. For the prince of the realme<sup>9</sup> and the subjectes make one corporation.  
The prince is the heade & the subjectes the members. And sithens I am a subject and so a  
member I have therefore to do with the heade for if the heade do not well the body dothe not  
well for the diseas of the one is the grieffe of the other. Therefore the members ought to have  
care for the direction of the heade: and therefore as well for the satisfaction of myselffe as of

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<sup>4</sup> Therefore I... that opinion] 'Therefore I thought it a worke fitt for any man of vnderstandinge  
in the lawes of the Realme with learninge to Confound that opynion', D: 3v; M: 1v; Y: 1v.

<sup>5</sup> there was delyvered me] 'there came vnto my handes', D: 3v; M: 1v; Y: 1v.

<sup>6</sup> your earnest ... should conceive] 'an earnest Request from my most honourable good Lorde the  
duke of Norffolke was made vnto me, that I would advisedlie deliberat upon the Cases and  
reasons of the lawe in that point', D: 3v-4r; M: 2r; Y: 2r.

<sup>7</sup> your leisure to ... poynte so lytle] 'your leisure so little to Iudge the point', R: 1v.

<sup>8</sup> Your Request ... delyberation therupon] 'The Request being soe earnest, and his favour to me  
soe great (but muche more my dutie and zeale to the Cause) made me to take deliberation  
thereupon', D: 4r; M: 2r; Y: 2r.

<sup>9</sup> prince of the realme] Blank space left in R: 1v.

you<sup>10</sup> I have serched the reasons and groundes of the lawe in the pointe <and have spent a great parte of this Christemas 1566 about the same>. And the rather because this parliament nowe<sup>11</sup> ended hath lefte this pointe undiscuste, albeit that occacion was ministered therin to have decyded it. <Which reasons and groundes I have here putt in wryting, not to the intent to publishe the same, but to satisfy myselffe and you, both whom it behoveth to be resolved in opinion in the point, and armed with the righte reasons therof, to bothe whom many will resorte for the intelligence of the lawe in the pointe if our Sovergaigne Ladie the quene shoulde faile without yssue in our tyme whiche god prohibit. For you knowe right well that in dealing in tytles of kyngdomes there [1v] is mutche danger, and specially to the subjecte, and in these cases I thinke the surest waie is to be sylent, for in silence there is saefftie but in speache there is perill, and in wryting more. Therefore I will be silent in words and wryting unles I be urged and oughte to utter.> Whiche<sup>12</sup> reasons and groundes here by me sett downe<sup>13</sup> you shall easly perceve do<sup>14</sup> overthrowe the allegations of Mr Hales and the printed boke in that pointe of disabilitie of the Scottishe quene by her birthe<, if the matter do rest only upon that. For touching the residue of the matter of the said bokes it is not myn intente to meddle withall, for if tittle of the Crowne in defaulte of heires of the quenes highnes bodye be by testament and laste will of kyng Henry the eighte or otherwise geven to any, it shall not be by me impugned nor I will not enter into the discussion of it, but will only treate of the poynte whether the birthe of the quene of Scottes which was in Edenbroughe in Scotlande be a disabilitie to her by the lawes of Inglande to receive the Crowne of Inglande by discent if ther be non other impediment to the contrary, for that only I accepte as my theame>. And the matter I have devyded into two partes<sup>15</sup>. The firste is that the

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<sup>10</sup> myselffe as of you] ‘his grace as of all others well affected’, D: 4r; ‘his Grace as other Mens affections’, M: 2v; Y: 2v.

<sup>11</sup> nowe] ‘not longe sithence’, D: 4r; M: 2v; Y: 2v.

<sup>12</sup> Whiche] ‘These’, D: 4r; M: 2v; Y: 2v.

<sup>13</sup> downe] ‘forth’, D: 4r; M: 2v; Y: 2v.

<sup>14</sup> you shall easly perceve do] ‘shall easelie be percyyved to’, D: 4r; M: 2v; Y: 2v.

<sup>15</sup> partes] ‘pointes’, R: 1v. ‘books, Whereof the first consisteth of twoe partes’, D: 4v; M: 2v; Y: 2v.

nexte of bloude to the Crowne is not disabled to receive by discent by his birthe althoughe he were borne in France Spaine or any other place whatsoever out of the lygeance of the Crowne of Englande. <Whiche parte I have digested into an eleven pointes besides this prologue.> The seconde parte is that if the lawe should be touching the discent of the Crowne doubtfull or cleare against him that were borne in France Spayne or other forrein Contrey, that yet it is not so in case of the Scottishe Quene who was borne in Scotlande. And this parte and thinges necessarie therto, I have digested into fowre poyntes and there conclude. Whiche severall pointes I have devysed and made for the clerer understanding of the matter. Which and all the matter I submit to your correction.<sup>16</sup> And in these pointes I have ussed the forme of locution called gradation going from stepp to stepp untill I come to my conclusions.<sup>17</sup> Nowe to the matter.

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<sup>16</sup> And this ... your correction] ‘The second book conteyneth onlie a declaration of the invaliditie of the last will and testament of kinge henry the eight to alter or direct the true course of succession of the ymperiall Crowne of this Realme in case his Children should dye without yssue’, D. 4v; M: 3r; Y: 3r.

<sup>17</sup> And in ... my conclusions] Does not appear in M or Y.

The firste parte of this treatise.

Of the two bodies of the king. Cap. 1.

Firste of all it is to be considered that the lawe of the Realme doth adjudge in the king of this realme two bodies of two severall natures and qualities. The one (if a man respecte<sup>68</sup> it alone) is naturall consisting of fleshe and bloude, and of naturall members, a body visible and tangible, a body passible subjecte to all infirmities comyng by nature and by eventes. And in this body he suffereth infancy & other defectes of nature, and this body is subjecte to age and death. And this bodie (if it be considered alone) is in qualitie and degree as the naturall bodyes of all other persons be: The other body is a body politique a body (if it be considered alone) not visible nor tangible a body impassible<sup>69</sup> not subjecte to force or violence, and is voyde of infancy and of age, and of all imbecilities and defectes that the body naturall susteigneth and wanteth [visible]<sup>70</sup> Substance. And is a body constituted and devysed by reason and pollicy and of mere necessitie for preservation of the people whose exercyse is in government and direction of his subjectes. And as the body naturall hath members of dyverse & sundry sortes, so hath this body politicke. For his subjectes who be of dyvers degrees and sortes be his members, and they be incorporate to him and he to them. And they bothe make a perfecte Corporation. And the office of this body polityke of the kyng is to governe well and the office of the subjecte is<sup>71</sup> to obeye. And other action then good government and direction the lawe of the realme doth not ascrybe or appointe<sup>72</sup> to the body politicke of the king of this Realm .

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<sup>68</sup> respecte] 'respecting', C: 2r.

<sup>69</sup> impassible] Struck through in M.

<sup>70</sup> visible] interpolated from D: 6r; C: 2r; M: 3v; Y: 3v.

<sup>71</sup> subjecte is] 'subjectes', D: 6r; C: 2v; M: 3v; Y: 4r.

<sup>72</sup> appointe] 'appropriate', D: 6r; C: 2v; M: 3v; Y: 4r.

The conjunction of the two bodies. Cap. 2.

This body pollicke muste be by necessitie of reason, and is settled and placed in some body naturall by the lawe of this realme. For no body politick or corporate<sup>73</sup> can be created or made to be settled elsewhere then in a body or bodyes naturall whiche hathe or have intelligence and use of reason: for by reason they are to be guyded & ruled. And because thinges senseles or wanting reason can not by oure lawe be incorporate or made capable of a body politique therefore this body politique is & muste be (as all other bodies politicke & corporate be & by our Lawe must be) placed in a body naturall. And after that the body naturall<sup>74</sup> wherunto the body pollicke comethe hathe received the body politicke then bothe the bodyes be made one body, and that one body is<sup>75</sup> *corpus incorporatum in corpore naturali et corpus naturale in corpore incorporato*, and be not dyvers bodies for there is not a body naturall alone nor a body politicke alone, but a naturall body adorned with the state<sup>76</sup> & dignitie royall. And so the body naturall & the body politicke by consolidation of them together be made during their continuance together one body indivisible. And because they bothe be but one bodye and the body politicke [is]<sup>77</sup> the worthier, therefore there is no surname used by lawe in the name or stile of this body, but is called by the name of his body politicke declaring his function. As *Henricus Rex et rex dicitur a regendo* & so is *Regina*. Which name conteignith his body naturall & politicke: for his body politicke includeth his<sup>m<T.4.</sup> *Eliz. Re<sup>ne</sup>><sup>m</sup>*<sup>78</sup> body naturall being bothe made one. And therefore I<sup>79</sup> mislyke not the opinion of the Judge who in the argument in the case of the ejectione firme Broughte against the Lord

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<sup>73</sup> corporate] ‘corporal’, C: 3r.

<sup>74</sup> and after that the body naturall] Does not appear in M.

<sup>75</sup> and that one body is] Does not appear in M or Y.

<sup>76</sup> state] ‘estate’, D: 6v; C: 3r.

<sup>77</sup> is] Interpolated from D: 6v; C: 3r; M: 4v; Y: 4v.

<sup>78</sup> Marginal annotation also found in D, M, Y. As it appears in M, the annotation also cites ‘Plowd. fol. 244 b’, f. 4v. { *Willion v. Lord Berkeley (1562)*. See Edmund Plowden, *Les Comentaries, ou les Reportes (London, 1571; second part 1579)*, ff. 223-52v. }

<sup>79</sup> ‘wyshe’ struck through in H.

Barkeley lately argued in the comen place, said that if landes were geven to <king><sup>80</sup> Edwarde the sixte or <king> Henry the eighte by the name of Edward the sixte or Henry the eighte omitting the <sup>i</sup><name><sup>i</sup> of king, that they should take nothing by that gyfte because their name of king whiche is the name of substance was omitted. And who said also that if landes were geven by king Edward the sixte, by these wordes *quod Dignitas rex concessit* or were geven to the king by these wordes *dedit dignitatio regi* omitting his christian name that the guyfte was good in bothe [the]<sup>81</sup> cases and it is averrable what king it was. For the worde king conteigneth his full [2v] bodye, that is the body politicke and naturall conjoynd, and his body naturall includeth his Christien name. And if the body naturall includeth his Christen name and the <sup>82</sup> name of king includeth his body naturall, therof doth insue that the name of kyng dothe [sufficiently]<sup>83</sup> include his christen name.

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<sup>80</sup> king] Struck through in D.

<sup>81</sup> the] Interpolated from D: 7r; C: 3v; M: 5r; Y: 5r.

<sup>82</sup> 'body naturall includeth' struck through in H.

<sup>83</sup> sufficiently] Interpolated from D: 7r; C: 3v; M: 5r; Y: 5v.

The capacities of the<sup>84</sup> Severall bodyes remaine after their conjunction.

Cap. 3.

Albeit that by this consolidation the two bodies be but one, yet the severall capacity of eche body doth remaine. For this conjunction doth not confounde the capacities of the bodies but preserveth the capacity of eche body. So as the king maie purchase landes to him & his heires in his body politicke and he may purchase landes to him & his heires in his body naturall but in this<sup>85</sup> case he muste have apte wordes therto. For if he purchase landes generally to him and to his heires it vesteth in his body politicke and not in his body naturall. But upon the guyfte that the markques Barkley had conveyed to king Henry the seventh & the heires masles of his body, [<sup>m</sup><T.4. Reg. Eliz.><sup>m</sup>]<sup>86</sup> the Judges in the late argued case of the Lord Barkley that nowe is toke it that king Henry the seventh received the same in the capacite of his naturall body for the bodye politique which is a body without substance can begett no children. And therefore sithence the lande was lymited to the heires masles of his body begotten<sup>87</sup> it must be to the heires masles of his naturall body whiche can begett suche heires. And soe we see that the conjunction of those two bodyes together and the making of them one doth not confound their capacities. And that is fully proved by the case in the <sup>m</sup><45. lib. ass. p.><sup>m</sup><sup>88</sup> booke of Assises where it appeareth that king Henry the third gave a manor to the earle of Cornwall & [to]<sup>89</sup> the heires of his body begotten, who exchanged the manor with an other in fee simple with warrantie and dyed without issue leaving assetz in fee simple. Whiche warrantie and assetz descended upon & to king

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<sup>84</sup> the] ‘their’, R: 3r; M: 5r; Y: 5v.

<sup>85</sup> this] ‘that’, D: 7v; C: 4r; M: 5v; Y: 5v.

<sup>86</sup> <sup>m</sup><T.4. Reg. Eliz.><sup>m</sup>] Interpolated from D: 7v; M: 5v; Y: 5v. As it appears in M, the annotation also cites ‘Plowd. fol. 245a’. { *Willion v. Lord Berkeley (1562)*. Plowden, *Commentaries*, f. **223v–52v.** }

<sup>87</sup> body begotten] ‘body lawfully begotten’, Y: 5v.

<sup>88</sup> Marginal annotation also found in D, M, Y. { **45 Lib. Ass. pl. 6, ff. 298-98b. Seipp Number: 1371.094ass** }

<sup>89</sup> to] Interpolated from R: 3v, D: 7v; C: 4v.

Edward the firste beinge heire to the said Earle. And this was founde by an office in the tyme of king Edward the thirde and herupon the king sued a scire facias against the assignee of him to whom the lande was geven in exchange and there it is<sup>90</sup> adjudged that the king shoulde be barred by this warrantie with assetz. Whiche case proveth that the capacitie of the kinges body naturall remained not withstanding the conjunction of the bodie politicke to it [for the kinge made his Tytle and claymed the manor in the capacitie of his body politicke]<sup>91</sup> for it was parte of the Crowne landes: for any thing that appeareth to the contrary and was barred by the discente of the warrantie with assetz upon his bodie naturall. But in that case it is to be taken (as I thinke the trueth was) that the eschange was before the Statute *de donis conditionalibus*. To wete before anno 13 Edward 1 in whiche case he had at the tyme of the alienation a fee simple conditionall. And soe here we may see that there is no confusion of the Capacities by the consolidation of the two bodyes in one. And if the kyng before he was king had landes in fee <simple>, and after the kingdome cometh to him, yet the lande he had before remayneth and continueth in his body naturall, & in that capacitie he holdeth it. And if he should give over or resigne the Crowne, and a newe king shoulde be chosen, or made by parliament, the newe king shall not have that lande. For by the accesse of the body politicke to the body naturall, the seysin of the lande is not translated from the body naturall to the body politicke. For the former body remaineth: and that and the other be nowe but one body, althoughe their severall capacities remaine whiche serve to receive to bring in two waies. And the body politicke of a bisshopp confoundeth not the capacitie of his naturall body. For he maie purchase landes to him and his heires, or to him & his Successors at his pleasure and so it is of deanes, parsons vicars, and others that have double capacitie. And so I conclude that the unity of the two bodyes in the kinge confoundeth not their severall capacityes.

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<sup>90</sup> is] 'was', M: 6r; Y: 6v.

<sup>91</sup> for the ... body politicke] Interpolated from D: 7v-8r; C: 4v; M: 6r; Y: 6v.

[3r] That the actes of the body politicke be not abased by his conjunction to the body naturall.

Cap. 4.

Albeit the body naturall whiche is but base be conjoynd to the body politicke whiche is more precious, and one body made of bothe, yet that unyon dothe nothing abase or blemishe the actes don that apperteigne to the body politicke, or other thinges doon to bothe the bodyes generally. For in these <sup>i</sup><cases><sup>i</sup> the body politicke draweth all the effectes to him, and therefore firste he chalengeth the name whiche is *Rex a regendo*, as is saide, and suffereth no surname of the body naturall. And that name includeth bothe the bodies, and all the names therof as is aforesaid. Also the body politicke touching thinges he dothe will not be disabled by the nonage of the body naturall. <sup>m</sup><26. lib. Ass. p. 24><sup>m</sup><sup>92</sup> And therefore in the boke of Assizes Justice Thorpe said that the guyfte of the king sholde not be defeated by his nonage, and so said many peeres and sages of the Realme. Also in the sixte yere of king Edwarde the therde it appeareth that the same king Edward the therde broughte a wrytt of right of a manor as heire to king Richard the firste. <sup>m</sup><videt M 6 E.3. fo. 91 et titlo droit 24><sup>m</sup><sup>93</sup> And there it was pleaded that the king was within age and prayed judgment if he oughte to maignteigne his action during his nonage. And that exception was not allowed there and therupon the tenante demanded the view and had it. Wherby [it]<sup>94</sup> dothe appeare that the nonage <whiche><sup>95</sup> the king hathe in his naturall body shall not imblemishe the actes or suites<sup>96</sup> made or pursued<sup>97</sup> in his body politicke. Also thoughte the

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<sup>92</sup> Marginal annotation also found in R, D, Y. *'vide hoc in 26 lib Ass. p. 54'*, M: 7v. {26. Lib. Ass., pl. 54, ff. 130-130b. Seipp Number: 1352.118ass}

<sup>93</sup> Marginal annotation also found in D and Y. {Mich. 6 Edw. III, pl. 49, f. 50b. Seipp Number: 1332.179. Fitz. Abr., Droite 24. I: 266r.}

<sup>94</sup> [it] Interpolated from R: 4r.

<sup>95</sup> whiche] 'that' \*.

<sup>96</sup> suites] 'sales', R: 4r.

<sup>97</sup> pursued] 'purchased', R: 4r.

body naturall dye, yet the body politicke<sup>98</sup> is not<sup>99</sup> accompted, or termed in [the]<sup>100</sup> Lawe to dye but is termed in [the]<sup>101</sup> lawe *Demise le roy*. Not signifying therby that the body politicke of the king is deade. For demyse impleyeth not that but a disjunction of the two bodyes. And the body politicke is translated and conveied from one body naturall to an other or hathe leffte one bodye naturall and is gone to an other. And so it hathe ben termed when the kinges have ben deposed. For every removing of the state Royall from one body naturall to an other is called in lawe *Demise le Roy*. Whiche is but a leving of one body naturall and going to an other. And as the body politicke hathe <the> preeminence in name of the body naturall so hathe it in receipte when they be bothe used. As if a man woulde geve landes to king Henry the eight and to his heires, this shall be received in the capacity of the body politicke, and not of the body naturall: so as if the king had geven over or resigned the Crowne to his sonne as kyng Henry the seconde did or had ben deposed as king Edward the seconde was he shoulde not have reteigned that land but the nexte heire should have had it. For when it was geven to Henry whiche was the name of his body naturall & king whiche conteigned his bodye politicke & eche body may have his heires, the greater and worthier shall have the preheminance in the receipte. And so the Justices toke it in the Lord Barkeleyes said case. And therupon a Judge said in the argument of the said case that if a man had the kingdome by discent on the parte of the mother and after he purchased landes by his charstien name & the name of king to him & to his heires and dyed without issue, so as the kingdom discended to the heires of the mothers syde, that heire should have the said purchased lande: and not the heires of the fathers syde for the cause afforesaid. And therefore it seameth to me that Justice Thorpe said truely that if the king <sup>m</sup><*T. 43. E.3. f.20 in quare impe.*><sup>m</sup>

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<sup>98</sup> Also thoughe ... body politicke] 'which' (as interlinear emendation), M: 7v.

<sup>99</sup> not] 'never', D: 8v; C: 6r; M: 7v; Y: 8r.

<sup>100</sup> the] Interpolated from D: 8v; C: 6r; M: 7v; Y: 8r.

<sup>101</sup> the] Interpolated from D: 8v; C: 6r; M: 7v; Y: 8r.

<sup>102</sup> purchase any manor to whiche any fraunchise was appendant<sup>103</sup>, and after alienatethe the manor the fraunchise dothe not passe. In whiche case he meanethe that the purchase generally made is received in the capacitie of the body politicke of the king out of whiche the fraunchise was deryved before, and not of the body naturall, and commyng to the same body it is extincte. And if a disseissor infeeffe the king & his heires who dyeth seised & his heires enter and geve the Lande to an other the disseyssor maie entre upon him. For the king received it in his body politicke in whiche no dying seised tollothe any entree for there is no deathe to that body. And if the king and an other purchase Lande to them & their heires they be tenantes in comen, and not joynt tenantes nor the survyvor shall not have all for the king taketh it in his body politicke whiche body can not holde in joynture with an other. And as the body politicke hath the prehemynence of the body naturall in name & in receipte [3v] and is not infeabled by the nonage or death of the body naturall so is he<sup>104</sup> not restrained by his<sup>105</sup> conjunction with the body naturall of his<sup>106</sup> amplexes in prehemynence, liberties and prerogatives. And therefore if the king geve landes parcell of his Crowne to an other in fee although he have a body naturall that myghte by possibilitie make livery of seysin, yet because the body politicke is joyned to it to whom it is unseamely to do so base a thing as to go to the grounde and <to> make livery to his subjecte, therefore it can not passe by livery but by lettres patentes. And if the king make a lease for yeres or lyffe reserving a rent and for defaulte of paiment a reentree although his naturall body by possibilitie might go to the lande and demande the rent [and reentree]<sup>107</sup> as a comen person oughte to do, yet by the lawe he shall not so do. <sup>m</sup><vide M. b. 7. f 15 p Brian et

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<sup>102</sup> Marginal annotation also found in R, D, Y. ‘Tr. 43. E.3. f: 22 in *Quare Impedit Rolle abridgment f. 184, pl. 50*, M: 8v. {Trin. 43 Edw. III, pl. 12, ff. 21b-22b. Seipp Number: 1369.066}

<sup>103</sup> fraunchise was appendant] ‘franchise royall did belonge’, D: 9r; C: 6v; M: 8v; Y: 9r.

<sup>104</sup> he] ‘it’, D: 9v; C: 7r; M: 9r; Y: 9v.

<sup>105</sup> his] ‘the’, D: 9v; C: 7r; M: 9r; Y: 9v.

<sup>106</sup> his] ‘the’, C: 7r.

<sup>107</sup> and reentree] Interpolated from D: 9v; C: 7v; M: 9r; Y: 10r.

*Hussay*<sup>m</sup> <sup>108</sup> For it is unfitt to bynde the king having a body politicke & naturall being together to go to the grounde to make a demande as an other oughte: and therefore shall reenter without demande for the body politicke draweth all effectes according to his propertie. And therefore if landes be geven to the king to an use, the use is voyde for the body politicke can not be seised to an use.

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<sup>108</sup> Marginal annotation also found in R, D, M, Y. {**Hil. 2 Hen. VII, pl. 1, ff. 8b-10a. Seipp Number: 1487.001**}

That the body naturall is extolled by the conjunction with the body politicke, and altered in qualitie and in use touching things enjoyed in the capacite of the body naturall.

Cap. 5.

Sythence then by these reasons and cases it dothe appeare that [neither]<sup>109</sup> the actes of the body politicke nor the bodie politicke it selfe be not<sup>110</sup> abased by his conjunction to<sup>111</sup> the body naturall, we have nowe to consider on the other syde whether the body naturall be extolled, and his estate and operation in judgement of lawe altered by this conjunction to<sup>112</sup> the body politicke. And surely the lawe of the realme by this conjunction<sup>113</sup>, which hath of both the bodyes made an union, doth therein adjudge the naturall body magnified & the qualitie and effectes therof by the participation of the body politicke to be altered and to ensue the qualitie and effecte of the body politicke, *quia omne magis trahit ad se minus dignum*,<sup>114</sup> and therefore where the slaughter of the naturall body before the accesse of the body politicke had ben but murder or manslaughter as the case required: after the accesse of the royall estate to it, the slaughter of the same body shoulde be highe treason: and an Injury to the whole realme & to everie subjecte in the same, for therby he hath loste the heade wherof he is a member and so in judgement of lawe that slaughter is of a body more precious than any other body and therefore the payne and forfeiture for the slaughter of that body due is greater then for the slaughter of any other body. And that body is so precious that the compasing or imagining the deathe therof and attempting the same by overt acte, is highe treason althoughe the distruction therof dothe not ensue, and so it is of his wyffe &<sup>115</sup> sonne inheritable to that body polliticke by paticipation of the perogatyve of that body

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<sup>109</sup> neither] Interpolated from D: 10r; C: 8r; M: 10r; Y: 10v.

<sup>110</sup> not] Does not appear in D or C.

<sup>111</sup> to] 'with', D: 10r; C: 8r; M: 10r; Y: 10v.

<sup>112</sup> to] 'with', D: 10r; C: 8r; M: 10r; Y: 10v.

<sup>113</sup> the body ... this conjunction] Does not appear in M.

<sup>114</sup> *quia omne ... minus dignum*] '*Quia omne Magis dignum ad se trahit minus dignum*', M: 10r; Y: 10v.

<sup>115</sup> &] 'or', D: 10v; C: 8v.

[pollitique]<sup>116</sup>. And this we see of what estimation the body naturall is [of]<sup>117</sup> after the the conjunction with the body politicke. And if the kyng have lande by discent of his mothers syde or any other auncester, or whiche he purchased before he was king this lande he holdeth in the capacitye of his body naturall and not of his body politicke. Yet in this case if he be disposed to geve the lande to an other, it shall not passe by livery of seysin for he can not go in his naturall body to delyver seysin but the kyng goethe withall. And that were impertinent to the king to go to his subjecte, or to have a lawe to bynde him therunto. And therefore it shall passe by lawe by lettres patentes without livery, and so hathe it ben used in the possession of the earldome of marche<sup>118</sup>, and of the duchie of Yorke, and of lyke other possessions comyng to the king by discent by severall auncesors & being no parcell of the possessions of the Crowne. And therefore when Henry the fourth and sonne of John of Gaunte & Duke of Lancaster attained the Crowne of England the possessions of the duchie [of Lancaster]<sup>119</sup> althoughe he helde them in the capacitye of his body [4r] naturall passed and oughte to passe by lettres patente only without livery of seysin without Attornement and without other circumstances requisite to comen persons, but merely as the possessions of the Crowne oughte to do. And the onely cause was because the body politicke of the Crowne was conjoynd to the naturall body of him that was owner of the dutchie of Lancaster in whiche case the body naturall was not bounde to the circumstaunces of other bodyes naturall, but was participate<sup>120</sup> of the body politicke and therefore the body politicke importith with him his effectes and maketh him of his condition & partaker of his degree. And king Henry the fourthe right well perceiving the same, and understanding that his tyle in the Crowne and possessions therof was not good but defeisible and his tyle in the dutchye of Lancaster & the possessions therof was good & perfecte &

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<sup>116</sup> pollitique] Interpolated from M: 10v; Y: 11r.

<sup>117</sup> of] Interpolated from D: 10v; C: 8v.

<sup>118</sup> marche] 'the marches', D, 10v; C: 8v; M: 11r; Y: 11v.

<sup>119</sup> of Lancaster] Interpolated from D: 10v; C: 9r; M: 11r; Y: 11v.

<sup>120</sup> participate] 'participant', D: 10v; C: 9r.

indefeisible, and fearing that if it should continue with the crowne landes, & passe in suche order as those did that then if he shoulde be after removed from the Crowne, the duchy landes or parte therof mighte be taken from the Crowne landes and not perfectly knowen from it, did therefore upon great policy in the firste yere of his raigne make an Acte of parliament to confirme his letters patentes made, which acte is intytled *Carta regis Henrici quarti de separatione Ducatus Lancastriae a corona, auctoritate parlamenti*, by whiche he did ordeigne touching the possessions of the duchie, *quod taliter et tali modo et per tales officarios et ministros in omnibus remaneant deducantur gubernentur et pertractentur sicut remanere deduci gubernari et pertractari deberent si ad culmen dignitatis Regiae assumpti minime fuissetus*. By which wordes it is brought to passe, that livery of seysin, attornement & other circumstances ought to be had of the possessions of the duchye of Lancaster as it shoulde before the duke cam to be kyng, and taketh away the order that the lawe before had requyred and taketh from the naturall body of king Henry the fourthe the preemynence [therein]<sup>121</sup> whiche the comen lawe by the unitie of the body politicke to it attributed to him touching those possessions. And althoughe the same Henry was before duke of Lancaster whiche name of duke was geven to his naturall body, yet as soone as the body politicke of the king of the realm cam to his body naturall, so soone the name of duke was goon, for the qualitie of that person that had the name [of duke]<sup>122</sup> was gone, and the greatnes of the name of kyng drowned the name of duke, so as he coulde not use that name in his style. And so it appeareth by the recytall of an other statute made in his said firste yere of his raigne whose wordes be these *Item nostre dit*<sup>123</sup> *Seignior le Roy considerant coment dieu*<sup>124</sup> *tout puysaunt de la grace luy ad myse en le honorable estate de roy, et purtant*<sup>125</sup> *il ne poet ny*<sup>126</sup> *pur certaine cause porter le nosme de Duke de*

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<sup>121</sup> therein] Interpolated from D: 11r; C: 10r; M: 12r; Y: 12v.

<sup>122</sup> of duke] Interpolated from D: 11v; C: 10r; M: 12r; Y: 12v.

<sup>123</sup> dit] 'dist', D: 11v; C: 10r. 'dict', M: 12v; Y: 13r.

<sup>124</sup> dieu] 'dient', R: 6r.

<sup>125</sup> purtant] 'tant', C: 10r.

<sup>126</sup> ny] 'in', R: 6r; 'mesme', D: 11v; C: 10r; M: 12r; Y: 13r.

*Lancaster en son style &c.* whiche maybe englishshed thus. Also our [said]<sup>127</sup> soveraigne Lord the king considering howe god allmightie of his grace hathe placed him in the honorable estate of kyng & therefore he himselfe can not for certaine cause beare the name of duke of Lancaster in his stile &c. And after doth enacte that his eldest sonne shall beare the name of duke of Lancaster, and that he be named<sup>128</sup> prynce of Walles duke of Gascoygne Lancaster and Cornewall as by the acte dothe appeare. And so by this recytall it doth appeare that the name of duke was gone with the change of the qualitie of his person, and drowned by the receipte of the greater. But the king<sup>129</sup> of Inglande maie beare the name of Duke of a Dukedome out of his owne Realme, as they did of Gascoigne and Angeowe but not in his owne realme for the cause afforesaid. And if a man woulde geve landes to the kyng & the heires of his body begotten, in this case it is apointed to his body naturall but yet he can not receive it by livery of seysin by meanes the body polliticke is settled there, but by dede inrolled. And if the king within age have by discent landes from his mother or other auncester by whom [4v] the kyngdome cam not, and so is settled in the Capacitie of his body naturall, and being within age dothe make a lease <within age>, [neither]<sup>130</sup> he, nor his heires, shall never avoyde that lease by reason of his nonage, no more then he shoulde of landes of the Crowne. For althoughe he holde the landes in the capacitie of his body naturall to disable that body in that pointe by infancy, which in all other pointes is abled to rule the Realme, were a greate inconvenience. And therefore the lease shall not be avoyded but is good in lawe. And so it was taken in the tyme of our Soveraigne Lady quene Elizabeth that nowe is, in the case of the leases made of the dutchie possessions by king Edward the sixte being within age. <sup>m</sup><*in novem. & decem A<sup>o</sup> 4 Eliz.*><sup>m</sup><sup>131</sup> For by all the Judges of England, and the Justices of Lancaster, & by the Lord Chiffe Baron and some of the Barons, and by the

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<sup>127</sup> said] Interpolated from D: 11v; C: 10r.

<sup>128</sup> named] ‘made’, R: 6v.

<sup>129</sup> king] ‘kings’, D: 11v; C: 10v; M: 12v; Y: 13r.

<sup>130</sup> neither] Interpolated from D: 11v; C: 10v; M: 13r; Y: 13v.

<sup>131</sup> Marginal annotation also found in D, M, Y. {*Case of the Duchy of Lancaster (1561). Plowden Commentaries, ff. 212v–223r*}

Quenes Serjant & Attorney & dyvers other learned apprentices of fame being assembled at dyvers tymes by the quenes highnes Chauncelor of her duchie of Lancaster by her highnes comandement, it was so dyvers tymes agreed on, and finally resolved, and their resolution therein signified to the Quenes highnes that nowe is. In whiche assemblies it was lykewise resolved that the body naturall conjoynd with<sup>132</sup> the body politicke coulde not for landes enjoyed in the capacite of the body naturall make livery nor take livery of landes conveyed to that body. And the drowning of the name of the duke of Lancaster by accesse of the estate royall and the other affore recyted assertions touching the duchye of Lancaster [were by them also resolved]<sup>133</sup>, for although the Statute of seperation of the dutchie from the crowne take order for the landes of the duchy to be as they were before the crowne came to the duke, yet the person of the king for those landes is not touched by the statute but doth remaine touching the same as the Commen<sup>134</sup> lawe is. <sup>m<10. b. 4. f. 197>m</sup> <sup>135</sup>And in the tenth yere of king Henry the fourth there is a notable case towching this pointe wherof I nowe treate where king Henry the fourthe brought a scire facias in the kinges bench against the Lord Strange to have execution of a manor parcell of the duchie of Lancaster upon reversall of a judgement geven against Thomas of Lancaster his auncester. And the wrytt had these wordes in it *Non omittas propter aliquam libertatem in balia tua*. And for that these wordes be used in writtes where the king demandeth as king a thing perteigning to his Crowne, and here he demandeth execution as Duke of Lancaster and so not as king therefore the Lord Stranges counsell prayed the wrytt might abate: but it was said by the chiffe Justice and the court that thoughe he demande it as parcell of the duchie of Lancaster, yet he is the same person that is king, and the king hathe suche a prerogatyve, that if there be a fraunchise yet none shall serve his process but his owne ministres, and so shall it be here in this

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<sup>132</sup> with] ‘to’, D: 12r; C: 11r.

<sup>133</sup> were by them also resolved] Interpolated from D: 12r; C: 11v; M: 13v; Y: 14v.

<sup>134</sup> Commen] ‘Crowne’, M: 14r.

<sup>135</sup> Marginal annotation also found in D and Y. {Hil. 10 Hen. IV, pl. 5, f. 7-7b. Seipp Number: 1409.005}

case, and therefore judgment was given by the adyvse of the Court that the wrytt was good and shoulde stand. And this we maie see that when the kyng maketh demande in the Capacitie of his body naturall what effecte the prerogatyve of the<sup>136</sup> body polliticke worketh therin.<sup>137</sup> That body politicke is lyke<sup>138</sup> an addamant attractyve that draweth all to himselfe. And the same cause and reason was conceived in the case of kyng Richard the third who being duke of Gloucester was infeoffed by dyvers persons to uses, and when the body politick of the king cam to his naturall body, in whiche he stode seysed to uses, then by that conjunction the uses were taken away quyte by the operation of the lawe, althoughe that lande were not parte of the possessions of the Crowne. <sup>m</sup><1. R. 3. ca. 5><sup>m</sup><sup>139</sup> And they that had the uses <sup>i</sup><greatly damnified><sup>i</sup> wherupon for redresse of the matter there was a statute made in the firste yere of his raigne, wherby it was enacted that where he was seasyed with others to the use of any person that his interest shoulde veste in his other cofeoffees, and where he was sole seysed to the use of any that his interest should veste in him that had the use. The same reason made the Serjant that affirmed in his argument made in the Lord Barkleys case the lawe to be that if there were two joynte tenantes in fee of certaine landes and the crowne of Englande cam to one of them, that therby the joynture was severed, and they tenantes in comen [soe]<sup>140</sup> as the survyvor shoulde not holde place, for the body naturall [5r] adorned with the estate royall will not abyde a joynte companion in any case but severith all joyntures. And if the king<sup>141</sup> have a rent discended to him from his mother or other auncestor by whom the Crowne came not, this rent he holdeth the capacity of his body naturall, yet for the same being behynde he should distraine in all other lande of him that ought

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<sup>136</sup> prerogatyve of the] Added as an interlinear emendation in both D: 12v and Y: 15r.

<sup>137</sup> what effect ... worketh therin] ‘what the effect of the bodie pollitique worketh therein’, R: 7r.

<sup>138</sup> lyke] Does not appear in R.

<sup>139</sup> Marginal annotation also found in D, M, Y. {1 Ric. III. c. 5, ‘An Act Touching Feoffments Made to the Kyng to the Use of Others’. See *The Statutes of the Realm*, ed. John Raithby et al. (11 vols., London: Record Commission, 1810-1828), II. 480.}

<sup>140</sup> soe] Interpolated from D: 13r; C: 12r; M: 15r; Y: 15v.

<sup>141</sup> And if the king] Repeated in M: 15r.

to pay it, as the king [may]<sup>142</sup> by his prerogative for a rente whiche he hath in the right of the Crowne. And so if a rent be reserved upon a lease for yeres with condition of rentree for default of paiment whiche rent & reversion is discended to the kyng from the same auncestor being other then he or they by whom the Crowne moved, in that Case the kyng althoughe he oughte to have the rent in the capacity of his body naturall is not bounde to demand the rent but maie reenter without demande unles the other do offer it, and that is by reason the society, the body naturall hath with the body politicke. And if the kyng have [such]<sup>143</sup> landes by a collaterall auncestor albeit he have them in the capacitye of his naturall body yet he shall not holde them of the Lord of whom they weare holden before, for it were inconvenient that the body that hath the nature<sup>144</sup> of a king knitt to it shoulde do homage and saie to a Subject I become your man or shoulde be sworne to him to beare faithe to him and fealty. And in that case if the king geve that lande he holdeth in the capacitye of his naturall <sup>i</sup><body><sup>i</sup> to an other without expressing any terme he shall holde of the king as of his body politicke in capite by knightes service because that it is joyned with the other body and obteigneth therfore the prerogatyve and preemynence. And therfore the body politicke draweth to him from the body naturall all the effectes, and bereveth him of suche power and liberties as other bodyes naturall have.<sup>145</sup> For <all> other bodyes naturall may make testmentes and geve legacyes of goodes and chattells, but so can not the king. And that was of late & in the tyme of our Sovereigne Ladie the Quene that nowe is earnestly serched for, and sticked<sup>146</sup> unto upon occasion of Mr Candishes deathe who was treasurer of the Chamber to kyng Henry the eighte and to kyng Edward & quene Mary, and dyed farr in debte to the quene by reason of his office. And because there was no recognizance or other bande taken of him for his true acompte to be made and paiment of his arrerages, therefore (according to

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<sup>142</sup> may] Interpolated from D: 13r; C: 13r; M: 15r; Y: 16r.

<sup>143</sup> Such] Interpolated from D: 13r; C: 13r; M: 15v; Y: 16r.

<sup>144</sup> nature] 'majesty', D: 13r; C: 13r; M: 15v; Y: 16r.

<sup>145</sup> And therfore ... naturall have] 'And thus the body polliticke extolleth the naturall body and altereth dyverse qualities therof', D: 13v; C: 13v; M: 16r; Y: 16v.

<sup>146</sup> sticked] seeked, R: 7v.

suche order as they thoughte they mighte by the comen lawe) the Courte of Escheaker proceeded for the accompte to be yeilded, and therupon seased all the landes that Mr Candishe had sithence the debte did growe<sup>147</sup> and they that had conveiaunce of the lande cam into the exchequier and alleged that the <sup>i</sup><comen><sup>i</sup> lawe was not that the lande should be seased untill the accompte was yelded. And upon pleading and a demmurror had on the said pointe the matter was debated in the quenes highnes tyme that nowe is in her said<sup>148</sup> Court of escheker and emong other pointes moved it was said at the barr that there was one pointe whiche the Counsaill of the parties thoughte woulde barr the quene. And they thoughte it more mete to shewe it out of the Courte then there, and upon tyme and place appointed they disclosed the matter to all the Barons at Serjantes Inn, whiche was this that the money and chattells whiche Mr Candishe had received could not come to quene Elizabeth for king Henry the eighte made executors to whom all his money goodes chatells & debtes oughte to go. And king Edward and Quene Mary were deade and made non executors, in whiche case the money debtes & duties due to them oughte to go to their administer if there were any, and if there were none the ordinaries of the dioceses wherin they dyed mighte seise their goodes and had tyle to their Chattells. And so Candishes executors rested chargable to them, or were discharged against all persons for theis debtes<sup>149</sup> being testamentory for quene Elizabeth being [5v] heire to her father, brother and sister, and not executor or administer to any of them coulde make no tyle to those dueties for whiche an accompte was nowe demanded for debtes dueties or chattell discende not to heires but be testamentorie, and go to the executer adminster or ordinances, and the king hath a body naturall

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<sup>147</sup> And because ... was yelded] ‘And because there was no recognizaunce or other bonde taken of him for his true accompte to be made and payment of his arrerages therefore the Court of Eschequer proceeded for the accompte to be yeilded according to suche order as they thought might by the comen lawe, and therupon seised all the lande that Mr Candishe had sythens the debte did growe’, D: 13v; C: 13v-14r; M: 16r-16v; Y: 17r.

<sup>148</sup> said] ‘Graces’, D: 13v; C: 14r. ‘Highnes’, M: 16v; Y: 17r.

<sup>149</sup> debtes] ‘duties’, D: 14r; C: 14v; M: 17r; Y: 17v.

as others have and maie make executors. <sup>m</sup><M. 1. b. 5. in titlo exec. p. 108><sup>m 150</sup> And in prouffe therof they alleged a boke case in the firste yere of king Henry the fyvth where it is this recyted. When king Henry the fourthe dyed the opinion of dyvers Justices & doctors of the Canon and Civill lawe assembled in the eschequer Chamber was that he mighte make a testament and legacies of the goodes he had, but of the goodes of the realme that is to saie of the auncient coroners and Jewells he can not. Also it was said that the forme appointed by the statute of erection of the Court of Surveiors for obligations and specialties to be made to the king is *solvendum eidem domino regi heredibus vl executoribus suis*, in whiche cases naming executors is not in vaine and it had ben in vayne if the king could make non executors. And the clause in the same Statute that all obligations and specialties the debte wherof being not payed in the lyffe of the king should come remaine and be to the heires or executors of the king at the free disposion assignement and appointment of the same king to whom suche obligations and specialties shall be made did geve power to the king to appoint it to the heires, where before he so could not, and therefore in that pointe the acte was a newe lawe, and not in the other pointe of assignement to the executor, for to them it should have gone by the comen lawe althoughe the statute had not ben. And then if those goodes chattells formes of money and other things for whiche the accompte is nowe demanded be testamentory, Quene Elizabeth making her tytles as heire and not as executrix nor administer can not have them. Upon this matter the Barons toke tyme to be advysed and caused serch to be made in the eschequier touching the premisses where there were found presidentes and recordes without nomber that the heires of the kinge of this realme had suide actions of debte and executions upon bondes made to other kinges before and accomptes upon receipte in tyme of former kinges and actions for taking away goodes and chattells, and it appeared also by the said recordes that all the debtes goodes leases wardes and other goodes and chattells whatsoever had from tyme to tyme come to the heires of the kinge not mentionyng that

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<sup>150</sup> Marginal annotation also found in D, M, Y. {**Mich. 1 Hen. V, per Fitz. Abr., Executours 108. I: 315v. Seipp Number: 1413.083abr**}

they were executor or administer to their auncestors. And therupon the Barons of the eschequier were of full oppinion that the lawe was in the case on the quenes syde, whiche the Counseill of Sir William Seyntlowe Captaine of the Guardie who had married the wyffe of Mr Candishe and being chiffe partie in this case against the quene righte well perceiving gave advyse to the said Sir William Seyntlowe to compoude with the Quene who therupon offered composition, her highnes utterly refused any composition<sup>151</sup> untill she first understode the lawe in the case. And therupon her highnes, being fully advertised of the resolution of the Court of Exchequier and that the lawe was on her syde in the case, did at leingthe for a some of money and in the consideration of the long service don to her grace by the said Sir William Seintlowe compoude with him, and gave him by her highnes Charter dated 15 *die Augusti Anno 5 regni Regine nunc* pardon and release to him & to his wyffe of all the said accompte and of all arrerages. In whiche pardon nevertheles she recyteth the whole<sup>152</sup> matter and the demurrer and howe it had ben argued & recyted the recordes of the Exchequer that proved the lawe on her syde, and dyvers judgements geven therin and so made the lawe clere, and without this her highnes woulde not grant the pardon. And the very grounde of the resolution of the lawe in this pointe (for they were agreed in opinion, but yet thoughte to have the opinion of all the Judges in the eschequer chamber for the greatnes of the matter) and the cause [they conceived]<sup>153</sup> why the Judges & Barons in tymes paste have ever taken the lawe that the heire of the Crowne shoulde have all his goodes debtes & chattells was for that the body politicke of the king of the Realme was unyted to the bodie naturall and bothe their bodies make in Judgement of lawe but one body and [of]<sup>154</sup> that one body the chiffe parte is the body politicke, which [6r] therfore of reason ought to beare & in judgement of lawe doth beare the chiffe rule and swaye <: and therefore draweth the actions

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<sup>151</sup> her highnes ... any composition] Missing from C: 15v.

<sup>152</sup> recyteth the] ‘recited that the recordes of the Exchequer proved that the Lawe the whole’, M: 18v.

<sup>153</sup> they conceived] Interpolated from D: 15r; C: 16r; M: 19r; Y: 20r.

<sup>154</sup> of] Interpolated from M: 19r; Y: 20r.

and effectes of the body naturall being but the baseste parte of the whole body to him and is a joynt agente with the naturall body in all the actes of the naturall body and the naturall body can do no actes without him>. And bodys naturall can<sup>155</sup> make testamentes, and bodyes politicke can make no testamentes, and here is a body naturall and a body politicke consolidate together, and no body naturall alone, and therupon it ensuith consequently that this body here can make no testament. And also it was considered that the debtes of the king accrued by recorde: and there be recordes of all leases chattels and debtes of the kyng, and those recordes go by the lawe to his heires. And if the kyng mighte make executors then oughte they to have the Recordes whiche were inconvenient and the lawe alloweth it not. And to what ende shoulde lawe geve power to them to make testamentes that can have no goodes to their owne uses to bestowe? If a man had ben [made]<sup>156</sup> an Abbot he and his covent were a whole Corporation, he the heade and they the members, and he had capacitie to the use of his Corporation and not otherwise<sup>157</sup>. In so muche that if his naturall body had ben beaten, and he recovered damages therfore and dyed those damages that cam for his corporall hurte, should have gone to the use of his house. And therefore although he might in his lyffe have geven away the goodes of his house: yet the lawe gave him no power to make a testament sithence he coulde have nothing to his ownse use for the testment coulde taken non effecte till after his deathe, and then the goodes were not his, nor any clayming from him, but when he hathe a Successor they shalbe adjudged in him from the deathe of the predecessor not as had from him and to his use but in the righte and to the use of the Corporation. [So the kinge and his subjectes make one corporation, he is the heade, and they the members. And his capacitye as touchinge goodes, debtes, or chattles accrued or gotten after he is kinge is only to the use of the corporation.]<sup>158</sup> And therefore although in his lyffe the king mighte have geven them away yet by his testament he can not, for his testament can take non effect

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<sup>155</sup> can] ‘may’, D: 15r; C: 16v; M: 19r; Y: 20r.

<sup>156</sup> made] Interpolated from D: 15v; C: 16v; M: 19v; Y: 20v.

<sup>157</sup> and not otherwise] Does not appear in C.

<sup>158</sup> Soe the ... the corporation] Interpolated from D: 15v; C: 17r; M: 20r; Y: 21r.

untill he be deade, and then his heire or successor is adjudged to have them to the use of his Corporation, and to the use of the realme and not to the [use of the]<sup>159</sup> kyng that is dead. And so the denyall of the lawe to the kyng to make a testament argueth his body naturall is not adjudged in lawe as others be, for althoughe his naturall body have handes yet he can not gyve or delyver with them by order of the comen lawe (as Bryan the chiffe Justice of the comen place thoughte) nothing at all. <sup>m</sup><*q<sup>d</sup> vide. p. 4. b. 7. f. 67 en le case de Deane de Poules*><sup>m</sup><sup>160</sup> And Norwiche Chiffe Justice of the comen place said that if the king shoulde gyve him goodes or otherthing, that *de rigore iuris* it is not good without dede, whiche Mr Justice Fitzherbert affirmed. <sup>m</sup><*M. 26. b. 8. f. 10*><sup>m</sup><sup>161</sup> And lykewise it semeth that no man can gyve to him any jewell or other thing without wryting. And what is the reason that the lawe shoulde be so? Surely non other but that the body polticke is conjoynd to the naturall bodye, and therefore the circumstances appropriate to the body politicke muste be used to the body naturall whiche carieth the body polliticke settled in him. And [soe]<sup>162</sup> of these precedentes you may evidently see that the majestie of the state<sup>163</sup> Royall settled in the body naturall dothe make the same body naturall more precious. So as to kill it, yea to attempte to kyll it is treason, and it taketh from it all imperfection of infancy, it delyvereth him from actes resting in Corporall action as making of livery, making of demandes of rentes: and imparteth to him for thinges injoyed in his capacity amplexes and fullnes of power, as lybertie of distresse in other landes and other lyke. And altereth him in qualitie so<sup>164</sup> as therby it severeth all joyntures with others. And extolleth him so highe that it will not suffer him to beare base tytles, as duke or other lyke. And so altereth him in qualitie that he will not suffer him to have landes to others use but dischargeth him of the use. It maketh him so stately that he

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<sup>159</sup> use of the] Interpolated from D: 16r; C: 17v; M: 20r; Y: 21v.

<sup>160</sup> Marginal annotation also found in R, D, Y. {**Pasch. 4 Hen. VII, pl. 2, ff. 6-6b. Seipp Number: 1489.012**}

<sup>161</sup> Marginal annotation also found in R, D, Y. {**Mich. 26 Hen. VIII, pl. 7, f. 8b. Seipp Number: 1534.048**}

<sup>162</sup> soe] Interpolated from D: 16r; C: 18r; M: 20v; Y: 22r.

<sup>163</sup> state] 'Estate', D: 16r; C: 18r; M: 20v; Y: 22r.

<sup>164</sup> 'that he will not suffer him to have' struck through in H.

[6v] shall receive nothing nor gyve nothing no not Jewells or goodes but by wryting or matter of recorde. It altereth him so in effecte that he can make no testament.<sup>165</sup> And as our lawe dothe acknowledge in the king two bodyes of distincte natures so do the philosfers and others that have wrytten of comen wealthes and other lawes, and even so do many other learned men. And to avoyd tediousnes by shewing many I will recyte but only one, and he a poet, for Poetes (as you knowe when I am disposed to play the wanton) I use as my sporting companions who wryteth that<sup>166</sup> all the Navye of the Grecians (being a thowsand shippes) <sup>m</sup><*Ovid in 12<sup>o</sup> et 13<sup>o</sup> Metam.*><sup>m</sup> <sup>167</sup> were in the haven of Aulys ready to passe to Troye, the stormes were so greate and the wynde so contrary for a long tyme together that their victualls were so spente and they and their shippes so afflicted that they were ready almost to geve over their jorney and to retorne home againe to their shame and to the reproach of all the contrey of grice, and whie the goddes sent suche weather they coulde not tell. And at leingthe *Calcas* their prophet tolde them that the virgin *Diana* goddes of hunting had sent that weather for that she was offended with king *Agamemnon* capteigne of all the army because he had killed <sup>i</sup><a hynde><sup>i</sup> sacred to her and therefore to pacify her wrath and to have prosperous wynde he said *Sanguine virgineo placandam virginis iram esse dee* that the wrathe of the goddes virgin must be pacified with virgins bloude and of what virgin? Forsothe of the virgin *Iphigenia* that was *Agamemnon*s doughter, for the poet wryteth *Duraeque iubent Agamemnona sortes Immeritam seve natam mactare Dianae* But what wryteth he of the father? *Denegat hoc genitor divisque irascitur ipsis atque in rege tamen pater est.* And so when *Agamemnon* the king understode that it was required that he should sacrificyse & put to death his deere doughter an innocent & guyltles creature he denyed it and was angree with heaven and earth.

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<sup>165</sup> it delyvereth ... no testament] Throughout this section, references to the king's body politic as 'he' are consistently amended to 'it' in D, C, M, and Y. References to the king himself as 'he' are not changed.

<sup>166</sup> for Poetes ... wryteth that] 'for Poetes in many places of their workes do covertly containe many deepe pointes both of naturall and morall philosophie', D: 16v; C: 18v; M: 21r; Y: 23v.

<sup>167</sup> Marginal annotation also found in R, D, M, Y. {**Ovid, *Metamorphoses*, ed. and trans. Frank Justus Miller (2nd edn., revised by G.P. Goold. 2 vols., Cambridge, MA: Harvard University Press, 1984), Books XII and XIII, vol. II. 179–299.**}

*Atque in Rege pater est.* For albeit he was a king, and ought to do as seemly was for that estate, yet in the king [there]<sup>168</sup> was a father saith the Poet, & in this body politicke there was a body naturall. The body politicke respecting the armyes comoditie would she should be killed in Sacrifice, the body naturall whiche begatt her and loved her inteerly wolde she should be preserved, the scepter moved her slaughter earnestly, but nature impugned it vehementlye, and as faste as the one body willed, so faste the other body willed. And at the laste the prynces Captaines and the rest of the Army sent eloquent *Ulysses* to the king to perswade him to yelde her to sacrifice, who toke in hande the matter, being very difficile as he himselfe in this verse said *Difficilem tenui sub iniquo iudice causam.* The cause was harde and the Judge unequall, for he muste make the father to be judge whether his owne inocent doughter should be putt to deathe. *Ulysses* with eloquent wordes moved him to consider the honor of his brother *Menelaus*, for whose sake the warres were taken in hande, the generall utilitie whiche should be preferred before any singuler comoditie, and the shame he and his should have in preferring his private affection before the publicke cause, and tolde him the glory he should wyne by this acte wolde double recompence his losse. But nature without sounde of wordes did vehemently counterplead him in every [7r] pointe, great was the contention in this sely<sup>169</sup> king touching the duety of his boyde politicke, and his affection in his body naturall, and whiche he should prefer in their desyres. But in the ende (as the Poet saith) *pietatem, publica causa rexque, patrem vicit.* And so the comen cause prevayled before the private, and Agamemnon as king overcame himselfe as father for the poett saith further *Castumque datura cruorem flentibus ante aram stetit Iphigenia ministris.* And so the body [politic]<sup>170</sup> of the king delyvered his deere doughter whom his body naturall begote to slaughter. And this we see howe this Poet sheweth that there is in a kyng two bodyes of dyvers distincte natures, and that they be conjoynd together, and howe the appetyte of the one body,

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<sup>168</sup> there] Interpolated from D: 17r; C: 19r; M: 22r; Y: 23v.

<sup>169</sup> sely king] 'sely point king', M: 23r; Y: 24r.

<sup>170</sup> politic] Interpolated from D: 17v; C: 20r; M: 23r; Y: 24v.

may be contrary to the [appetite of the]<sup>171</sup> other, and howe the sentence or other action of the one may grieve the other. And many grave wryters (both whom and their wrytinges I do for brevitities sake pretermitt) agree together herin, and our lawe whiche is grounded upon reason and depe consideration agreeth with them all and they with our lawe. And so I conclude that in a kyng there are two bodyes and that they be conjoyned together and that the body politicke hathe the preheminance over the other.

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<sup>171</sup> appetite of the] Interpolated from D: 17v; C: 20r; M: 23v; Y: 24v. 'appetite of the' is repeated in M.

That privies<sup>172</sup> in bloude & disabled in lawe by criminall causes maie receive the Crowne by discente.

Cap. 6.

I have before shewed firste the two bodies that be in the kyng, secondely I have shewed howe they be conjoynd, therdly that their conjunction confoundeth not ther severall capacities, fourthly that the actes of the body politicke be not abased in this conjunction, and fyvthly that the body naturall is exalted in estate, and altered in degree, qualitie, and effectes by this conjunction, and if you marke well the same antecedentes, you shall righte well perceive that your mynde is the apter and therby framed and haulffe won already to yelde to the subsequentes tending to prove that the quene of Scottes is not disabled by her birthe to receive the crowne of Englande if our Sovereigne [Lady]<sup>173</sup> Quene Elizabeth (whom god blesse wth long lyffe and make fertile wth children) shoulde dye without issue, and if non other impediment there be in the matter. And for the better understanding therof firste it is to be considered that the body politicke conteigning the estate royall of the kyng of this Realme is suche that maie discende by the lawes of the realme and being vested in a bloude it shall and ought to discende in the same bloude. And if there be none of the bloude remayning then is the kyng eligyble by the people of the realme, and so that body politicke maie be placed in an other bloude in whiche it shall lykewise discende [and there is none other bodie polliticke within this realme that shall discend]<sup>174</sup> by the lawes of the realme for all other bodyes politicke & corporate wthin this realme, were they Abbottes or priors<sup>175</sup>, or be they Bisshops, deanes, maiors or bailiffes or other lyke, whiche have capacitie to receive landes or tenamentes were firste made by lettres patentes of the princes of this realme, and go by succession, whiche succession cometh by election,

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<sup>172</sup> privies] princes, R: 11r; M: 23v; Y: 25r.

<sup>173</sup> lady] Interpolated from \*

<sup>174</sup> And ther ... shall discend] Interpolated from D: 18r; C: 21v; M: 24v; Y: 26r.

<sup>175</sup> priors] 'Fryers', M: 24v; Y: 26r.

presentation, donation and other lyke meanes & not by discente. But this body politicke was founded without lettres patentes by commen lawe only and was firste divysed for necessitie of the people and for their good direction placed in some one, and is by the lawe of the realme discendible in his bloude and none other body politicke within this realme doth by or lawe discende. [7v] And this estate or dignitie royall being in itselffe a body politicke of inheritaunce and discendyble in bloude by order of the commen lawe ought to go to suche of the bloude as our lawe and all other lawes accepte moste worthie: that is to the males before the females, and to the males of the eldest before the youngeste. Sithence then this body politicke is an inheritaunce and shall discende in bloude, and to the worthiest of bloude, and to suche lynes as inheritance in fee simple, emong subjectes shall do, we have further to consider whether suche things as be interruptions of the discentes to subjectes for their inheritaunce in fee simple be likewise interruptions by the discent for the inheritance of this body politicke in fee simple and whether suche as be disabilities to receive the one, be disabilities to receive the other, and surely they be not, but differ utterly. And to make it evident I will try it by cases, and therefore I putt the case that a subject hathe two sonnes, the eldest is atteinted of felony, & in lyffe, and his father having landes in fee dieth therof seised, this lande shall not discende to the eldest because he is atteinted, by whiche atteinder his bloude is corrupte betwene him and his father, and therfore the commen lawe disableth him to receive the inheritance by discent. And the younger [brother]<sup>176</sup> shall not receive it because the eldest brother was the worthiest in bloude, to whome it oughte to come, and he is disabled, and therfore it shall escheate to the Lorde of whome it is holden, and from whom it firste cam, because he first gave it to his tenant and his heires, and nowe he that was his tenant is dead without heires and therfore it shall reverte to the Lorde by waye of escheate from whom it cam, as is aforesaid. Nowe lett us resemble the case of the Crowne to it, and for that resemblaunce I putt the case the king hathe two sonnes and the eldest

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<sup>176</sup> brother] Interpolated from D: 18v; C: 22v; M: 25v; Y: 27r.

is atteinted of felony or treason, the father dyeth seysed of the kyngdom. Who shall be heire to the kyngdome, and to whom shall this body politicke come or discende? Surely it can not escheate, for to whom shoulde it escheate? Of whom is it holden? And who firste gave the kyngdome to him & his heires? Surely none, nor is it holden of none, nor it hathe not any Lorde paramount, & therefore it can not escheate. Ought then<sup>177</sup> the yonger brother to have it? Surely no, for the eldest was worthiest of bloude [and is living]<sup>178</sup>, and the yongest can not have it as heire unles he be the worthiest of bloude no more then the younger brother of the commen person can have it in the case aforesaid where the eledest brother atteinted is in lyffe, for the maxime in lawe <sup>i</sup><of discent><sup>i</sup><sup>179</sup> is against it. What then, is the realme destitute of a kyng? If it should be therof ensuith the confusion to the subjectes, for then there were none to correct ravyn, spoyle and enormyties. If the lawe have not better provyded [for]<sup>180</sup> the placyng [of]<sup>181</sup> the body politicke in this case the lawe may be accompted verie defectyve. But it ought not to be so, for the lawe is provident ynoughe in this pointe, and appointeth that this body politicke conteigning the kyngdome shall discende to the eldest sonne that is atteinted and the atteinder is no disabilitye, and the rule of the lawe is not broken therin, for that rule serveth <not> but when the body naturall of the subject shoulde receiveto the use of the same body naturall but yet being atteinted he maie have capacity to other uses. For a person atteinted maie be executor and have capacitye to the use of the testator, and he may be a Bishopp and exercyse episcopall function to the use & comoditie of his flocke, and he maie be a maior of a cyty, or one of a corporation and hathe capacitye as one of the corporation to take to the use of the Corporation, and then why hathe he not capacitye to receive the body politicke of the kyng of the realme to the use of the whole realme? Surely there is no cause but he maie, and by his conjunction to the bodye politicke

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<sup>177</sup> not any ... Ought then] Does not appear in R: 12r.

<sup>178</sup> and is living] Interpolated from M: 26r; Y: 27v.

<sup>179</sup> 'of discente' also appears as an interpolation in Y: 27v.

<sup>180</sup> for] Interpolated from D: 19r; C: 23r; M: 26v; Y: 27v.

<sup>181</sup> of] Interpolated from D: 19r; C: 23r; M: 26v; Y: 27v.

he is purged of his offence, and of all disabilitye, for the body politicke taketh awaie infancy from the body naturall and other defectes as [is]<sup>182</sup> aforesaid [8r] <and draweth all the effectes from the body naturall to him selffe as before at lardge is shewed>. Whye then is this atteinder any impediment to the body politicke from setying in a body naturall atteinted, when as the body naturall if he were not atteinted should beare no swaye, but yelde to the body politicke? Why shall not he purge the naturall body from this disabilitye, as well as he dothe from disabilitye of infancy? Surely this body politicke doth swepe the howse cleane where<sup>183</sup> he cometh and graunteth pardon to the naturall body by operation in lawe as fully as he coulede to an other body by Charter. For if there be father and sonne, and the sonne in courte of recorde dothe confesse himselffe to be a bondman to the father by this acte he hathe made himselffe and all his bloude discending after of him to be bound, and the father maie grante him away to an other if he will. But if the father dye the same sonne beinge his eldest sonne & heire then is he free imediatlye, for to that bonde body the inheritance that made him bounde is discended and extinct, and because he can not be bounde to himselffe therfore the lawe maketh him free, for no man can clayme him as his bondeman and he in whom no man can clayme bondage muste nedes be free. As if a man confesse himselffe in Courte of recorde to be bondman to an other that after dyeth without heire, the bondman is nowe become free, for no tyle of escheate is in the case, sithence there is no tennure. And for that no man hathe tyle of bondage in him, he is free. So when the eldest sonne of the kyng was atteinted his bodye is<sup>184</sup> the kynges and subjecte to death at his pleasure for the offence don againste the body politicke, but when the same body politicke is discended to him and vested in his body naturall, nowe is he discharged of the offence, and bondage he was in before for the offence, and made free as freely as the villaine in the case aforesaid by the discent of the bondage to him is manumysed and made free. For what Judge

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<sup>182</sup> is] Interpolated from D: 19v; C: 23v; M: 27r; Y: 28v.

<sup>183</sup> where] 'wheresoever', D: 19v; C: 24r; M: 27r; Y: 28v.

<sup>184</sup> is] 'was', D: 19v; C: 24v; M: 27r; Y: 29v.

may commande him to execution or officer putt him to execution? He can not do it unles he be Judge to the kyng and have warrant from him. And that can not be that he should have warrant from the kyng to putt the kyng to death. Therfore of necessitite of reason the accesse of the body politicke to the bodye naturall delyvereth him from all servitude and thraldome he was in. And if an others villanie commeth in the kynges presence, it is not lawfull to his Lord to sease him as appeareth by the boke of assizes, <sup>m</sup><27. li. Ass. pl. 49><sup>m</sup><sup>185</sup> if the presence of the body politicke of the kyng be of suche efficacy as it delyvers the <naturall> body of the bondman from the bondage and thraldome of the Lorde for the tyme, then by a more strong argument it delyvereth the naturall bodie in whiche he is resident and to whiche he is conioyned from all thraldome and disabilitie. And in the case aforesaid if the king of the realme have by the quene his wyffe two sonnes and the eldest is atteynted of felony as is aforesaid, if the Quene had landes in fee simple and dyeth in the lyffe of the kyng, this lande shall escheate to the Lorde for the bloude is corrupted betweene her and her sonne, whiche taketh awaye the discent, but if the quene lyve and the kyng firste dye and after the quene dye seased of the landes in fee simple than it seameth that the eldest sonne shall have the landes by discent from the quene. For the Crowne [first]<sup>186</sup> descending purgeth and dispenseth with his offence, and removeth his disabilitie, yea in the capacitye of his body naturall as it seameth, and so he atteinted shall not have the inheritance from the quene his mother firste dying, but shall take the inheritance of the Crowne from his father whensoever he dyeth. And to prove that the atteinder is no disability to receive the Crowne, and that by the receipt therof the body naturall is enabled I thinke it necessary to recyte the case in the first yere of kyng Henry the seventh worde by worde whiche is this. <sup>m</sup><T. 1. b. 7. f. 20><sup>m</sup><sup>187</sup> In the parliament many whiche were knightes of [the]<sup>188</sup> Shyres and Burgeses of

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<sup>185</sup> Marginal annotation also found in R, D, M, Y. {27 *Lib. Ass. pl. 49, f. 140. Seipp Number: 1353.174ass*}

<sup>186</sup> first] Interpolated from D: 20v; C: 25v; M: 29r; Y: 30v.

<sup>187</sup> Marginal annotation also found in R, D, M, Y. {*Mich. 1 Hen. VII, pl. 5, f. 4b. Seipp Number: 1485.005*}

<sup>188</sup> the] Interpolated from D: 20v; C: 25v; M: 29r; Y: 30v.

parliament [and Citizens]<sup>189</sup> were atteinted by parliament before [8v], whereupon all the Justices agreed that touching those that were atteinted the acte shoulde firste be annulled, and that those atteinted shoulde not be in the parliament at the reversall of the acte, and as soone as that acte was reversed that then all those shoulde remaine in their places, and procede lawfully. And it was demanded what shoulde be don for the kyng himselffe for he was atteinted by parliament, and it was agreede by all the Justices that at the instante that he toke upon him to be king that he was a person able and discharged of the attainder. Those be all the sylables of the case. Loe this you maie see the oppinion of all the Judges that were in the firste yere of king the Seventhe who were greate learned men & who right well understode the nature & operation of the body politicke of king Henry the viith, and that it woulde not shame the body naturall that was to pryvate purposes disabled, and that it purged and censed the bodye naturall of king Henry the viith from all treasons and atteinders whiche case confirmeth mutche my former assertions. But some perchance will saie <sup>190</sup> that the said case of kyng Henry the viith will differ from the case of discent. For they will saie true it is that when kyng Henry the viith toke the Crowne upon him [and]<sup>191</sup> was once kyng, and so accepted of the Realme, then the body politick of the Crowne must needes purge and cense the body naturall from all crymes and offences whether he were lawfull kyng or not. But they will saie the question here is not whether the body naturall be purged of attainder after the Crowne received in it. But whether the attainder before the Crowne [received]<sup>192</sup> be an impediment to receive the Crowne by lawe? And so the question comith before the attainted person hath received the Crowne, and not after. Sir I saye the reason in the said case of kyng Henry the viith & in the case of the discent of the Crowne to a person atteinted is all one. For if kyng Henry the viith were by lawe disabled to receive to his owne use the

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<sup>189</sup> and Citizens] Interpolated from D: 20v; C: 25v; M: 29r; Y: 30v.

<sup>190</sup> saie that] 'saie true it is that', C: 26v.

<sup>191</sup> and] Interpolated from D: 20v; C: 26v; M: 29v; Y: 31v.

<sup>192</sup> received] Interpolated from D: 21r; C: 26v; M: 29v; Y: 32v.

Crowne as he was to receive to his owne private inheritance by disseysyn<sup>193</sup> or purchase, then I saie by lawe he was not kyng, nor never coude be by usurpation or otherwyse but is exempte by lawe to receive to his use as well in one case as in the other. And then I say althoughe he toke himselffe kyng and the people accepted him so yet he was no kyng in the lawe, nor the Judges ought not then by lawe to saie that he was discharged of his atteinder by his taking upon him to be kyng, for his disability before will<sup>194</sup> not suffer him to take to his owne use the state Royall. But sir the Judges said truely, and they thoughte as theyr saing purporteth that the disability before was no impediment, but he mighte in the same disability receive the Crowne to his owne use althoughe he coude not have received to his owne use any pryvate inheritance by purchase or discente. And lyke as a man attainted of treason is capable of the Crowne by election by gyfte or usurpation, so is he in tyme of his atteinder capable of the Crowne by discent. And lett the question be in bothe cases axed before the Crowne be received, and the answeere in bothe the cases will and oughte to be lyke: to weete that the atteinder is non obstacle to the receite of the Crowne by discent more then in the other cases, and that the accesse of the Crowne purgeth the disability a lyke in bothe the cases and that the lawe of disability servith but for pryvate inheritance of Subjectes only, whiche inheritance may escheate as it can not of the Crowne. And I woulde see howe<sup>195</sup> that he that putteth a differance in the cases will answer my case of the two bretherne, and what shall become of the Crowne in the same case if the elder brother shall not receive it, and if he will saie the yonger brother oughte to have the Crowne by discente, then where he fyndeth any suche lawe, for subjecte or for Crowne, that the yonger brother lyving the elder brother whiche was borne and is within the realme shall receive [9r] a fee simple by discent from his father. And to prove that atteinder is no disability to receive the Crowne by discent I thinke good to recyte the case of kyng Edward the fourth, for when he was duke of Yorke and

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<sup>193</sup> disseysyn] ‘discent’, D: 21r; C: 27r; M: 30r; Y: 32r.

<sup>194</sup> will] ‘would’, D: 21r; C: 27r; M: 30r; Y: 32r.

<sup>195</sup> see howe] ‘soe love’, R: 14r.

before he was king & in the eighte & thertith yere of the raigne of kyng Henry the sixthe he was atteinted by acte of parliament of highe treason, and so remayned atteinted untill kyng Henry the sixte was deposed, and then he toke the kyngedome upon him, having righte & tyle therto by discent, and by an Acte made in the parliament holden in the firste yere of his raigne (for this acte is in the towre and it hathe ben my chance to see it) the firste ace of Atteinder was repealed, not because the kyng neded to have it repealed for himselffe but because many of the nobility and many getilmen were atteinted by that acte who nedefully oughte to have the acte repealed for them. It can not be denyed but kyng Edward the fourthe had good tyle to the Crowne as heire therto by discent, and it can not be denyed but he was atteinted of treason by the acte in Anno 38 Henry 6 and then it is to be axed<sup>196</sup> whether the said atteinder disabled him to receive his tyle by discent or not? Surely no. For if it did then<sup>197</sup> was he never lawfull kyng, for the acte of repeale made in the firste yere of his raigne is no Acte unles the parliament were sommoned and called by a kyng. And if he were no kyng then was there no parliament. And if the atteinder disabled him to receive the Crowne as it did to receive to his use other pryvate inheritance then was he not kyng at all sithence kyng Henry the vith then lyved. And in lyke degree was kyng Henry the seventh, but no man ever toke it so: but contrarily that the body naturall was capable of the Crowne by discent notwithstanding the said disability of the body naturall, and that the same disability of the body naturall<sup>198</sup> is washed away by accesse of the body polityke to it. And he hathe lytle skylle that by the lawe touching disability of private subjectes in their [private]<sup>199</sup> causes measureth the Crowne or thinketh those cases lyke. For the disability of pryvate persons commeth for offence to the Crowne, and to measure the crowne whiche comittithe not, nor can comytt any offence with lyke lawe is [verie]<sup>200</sup> absurde. And therefore if a man be outlawed [or

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<sup>196</sup> axed] ‘demanded’, R: 14v.

<sup>197</sup> ‘for if it did then’ is repeated in M: 31v.

<sup>198</sup> and that ... body naturall] Does not appear in C.

<sup>199</sup> private] Interpolated from D: 22r; C: 28v; M: 31v; Y: 34r.

<sup>200</sup> verie] Interpolated from D: 22r; C: 28v; M: 32r; Y: 34r.

excommunicate]<sup>201</sup> or atteinted in a preminure and bring any action the [party]<sup>202</sup> defendand shall demande judgement if he shalbe answered and shall shewe this disability of the plaintiffe or demandant, and shall stay therupon & never answer the matter but if one be outlawed or excommunicate or atteinted in a premunire, and after the Crowne discende to him, and then he being a quare impedit or other action vested in his body naturall, I thinke a man coulde not fynde so unskilfull a lawyer that woulde plead against the king those disabilities, or thinke that he from whom all lawe is derived shoulde be disabled in his owne lawe. And so by these precedentes you maye evidently see that disabilitie of the body naturall by atteinder, and the other aforewrytten disabilities be no obstacle in our Lawe from receiving the body politicke of the kyng of this realme, or suyte or action of the kyng, and howe the body [naturall]<sup>203</sup> is purged of those disabilities by the accesse of the body politicke of the kyng of the realme being adjudged in the lawe a body precious a body full of majestie.

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<sup>201</sup> or excommunicate] Interpolated from D: 22r; C: 29r; M: 32r; Y: 34r.

<sup>202</sup> party] Interpolated from D: 22r; C: 29r; M: 32r; Y: 34r.

<sup>203</sup> naturall] Interpolated from M: 32v; Y: 34v.

[9v] That foreine birthe is no disability to receive the Crowne, and two objections against it, & the confutation of the firste, whiche is, he borne beyonde the Sea can not be knowne or tried to discende<sup>204</sup> of Englishe bloude.

Cap. 7.

Sythence I have by these presedentes shewed that where there is proximitie<sup>205</sup> of bloude that the Crowne of the Realme shall discende therto, and that atteinder is no interuption to that discent but that the lawe alloweth that, and the other afforesaide disabilities only amongst [the] subjectes, I will nowe procede further to discusse whether forreine birth in the next of bloude be a disability by the lawe of the realme [to receive]<sup>206</sup> by discent to the Crowne of England. And for the better understanding therof I will make the case moste strong againste my selffe, and admitt the king of Inglande to have three sonnes and dyeth. The eldest of these three brethrene is king and dyeth having a sonne who is kyng also. The seconde brother goeth into Fraunce and hath issue there a sonne and dyeth, that sonne continueth in Fraunce as a subjecte to the French kyng and marieth a Frenche woman, and by her there hathe a sonne and dyeth. The therde brother hath a sonne in Inglande and dyeth. After the kyng whiche is sonne of the eldest brother dyeth without yssue the question is whether the frenche borne sonne of the sonne of the seconde brother or whether the sonne of the therde brother shall be kyng and upon whiche of them doth the Crowne discende by the order of the Commen lawe of the realme? This case woulde pleas any that were desyrous to encounter with me: for the Subjectes of the frenche kyng borne in Fraunce I take without all contraversye to be adjudged by the lawes of this realme to be aliens and disabled to inheryte landes in Inglande, and if the lawe in this case be evident that the French man shall inherit the Crowne of England then is the Case more strong for the quene of

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<sup>204</sup> discende] 'be discended', D: 22v; C: 30r; M: 32v; Y: 34v.

<sup>205</sup> proximitie] 'propinquity', R: 15r.

<sup>206</sup> to receive] Interpolated from D: 23r; C: 30r; M: 33r; Y: 35r.

Scottes who was borne at Edenborough in Scotland. And nowe to the Case admitted. There is no cause to the contrary but that the french borne discending of the seconde brother & so worthiest of bloude ought to have the Crowne unles the lawe of the realme disableth him therunto, and if the lawe of the realme shoulde disable him, it is for one of these two causes, or else for both the causes<sup>207</sup>. The firste cause is (for so perchaunce it will be objected) that the French borne can not be knowne or tryde within Inglande to be discended of the seconde brother, for that he and his father were borne out of the Realme, and of thinges chaunced out of the realme our lawe taketh no knowledge, for tryalls by oure lawe are by twelve men, and xii men are not bounde to enquire of any thinges beyonde the Seas. And sithence the brother<sup>208</sup> of the frenche borne & his father was beyonde the sea in Fraunce therefore no Jury of this Realme is bounde to take knowledge, nor non otherwais there is by the lawe to trye or knowe<sup>209</sup> that the frenche borne is discended of the seconde brother. And that is one reason (perhapps some will saie) whye that a stranger borne discended of Inglish bloude can not have landes by discent within the realme of englande. And if the birthe of any borne beyonde the sea can not be understanded in Englande then the same reason serveth<sup>210</sup> lyke againste him borne beyonde the sea that<sup>211</sup> pretendeth tyle of discent to the Crowne, as against him borne beyonde the Sea that pretendeth tyle of discent to other inheritance. The seconde cause is, that admitt that it [might]<sup>212</sup> be tryed & understode that the borne beyonde the sea were come of [the blood of the]<sup>213</sup> the seconde brother, yet the frencheman shoulde be disabled for that he was borne in the alligiance of an other prynce to whom he is subjecte, and not of the kyng of Inglande. And if he be subjecte to an other to whom he oweth faith and ligeaunce, then the lawe accompteth him a

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<sup>207</sup> or else ... the causes] Does not appear in C.

<sup>208</sup> brother] 'birth', D: 23v; C: 31r; M: 34r; Y: 36r.

<sup>209</sup> nor non ... or knowe] 'nor any other way there is by the Lawe to trye or knowe', M: 34r; Y: 36r.

<sup>210</sup> serveth] 'sheweth', R: 15v.

<sup>211</sup> that] 'and', M: 34r; Y: 36v.

<sup>212</sup> might] Interpolated from D: 23v; C: 31v. 'may', M: 34r; Y: 36v.

<sup>213</sup> of the blood of the] Interpolated from D: 23v; C: 31v; M: 34r; Y: 36v.

stranger to the realme, and therefore disablith him to take by discent any inheritance as welll of the Crowne as of other hereditamentes<sup>214</sup>. And touching the firste of these two causes I answere that if any man come into Inglande or be in Inglande and clayme lande certaine it is he had a birthe tyme and [10r] parentes that begate him, and his parentes and his birthe be <the> cause of his being, but the place of his birthe is not a principall cause of his being, but it is an accidentall thing to the<sup>215</sup> birthe. Then if the lande be here in the realme it ministreth occasion to serche the owner. If one come and clayme it, the Jury is bounde to trye whether he be owner and to take knowledge of the circumstances pertainyng to the tittle of the lande, and the Clayme of the partie, and if parte of the circumstances chaunced beyonde the sea they are bounde to take knowledge of it, or else the lawe shoulde be unperfecte and wante tryall in many cases. And therefore if an Englishe man mary an<sup>216</sup> englishe woman beyonde the sea [and]<sup>217</sup> they come into into the Realme & have yssue a sonne here and the man dieth seysed of lande in fee simple & a stranger wrongfully entreth into the lande, and the sonne bryngeth an assize of mortdauncester and xii men be chardged upon the poyntes of the wrytt, one poynte of the wrytt is that they shoulde enquiry whether that he that bringeth the writt be nexte heire to the<sup>218</sup> father, in this case they may and oughte to saye that he is nexte heire to the father. In whiche case he can not be said heire to the father unles he be his sonne lawfully begotten, and he can not be his sonne lawfully begotten unles he were begotten in lawfull matrimony, and there is no lawfull matrimony unles the father & mother of the sonne were maryed together, and unles the Jury may take knowledge of the mariage had beyonde the sea they can not saie he was lawfully begotton, and so of necessitie they muste geve a false verdicte, or else muste take knowledge of the mariage beyonde the seas, and that they may do as of a necessarie circumstaunce pertainyng

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<sup>214</sup> hereditamentes] ‘inheritances’, R: 16r.

<sup>215</sup> the] ‘his’, D: 24r; C: 32r; M: 34v; Y: 37r.

<sup>216</sup> an] Does not appear in M or Y.

<sup>217</sup> and] Interpolated from D: 24r; C: 32r; M: 35r; Y: 37r.

<sup>218</sup> the] ‘his’, M: 35r; Y: 37r.

to their issue. And so thinges beyonde the sea maie be inqyred of and tryed & understode here in Englande. If an<sup>219</sup> merchant maketh promesse to an other beyonde the sea to paye to him a some of money at a daye or to do an other thing, or make a bill beyonde the sea, it is a very Comen case to sue him at London in the Gylde hall or in the kynges benche for his promesse or upon that bill, and if the defendant [doth]<sup>220</sup> pleade to the generall yssye denying the promises or bill, the Jury in Inghland shall trye it and take knowledge of the contracte or bill made beyonde the sea, for the promyse or debte dothe followe his person, and the place of contracting is not the chiffe matter but an accident to the matter. A man brought an action upon the case for that the defendant in consideration the plaintiffe had delyvered here to him in London a certaigne some of money, did promyse at London to delyver to the plaintiff in exchange at a certayne daye a certain some at Antwarpe whiche he did not. The defendant demurred in lawe because the money was to be delyvered beyonde the sea, and it was adjudged that the action was maintainable in Anno 7 Henry 8 the Recorde therof is extante in the kynges benche. And so when parte of the matter beginneth here, & parte is to be don beyonde the Sea, the matter maie be sued for and tryed here. Sir Thomas Hobby<sup>221</sup> the Quenes highnes Ambassador dyed this laste sommer in Fraunce, in this case if a *diem clausit extremum* be awarded into the shyre where his lande is<sup>222</sup>, the Jury muste & oughte to finde his deathe, yea and the day of his deathe, for one poynte of the wrytt is to inqyre what daye he dyed. And if the lawe shoulde restraine them of taking knowledge of his deathe because he dyed out of the realme therof followeth we muste take him still to lyve, and the quene may not have the wardshipp of his sonne, nor his wyffe maie have dower, nor his will can be proved here in Englande, nor his executors meddle with his goodes. And if the deathe of those beyonde the Sea can not be understode in Inghlande, then the children

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<sup>219</sup> an] ‘one’, D: 24r; C: 32v; M: 35v; Y: 37v.

<sup>220</sup> doth] Interpolated from D: 24v; C: 33r. ‘doe’, M: 35v; Y: 38r.

<sup>221</sup> Hobby] ‘Hobson’ in M: 36r.

<sup>222</sup> is] ‘lyeth’, D: 24v; C: 33r; M: 36r; Y: 38v.

<sup>223</sup> that the wyves of suche husbandes have had by their seconde husbandes be all bastardes. But Sir the deathe is the chiffe pointe [10v] and the place where he dyed is but an accidentall thing to the deathe, and therefore it is not the effect but a circumstance whiche maie be understode well ynoughe. <sup>m</sup><p. 19. E. 3><sup>m</sup><sup>224</sup> In a *quare impedit* the avoydaunce was alledged<sup>225</sup> by meanes the laste incumbent was made Bisshop of Urton beyonde the Sea and the declaration alledged that for suche cause in this Court it coulde not be tryed, and the exception was disalowed by judgement. <sup>m</sup><6 R. 2><sup>m</sup><sup>226</sup> And so in anno 6 Richard 2 avoydaunce of churche was alledged in a *quare impedit* by depravation at Rome of a Cardinall last incumbent for heresy, and it was objected it was not tryable here, and that objection was disalowed by Judgement there. And if a man having lande had gone beyonde the sea on pilgrimage and there dyed before his retorne into Inglande in that case there is an assize of mortedansetor framed in the Register, and the wordes of the wrytt be *in quo itinere obiit ut dicitur*, and one pointe of the wrytt is that the Jurye shoulde enquire who is his <next> heire, and that they coulde not do unles they mighte take knowledge that he were deade. <sup>m</sup><18. E. 2. Fitz. t. testam. p. 6><sup>m</sup><sup>227</sup> And executors made by a testament bearing date at Caen in Normandy and proved here in Inglande before the archebisshop of Canterbury did maignteine an action of debte in the Commen place, whiche proveth that knowledge maie be had here of deathe & making of the executors in France. Kyng Edward the therde pretended tittle to the kyngdome of Fraunce because Blanch (as Polidor saithe) his uncle the kyng of france his daughter dyed without yssue, he being her next heire, that is to say her fathers sisters sonne, so

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<sup>223</sup> ‘of those beyond the sea’ struck through in H.

<sup>224</sup> Marginal annotation also found in R, D, M, Y. {Pasch. 19 Edw. III, pl. 27. See *Year Books of the Reign of King Edward the Third: Year XIX*, ed. and trans. Luke Owen Pike. Rolls Series no. 31, part B, vol. 13 (London: His Majesty’s Stationery Office, 1906), pp. 76-79. Seipp Number: 1345.080rs}

<sup>225</sup> alledged] ‘challenged’, D: 25r; C: 32v; M: 36v; Y: 39r.

<sup>226</sup> Marginal annotation also found in R and D. {Mich. 6 Ric. II, pl. 10. See *Year Books of Richard II: 6 Richard II (1382-1383)*, ed. Samuel E. Thorne et al. (Cambridge, MA: Ames Foundation, 1996), pp. 70–71. Seipp Number: 1382.048am}

<sup>227</sup> Marginal annotation also found in R, D, M, Y. {(n.d.) Hen. VI. Seipp Number: 1448.110abr. Fitz. Abr., Testament 6. II: 215r. Fitzherbert wrongly dates the case ‘Trin. 18 Edw. II’}

indeede he was, and where dyed she and her father? Forsothe in France. If he coulde not take knowledge in Inglande of their deathe in France then he did yll to make tyle to that kyngdom for whiche he fought so many blouddy battells, and whiche did coste so many mens lyves. But our lawe is not so defectyve but Jurors before whome witnesses may be sworne maie take knowledge of thinges that witnesses may geve and so deathe in a foreyne realme maie be understode in this realme, in cases bothe of the prynce & his subjectes, and so maie lyffe there. For if a man having a wyffe, and having inheritance sell his inheritance, and goeth beyonde the sea leaving his wyffe here and she bringeth a writt of dowre supposing her husbnde to be deade, & he in dede is in lyffe, that maie be pleaded in Barr of her dowre by him that boughte the lande and shalbe tryed here. And as lyffe & deathe in a forreyne Realme may be understode here, so maie birthe in a forreine realme be understood in this realme. <sup>m</sup><M. 1. R. 3. f. 4><sup>m</sup><sup>228</sup> For the commen lawe is and before the Statute of 25 of the raigne of kyng Edwarde the therde, in whiche the statute *de natis in partibus ultra mare* was made alweis was & so thought Hussey chiffe Justice of Inglande that those children that were borne beyonde the sea of englishe father & mother whiche were of the faithe of the kyng of Inglande shoulde inherite landes in Inglande by discente. And if they oughte to inherit landes in Englande by the Commen lawe, therof dothe it followe that their birth maie be knowne & tryed in Englande, for if the Commen lawe be, and before the said statute was that they shoulde inherit in Englande then there<sup>229</sup> followeth that there is some way in lawe to trye whose children they were. For if there were no way in lawe to try it, then were it not lawe at all but it is tryable in all issues by a Jury of that shire where the lande lyeth. For if suche a sonne and his father come into Englande after his birthe and his father dyeth seased of lande in fee, a stranger wrongfully entreth, the sonne bringeth an assize of mortdancestor against the stranger, one poynte of whiche wrytt is that the Jury shall inquire who

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<sup>228</sup> Marginal annotation also found in D, M, Y. {**Mich. 1 Ric. III, pl. 7, f. 4a. Seipp Number: 1483.039**}

<sup>229</sup> there] 'it', D: 25v; C: 35r; M: 38r; Y: 40v.

is heire to the father, and in this case the Jury is bounde to fynde the said sonne borne beyonde the sea to be heire. For if the Commen lawe were ever so as Hussey the Chiffe Justice saith it was and that the said statute is made but in affirmance of the Commen lawe that was before, then that sonne muste have the benefit of the Commen law and that he can not have unles the Jury maie yea & were bounde to take knowledge that he is heire, & that can they not do unles they take knowledge of his <sup>i</sup><birthe><sup>i</sup> whiche was beyonde the sea. And so herby we see that birthe beyonde the sea in case of discentes of subjectes maie be understood [11r] here in Englande, and our lawe forceth inquestes of Inglande to trye it , and no inconvenience sithence witnesses that were present at the birthe may be broughte to instructe the jurye, whiche jury are bounden to harken to witnesses upon payne of Atteinte. And if the king of this realme have children borne beyonde the sea, they by the Commen lawe were<sup>230</sup> inheritable within the realme. And so is it declared by the [said]<sup>231</sup> Statute of kyng Edward 3 and the lawe was so upon this reason, that the children of kynges can not be intended but to be of the faith and ligiaunce of their father and not strangers to him: for nature suffereth it not, and their father is of non others ligeance, nor oweth ligeance to none other superior in earthe, the childe therefore can not be intended to be of the ligeance or faythe of any other then of his owne father to whom and to whose obedience nature hath conjoynd him. Nowe if a man shoulde strayte us as to take knowledge of no birthe beyonde the sea, then we can not knowe that these be the kynges children because their birth was beyonde the sea, and the Realme could not knowe that John of Gaunte who was borne at the City of Gaunte & not in Inglande was sonne to the same kyng Edward the therde. But birth beyond the sea as well of subjectes children as of the kynges maye well be understode in Englande. And of these precedentes we maie see that mariages beyonde the sea, Contractes beyonde the sea, death beyonde the sea, lyffe beyonde the sea, [and]<sup>232</sup> birthe

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<sup>230</sup> were] 'are', D: 26r; C: 35v; M: 38v; Y: 41r.

<sup>231</sup> said] Interpolated from D: 26r; C: 35v; M: 38v; Y: 41r.

<sup>232</sup> and] Interpolated from D: 26v; C: 36v; Y: 41v.

beyonde the sea, yea and many other thinges innumerable chancing beyonde the sea<sup>233</sup> maie be tryed and understode in Englande. And therefore I conclude that the objection for wante of tryall and<sup>234</sup> knowledge that the frenche borne and his father can not be knowen and understanded [by the Lawes of this Realme]<sup>235</sup> to be discended of the bloude royall is of no force, but is an objection voyde of trueth & not warranted by lawe. And I denye that forreyne birthe in any case is grounded upon the reason that it can not be tryed or understode in Englande, but it is upon an other reason shewed nexte after. And so I ende<sup>236</sup> that the Frenche man in this case ought to have the Crowne of England notwithstanding this cause.

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<sup>233</sup> Contractes beyonde ... the sea] Does not appear in M.

<sup>234</sup> and] 'or', D: 26v; C: 36v; M: 39r; Y: 41v.

<sup>235</sup> by the ... this Realme] Interpolated from D: 26v; C: 36v; M: 39r; Y: 41v.

<sup>236</sup> ende] 'conclude', M: 39v; Y: 42r.

The seconde objection to wete, borne in the ligeans of others is allowed emongste inferiour persons to the Crowne, who shall be accompted so borne, and who not. The exposition of the acte of Anno 25 Edward 3, and of prerogativa reges cap. 12. Howe farr aliens mai be disabled, & the reason why they be disabled whiche can not take place in the Crowne.

Cap. 8.

As touching the seconde cause, because this father and mother of this Frenche man were borne in Fraunce and lyved as subjectes to the frenche kyng, therefore I accompte them of the faithe of the Frenche kyng, and as his subjectes and of his ligeaunce and therefore disabled in Englande as aliens, and that no pryvate inheritance shall discende to him from any auncestor either of his grandmothers syde, that is [to say]<sup>237</sup> of the wyffe of the seconde brother, or of any other pryvate auncestor, but the same shall go and discende as it shoulde do if his grandfather and grandmother had dyed he not being borne. But if an englishe man go over into France by lycense of the king as [an]<sup>238</sup> Embassadour, or [as]<sup>239</sup> a merchant for merchandise or as a scholar, or as a souldiar of the kynges of englande, and in [this]<sup>240</sup> his abode there he hath a childe by his wyffe, this childe is a subjecte to the kyng of Inglande and inheritable in Inglande, & is not accounted<sup>241</sup> by our lawe a subjecte to the frenche kyng, because his father meant to retorne againe into Inglande, for the cause of his going was for necessary causes to Inglande, and doth not estrange himselffe from Inglande, but affirmeth [**11v**] him to continue an englishe man in acte and in intente, and therefore the childe whome nature hathe conjoynd and appropriate<sup>242</sup> to the father and to be broughte up by him, muste nedes be estemed in lawe, and in all reason of

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<sup>237</sup> to say] Interpolated from D: 27r; C: 37r; M: 40r; Y: 42v.

<sup>238</sup> an] Interpolated from D: 27r; C: 37v; M: 40r; Y: 42v.

<sup>239</sup> as] Interpolated from D: 27r; C: 37v; M: 40r; Y: 42v.

<sup>240</sup> this] Interpolated from D: 27r; C: 37v; M: 40r; Y: 42v.

<sup>241</sup> accounted] ‘accompted’, R: 18v; D: 27r; M: 40r; Y: 42v.

<sup>242</sup> appropriate] ‘propriety’, M: 40v; Y: 43r.

the state [of the]<sup>243</sup> faith and ligeance of his father. And that may so appere evidently by the said statute or treatise called *statutum de natis ultra mare* made in the xxvth yere of king Edward the therde, whiche treatise in the beginning sayth the kyng by the assent of the prelates, earles, barons and others greate [men]<sup>244</sup>, and all the commens of the realme at the parliament somoned hathe ordeigned and established the thinges under wrytten, that is to saie, because some people stode in doubte whether children borne beyonde the sea oute of the ligeance of Inglande whiche is as muche to saie as in countreys that be not belonging<sup>245</sup> to the Crowne of Inglande, shoulde be able to demande inheritance within the kynges ligeance, that is to saie within countreys that belong to the Crowne of Inglande. The kyng willing that all dowbtes were taken awaye, and the lawe<sup>246</sup> in that case put in certaine, gave chardge to the prelates, Earles & Barons and other wyse men of his counseill assembled at the parliament to make delyberation upon this poynt whiche of one assent have said that the lawe of the Crowne of England is and always hathe ben suche that the Children of the kynges of Inglande in whatsoever place they have ben borne in Englande or elsewhere be able and ought to inherite after the deathe of their auncestors. Whiche lawe the king, the said prelates earles, barons and other greate [men]<sup>247</sup> and all the comens assembled in the parliament did approve and affirme for ever. And in righte of other children borne out of the ligeance of englande in the kynges tymes they be agreed that Henry sonne of John Beaumonde, Elizabeth daughter of Guye Bryan , and John sonne of Rauffe Dawberry, & others that the kyng will name whiche were borne beyonde the sea out of the ligeance of Inglande be from henceforth able to enioy & have their inheritance<sup>248</sup> after the deathe of their ancestors in all partes within the kinges ligeance of Inglande. And that all

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<sup>243</sup> the] Interpolated from M: 40v; Y: 44r.

<sup>244</sup> men] Interpolated from D: 27v; C: 37v; M: 40v; Y: 43r.

<sup>245</sup> be not belonging] ‘belong not’, M: 40v; Y: 43r.

<sup>246</sup> In M, the rest of part I, chapter 8 of Plowden’s *Treatise* continues at f. 49r. A marginal note at f. 41r instructs the reader to skip forward to this point: ‘*Vide pag. 49*’. Folios 41r-48v contain text from part two of the *Treatise*. This error is discussed in the editorial introduction.

<sup>247</sup> men] Interpolated from D: 28r; C: 38r; M: 49r; Y: 43v.

<sup>248</sup> inheritance] ‘heritage’, M: 49r; Y: 44r.

children inheritable that sholde be from henceforth borne out of the lygeance of the kyng (the father and mother of whiche children at the tyme of their birthe should be of the faithe and ligeance of the kyng of Englande) should have and enjoy the same benefitt and advantage to have their heritage within the same ligeaunce as other inheritors afforesaid in tyme to come &c. In all whiche pointes and in the certificat of Bastardy after mentioned there is noe newe thing enacted for the lawe was so before in everie of these poyntes. And therefore three thinges there are to be noted. The first is the leter dothe recyte that there was dowte before whether the borne beyonde the sea shoulde inherit here by the Comen lawe or not. The seconde is for deliberation what the comen lawe was before in the poynt, the kyng referred it to his counsell to be discussed and not to make a newe lawe, for the Counsell coulde not make newe lawes, nor it was not mete<sup>249</sup> to be referred unto them to be don. The therde is their declaration, for the letter is they of one assent said touching the kinges children as before, whiche declaration the king, the prelates, the Lordes and comens did approve and affirme for ever, and some of the parlaiment that were of the Counsell did declare. And the kyng and all the Lordes & commens did approve and affirme, and so we see it is approved by more then were the delyberators, to wete by the Comens whiche worde comens dothe overthrowe the sense that some make, whiche woulde that the wordes before of the chardge to the prelates earles and Barons & other wyse<sup>250</sup> men of his counsell sholde comprehende all the whole parliament, as well comens as the other whiche is not [12r] so. For in that the wordes be, that the prelates, earles, barons and others greate<sup>251</sup> and all the Comens did approve: therein muste be confessed that the prelates, earles and barons and others greate<sup>252</sup> had suffysed to have comprehended the Counsell and the others appointed to be delyberators without namyng comens. But the worde comens here sheweth the comens were not comprehended in the worde wyse men of the counsell. And touching the second clause, of them

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<sup>249</sup> nor it was not mete] ‘nor was it mete’, R: 19r.

<sup>250</sup> wyse] ‘great’, M: 50r; Y: 45r.

<sup>251</sup> others greate] ‘other great men’, D: 28v; C: 39v; M: 50r; Y: 45r.

<sup>252</sup> others greate] ‘other great men’, D: 28v; C: 39v; M: 50r; Y: 45r.

then before borne out of the kynges ligeance the wordes be in Frenche [*sz*]<sup>253</sup> *sont ils unement accordes*, and maie be englisshed thus, they were all agreed together and agreed in one that Henry &c, but herof some make a dowte to whom these wordes (*ils*) and in englishe (they) shall be referred, that is to saye whether to the delyberators, or to the king Lordes & comens that be enactors. For if it be referred to the deliberators, then it is not nor can not be but a declaration of the lawe that was before. And if it be referred to the others that be enactors, then saie some it maie be a newe lawe made by the acte. To that I saie the worde (they) oughte to be referred to the delyberators for two causes. The firste is because (as the preamble sheweth) the doubte was of all infantes borne beyonde the sea out of the ligeance of Englande, and the kyng willing that the lawe in this case were declared & putt in certainty did chardge his said counsell assembled in that parliament to have delyberation in that pointe. And they declared the lawe for the kinges children to be as afforesaid and sithence they were charged to have delyberation what the lawe was for all children if they shoulde make declaration<sup>254</sup> but of the kynges children only, then they had not executed all that was comytted to them. And it is not lyke they woulde be, nor it is not mete to thinke them so careles or necligent, therefore the sense woulde be drawne to performe<sup>255</sup> that whiche is convenient. And if the worde (they) be referred to them, then they have made declaration of the whole comytted to them: and so it is mete to take it, and [*so*]<sup>256</sup> for that cause (they) shall be referred to the deliberators, and not to the enactors. The seconde cause is, for that the wordes be, *ils sont unement accordes* whiche is they be agreed together, or agreed in one, whiche wordes be apte to answeere to the question what the lawe was, or for a resolution<sup>257</sup> or declaration of a doubte, but not newlye to enacte a thing, for then they should have had there wordes apte therunto, as be it enacted, or other lyke. For whiche cause the worde (they) semeth to be referred

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<sup>253</sup> *sz*] Interpolated from D: 28v; C: 39v; M: 50v; Y: 45r.

<sup>254</sup> declaration] ‘deliberation’, R: 19v.

<sup>255</sup> performe] ‘presume’, R: 19v; C: 40r.

<sup>256</sup> *so*] Interpolated from D: 29r; C: 40r; M: 51r; Y: 46r.

<sup>257</sup> resolution] ‘solution’, D: 29r; C: 40r; M: 51r; Y: 46r.

to the delyberators only, in whiche case it muste of necessitie followe consequently that their declaration can be but only to tell what the comen lawe was. But sir if the worde (they) shoulde be referred to the enactors yet surely that accorde or agreement by them can be but a declaration or affirmation of the comen lawe, and that for three causes. Firste for that<sup>258</sup> the preamble saithe, some men did doubte what the comen lawe was, the matters<sup>259</sup> saie they be agreed or accorded that suche and suche <persons> borne out of the lygeance shall inherite, that can be but an answer to the preamble touching the doubte before. For it is a principle in exposition of Statutes that if the statute in the premable sheweth doubte to be before either in comen lawe or in some statute and after dothe enacte that from henceforth this it shall be, that in that case, it shall be taken that the lawe or statute doubted of, was so to be taken before, for it may not be that<sup>260</sup> they have ordeyned it otherwise then the lawe was before, for that were not the office of expositors of doubttes. Secondly it is to be noted that in this pointe there is no worde of enacting here used, but the wordes are they be accorded or agreed in one, whiche be no so apte wordes of newe inacting as they be of declaration as afforesaid. Therdly if it shalbe taken to be a newe acte, and otherwise then the comen lawe was before, then the parliament mighte be said to do wrong, for in making Henry Beaumonde and the other two inheritable to their auncestors inheritance, therby toke they away the tytle that others had to be heirs by the comen lawe, whiche is a playne injury to them, and that is not mete to conceive of them of the parliament. For whiche three causes if the worde (they) be referred to the <said> enactors [yet]<sup>261</sup> their said agreement is no newe acte but a declaration [12v] of the comen lawe, and so is all the residue of the acte that cometh after. And whye did they declare that those three there recyted that is to saie Henry sonne of Beaumonde and Elizabeth doughter of Bryan, and John sonne of Dawbeney whoe<sup>262</sup>

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<sup>258</sup> that] ‘when’, D: 29r; C: 40v; M: 51v; Y: 46r.

<sup>259</sup> matters] ‘enactors’, D: 29r; C: 40v; M: 51v; Y: 46r.

<sup>260</sup> that] ‘thought’, D: 29v; C: 40v; M: 51v; Y: 46v.

<sup>261</sup> yet] Interpolated from D: 29v; C: 41r; M: 52r; Y: 47r.

<sup>262</sup> whoe] ‘which’, D: 29v; C: 41r; M: 52r; Y: 47r.

were borne in contreys out of the kinges ligeaunce shoulde be inheritable in England? Mary sir the cause was because the parentes of these three weare beyonde the sea in the kinges affaires at the tyme of the birthe of their said childen. And so althoughe their parentes at the tymes of their birthes were in contreis out of the kinges ligeaunce, yet they themselves were [then]<sup>263</sup> of the kynges ligeaunce, and therefore they declared the lawe therin rightly. And whye did they declare that those that the king would after name whiche were borne beyonde the sea were inhabled to inherite in englande? Was it meante [therby]<sup>264</sup> that the kyng shoulde have power geven him newly to inable those aliens borne oute of the realme whiche were before disabled? No forsothe that is not meante by those wordes for then there shoulde have ben wordes of enacting, & not of declaration of the kinges counsell but sir there were many children of Englishe men borne beyonde the sea and the parentes of some of the children at the tyme of their birthes were of the faith and ligeaunce of the frenche kyng or of <some> other prynces & some of their parentes were in those contreys by the kynges apointment occupied in his affaires or in busines of the realme, and because the counsell knewe them not all certainly at that tyme, nor more of them then the said three before recyted therefore they meant that the king should make declaration after of suche as he had sent beyonde the seas, or were there occupied in the affaires of him or of the realme at the tyme of the birth of their children there. And suche they declared to be inheritable in Inglande, and rightly, because their parentes at the tyme of their birth were of the faith and ligeaunce of the king of Inglande althoughe they were in contreys out of the faith and ligeance of the kinges of England. And so that declaration of suche as the kyng shoulde name (for they meante not nor it is to be thoughte he woulde name others for that were verie dishonorable, and not mete to be thoughte of the kyng, nor that power of namyng extended but only of suche as were borne in his tyme and not before. For he well mighte have knowledge whether sytehns the firste daye of his raigne their parentes were occupied in his affaires or

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<sup>263</sup> then] Interpolated from D: 29v; C: 41v; M: 52v; Y: 47r.

<sup>264</sup> therby] Interpolated from D: 29v; C: 41v; M: 52v; Y: 47v.

busines of the realme)<sup>265</sup> was agreable to the Comen lawe whiche was so before as in these cases before even as Hussey chiffe Justice said, and as this treatise or acte declareth and not enacteth. In whiche case we see that the kynges sonnes have no more preeminence then other persons have. But the reason in bothe the cases is that the childe shoulde be taken to be of the alligeance and faith of his father. And therefore if one of the kynges sonnes have issue beyonde the sea the same issue is inheritable here in Inglande because his father was of the faithe of the kinge of England and he shalbe taken in lawe of the faithe his father was of. And therfore where Lyonell therde sonne of kyng Edward the therde toke to his seconde wyfe *Jolantis* sister to *John Galeatius* firste Duke of Millane and married her at Myllane in Italye, and in comyng hooome with his wyffe dyed by the waye as Polidore wryteth, if he had [had]<sup>266</sup> by the same wyffe any issue whiche had ben borne at Millaine or elsewhere beyonde the sea as in dede he had not, I thinke no man wolde have denyed but that this childe shoulde have ben taken in lawe of the faith and lygeance his father was of and inheritable in Inglande. For his being <borne> beyonde the sea for this necessary purpose did not alienate him from his fathers ligeance and faith, and then his issue shoulde [13r] have ben adjudged of suche ligeance and faithe his father was of. Some there be that saie (for marveilous searching there is of the sense of this acte or treatise & marveilous expositions made therupon) that the said Henry sonne of John Beamonde named in the said treatise was made inheritable upon an other grounde: for they saie that the said Henry Beamonde was discended lynially of Edmunde earle of Lancaster seconde sonne of kyng Edward<sup>267</sup> the therde and younger brother of king Edwarde the firste, and because by the said statute or treatyse touching the disabilitie<sup>268</sup> of the kynges children it is declared that the kinges children termed in Frenche *les infants des roys* be inabled to inherite, and therefore goeth not to childrens children, nor to any degree further then to children only, and Henrie discended of the king was

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<sup>265</sup> (for they... the realme)] Does not appear in parentheses in any other witnesses.

<sup>266</sup> had] Interpolated from D: 30v; C: 42v; M: 53v; Y: 48v.

<sup>267</sup> Edward] 'Henry', D: 30v; C: 43r; M: 54r; Y: 49r.

<sup>268</sup> disabilitie] 'abilitie', D: 30v; C: 43r; M: 54r; Y: 49r.

of further degree then a childe to the kyng, that for that cause it was provyded of necessitie that he by name shoulde be inheritable as not comprehended in the terme of *Infantz les royes*. To this I saie it is a vayne thing to stande upon the terme of *infantz les royes* in this case or to serche what is comprehended within the terme and what without because it is no statute at all, and therefore the wordes be not to be pinched at as the wordes of a statute, nor it is not to be gathered that because this or that is not in the wordes, therefore this or that is lawe or is not lawe, but loke what was lawe before is lawe in that poynte sithens and what was not lawe before is not lawe sithens, and so no regarde is to be taken to the wordes (*infantes des royes*) but further I saie, as in this treatise I fully confesse that they discended of the king of Englande may become of others ligeance, and be mere aliens and utterly disabled to receive pryvate inheritance by the Judgement of the lawe of this realme. And to the ende of our question in contraversie<sup>269</sup> it is neither off nor on<sup>270</sup> as I shall after make it most manifest. But sir if I shoulde admitt this treatise to be a newe Statute, yet I can not assent that Henry Beamonde was inabled for the said cause objected, for then I crave of him that so objecteth the cause why Elizabeth Bryan and John Dawbeny were inabled? Were they also discended of the<sup>271</sup> kynges of this realme? Forsoathe no, for I do not finde they were. Then I saie loke what cause was of their abilitie, the same I take to be of Henry Beamonde, and the same of those whiche the kyng shoulde name. And so I make an ende of that treatyse made in the xxvth yere of kyng Edward the therde, affirming the same to be non acte in any one poynte, but in every poynte an affirmation of the Comen lawe before, and that the wordes of ordeigning and establishing that be before the preamble be but a confirmation of that alledged in the acte or treatise after, whiche was before lawe, and so may be taken by the same to be the Comen lawe. But the said treatise sheweth [to]<sup>272</sup> us two degrees of men discended of englishe bloude borne beyonde the sea out of the kynges dominions, the one

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<sup>269</sup> contraversie] ‘variance’, M: 54v; Y: 50r.

<sup>270</sup> neither off nor on] ‘not materiall’, D: 31r; C: 43v; M: 55r; Y: 50r.

<sup>271</sup> the] ‘anie’, D: 31r; C: 43v.

<sup>272</sup> to] Interpolated from \*.

inheritable by the Comen lawe within the realme the other not inheritable (for suche as the kyng shoulde not name seame to be taken by the acte or treatise for mere aliens not inheritable) by the comen lawe. And in dede there be dyvers factes that maie make those discended of englishe bloude to be out of the kynges ligeance, as if one borne in England be made denizon in France. For everie one that is made denizen in an other realme dothe therby two things: one is he dothe therby renounce the ligeance of his owne prynce: the seconde is he submitteth himselffe to the newe princes faithe and becometh his subject & inferior and alloweth the newe kyng his soveraigne Lord and superior. And that is the cause that no king of a free Realme can be made a denizen in this realme, nor our kyng or Soveraigne can be made denyzen in any other Realme or dominion. And therefore they that elsewhere be made denizens cesse therby to be of the ligeance of our kyng, & therefore their [13v] issues be not inheritable. So they that departe without license & inhabite themselves in other realmes with mynde never to retorne, and during that tyme have children beyonde the sea, these children be not inheritable in Englande. And herupon I conclude that this Frencheman borne in France sonne of one borne in France<sup>273</sup>, and there inhabited & staing for no necessarye busines of the prince or the realme, but with mynde of continuance and following the lygeance of the ffrench kyng as other his subjectes do, is by the lawe disabled & not inheritable in englande. And upon that cause was the seconde pointe in the acte of *prerogativa regis. cap. 12.* made and partlye the firste also. For the frenche kyng had entred into Normandy, and by violence and conqueste toke it from kyng John, and many of the subjectes of king John who had lande in Inglande and Normandy also did still abyde & continue in Normandy and kepte still their landes there, and became subjectes to the frenche kyng, and for as muche as that was an adherencye to the kynges enemy & so highe treason, and they coulde not be gotten into englande to be atteinted<sup>274</sup>, therefore the king seysed their lande in Inglande. And to have them upon a clere tyle to him and his heires was the statute made to geve to the king the escheate of

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<sup>273</sup> sonne of one born in France] Does not appear in R.

<sup>274</sup> atteinted] 'arrayned', D: 32r; C: 44v; M: 56v; Y: 50v.

them, and the wordes be *Rex habebit escaetas de terris Normanorum cuiuscumque feodi fuerint*, and in dede that braunche had some reason, because adhering to the kinges enemy was treason, [and they could not be had heere to answeare the treason]<sup>275</sup> and therefore it was reason the kyng shoulde have a statute to geve him lyke benefit by their absence, as he might have by their atteinder if they had ben present.<sup>276</sup> And therefore the eschaete was geven to the king *cuiuscumque feodi fuerint*. But there was lesse reason in the seconde poynte of that whiche taketh away from the englishe men the landes upon discent where the normanes were nexte of bloude. But there was lesse reason in the seconde poynte of that whiche taketh away from the englishe men the landes upon discent where the normanes were nexte of bloude. But after the Conqueste of the Frenche kyng of Normandy and before the xviith yere of kyng Edwarde the seconde in whiche yere this statute was made there were many yeres run and paste, in whiche tyme by reason that the Normans and englishe men had married together whylste bothe the realmes<sup>277</sup> were in handes of the kynges of Englande, there were many discentes of inheritences in englande to whiche Normans were nexte of bloude but because they and their auncestors had continued in the lygeance of the frenche king sithens the tyme of King John therefore they were disabled to take by those discentes. And therefore the nexte of bloude in Englande oughte to have taken by those discentes, and to take it from them & to conveie it to the kyng was the seconde poynte of the statute made, the wordes wherof are *Et hoc similiter est intelligendum si aliqua hereditas descendat alicui natio in partibus transmarinis et cuius antecessores fuerint ad fidem regis franciae de tempore regis Johannis et non ad fidem regis Angliae*. And so hereby he taketh not the discentes from the normanes for by the lawe they weare disabled but in dede from the englishe, and yet to saie truthe there is some sparcke<sup>278</sup> of *i<reason>*<sup>279</sup> in it, sithens their auncestors that were in Normandy were once

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<sup>275</sup> and they ... the treason] Interpolated from D: 32r; C: 45r; M: 56v; Y: 50v.

<sup>276</sup> 'But there was lesse reason' struck through in H.

<sup>277</sup> realmes] 'dominions', D: 32v; C: 45r; M: 57r; Y: 51r.

<sup>278</sup> sparcke] 'sparkell', D: 32v; C: 45r; M: 57r; Y: 51v.

<sup>279</sup> reason] Repeated in the right-hand margin of H alongside the interlinear emendation.

adherent to the enemy of kyng John. In whiche case if they mighte have ben had here and atteinted, then the bloude had ben corrupted, and then it shoulde not at all have discended [at all]<sup>280</sup> to englishe men but escheate, and so the lesse hurte is don herby to the heires. But the entente of the makers of this acte appeareth to have ben that suche Normanes as had ben at the faith of the french kyng were by comen lawe disabled to receive the lande by discent, and so non injury towardses them in making of the lawe. And herupon and upon the premisses I conclude that this frenche borne discended of the seconde brother & sonne of one borne in France, and there inhabiting and staying for no necessary busines of the prince or of the realme, but with mynde [14r] of continuance there and yelding him to the ligeaunce of the frenche kyng as other his subjectes do is for that cause, & not for that it can not be tryed that he is discended of the bloude royall utterly disabled and adjudged as an alien & not capable to his owne use of any pryvate inheritance in england by discent or purchase. Then will it be answered why is he not lykewise disabled to receive the Crowne? To that I answer that he is not disabled therto, for that lawe of disabilitye of<sup>281</sup> foreyne birthe is a lawe only to inferiors to the crowne and not the Crowne it selffe. And for the more full intelligence therof I will open howe farr foreyne birthe in others ligeance shall disable persons. And I will also shewe the reasons of the lawe in that pointe, whiche shall shewe itselfe manifestly not to extende to the Crowne. Firste because our Realme hath nede of foreyne Comodities and other Realmes have nede of ours, therefore the founders of our lawe at the beginning did allowe merchandes forreine borne to come into this realme and to bryng into the same their comodities nedeful to us, and for the same to receive suche thinges of us as this realme yeldeth and maie be spared, and as be comodious to them. And therefore have imparted with them so far forthe the benefit of our lawes, so as they maie contracte for goodes and chattells movable. For the merchandes withoute cloathes to defende their bodies from the Colde and heate can not endure, without horses they can not travell conveniently, and without

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<sup>280</sup> at all] Interpolated from D: 32v; C: 45v; M: 57v; Y: 51v.

<sup>281</sup> of] 'by', D: 33r; C: 46r; M: 58r; Y: 52r.

money to pay for meate and drynke and their merchandises they can not be susteigned, and without a house to lye in and kepe their wares, they nor ther goodes can be preserved. And all this were to no purpose unles their boydes were defended from beating wounding and other violation. And therefore all foreine borne that be not under the ligeaunce of any that is enemy to the realme are inabled to contracte for all goodes and chattells movable, to sue in any of the kinges Courtes here any person for assaultes, beating wounding or any other misdemeanor don to their bodyes, or for taking of their goodes wares or marchandise, or for not paiment of any debte, or performing of any contracte, and generally for or conceaving<sup>282</sup> any matter or cause touching any goodes or chattells movable or for entring into his shoppes or house whiche he hathe or holdeth for yere or lesse tyme. [<sup>m</sup><*vide h. 32. H. 6. fo. 27*><sup>m</sup>]<sup>283</sup> But to take a house for lyffe and retaigne it to his owne use he can not by the oppinion of dyvers, for then he sholde have therin an estate of freholde, whiche the lawe judgeth to be greater then a traveller or passenger nedeth, [and for these suites aforesaid he shall not be disabled]<sup>284</sup> but daily experience teacheth us that they may and do prosecute suche suites. And herin Lyttelton in his boke muste be favourably expounded or else he maie not escape reprehension for he wryteth generally that if an alien borne out of the kynges ligeance will sue an action reall or personall that the tenant or defendand maie saie that he was borne in suche a contrey whiche is oute of the ligeance of the kyng and demande [judgement]<sup>285</sup> if he shall be answered. But you muste intende Lytleton to meane that if he sue any personall action for lande, or an action of trespass or suche lyke for offence in lande, that then he shall be disabled [and so indeed he shall. But yf his action personall be for goodes or chattles, then he shall not be disabled]<sup>286</sup> as afforesaid. And so the founders of our lawe have geven abilitie to strangers borne as farr as necessitie or reason requyreth. And if

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<sup>282</sup> conceaving] ‘concerning’, D: 33v; C: 47r; M: 58v; Y: 53r.

<sup>283</sup> Marginal annotation interpolated from D: 33v; M: 59r; Y: 53r. **{Hil. 32 Hen. VI, pl. 5, f. 23b. Seipp Number: 1454.005}**

<sup>284</sup> and for ... be disabled] Interpolated from D: 33v; C: 47r; M: 59r; Y: 53r.

<sup>285</sup> judgement] Interpolated from D: 33v; C: 47r; M: 59r; Y: 53v.

<sup>286</sup> and so ... be disabled] Interpolated from D: 34r; C: 47r; M: 59v; Y: 53v.

they shoulde be slayne or murdered here, the sleiours or murderers shoulde be indicted and arraigned and putt to deathe for killing of them at the kinges suite as they shoulde for killing of his subjectes. But as touching any manors, landes, tenementes or any hereditamentes here in Englande, all strangers borne that be of the ligeance of any other prince be utterly disabled by our lawe to receive and have to their owne use estate of inheritance or for lyffe or for yeres or otherwise [14v] in the same. And the reason and cause therof I thinke most necessary to open, for *Ratio legis est anima legis*, and he that understandeth the wordes of the lawe, & understandith not the reason of the lawe dothe not understande the lawe perfectly. And the reason why the lawes of the<sup>287</sup> realme do disable others subjectes to have or retaigne any landes or inheritance in this realme is for the streingthening of this realme and for the eschewing the occacions of enfeabling the same. For if subjectes of other princes as for example if the subjectes of the frenche king mighte be permitted to have or purchase xx acres in this lande, the same reason woulde serve<sup>288</sup> they might purchase and have 100 yea a thousande and so xx thousand and as they mighte purchase and have one hundred pounde lande by yere, so mighte they purchase or have a thousand pounde lande by yere and so xx thousand pounde lande by yere, and by that reason also they mighte have havens and porte townes of this realme, & should have many tenants and greate streingthe in this Realme. And by this meanes the revenues of the lande of this realme shoulde be conveyed out of this realme to the maintenance of the Subjectes of the Frenche kyng, and the Frenche king should be streingthened therby and this realme enfeabled. And if the frenche king were disposed to make invasion into this realme, he might perchance have ready havens of suche his subjectes he bringeth with him, and many men here tenants of the said possessions that woulde be ready to ayde their landlordes and their prince to whom their landlordes owe faythe & ligeance, and so by these meanes the realme shoulde be weakened & others made <more> stronge. And to avoyde this inconvenience the lawe hathe utterly disabled

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<sup>287</sup> the] 'this' \*

<sup>288</sup> serve] 'show', R: 23r.

all forreine borne and of the faithe of other prynces to have to their owne use any lande in England by discent purchase or otherwise and so I conclude the reason of the lawe to be, and the lawe to extende only to that ende to avoyde the decaye of this realme & strengthing of others by the hereditamentes of this realme or by the revenues of the same. And if that be the reason and cause of the lawe & non other, then lett us examyne the case of this frenche borne discended of the bloude royall of Inglande. If he be our king then muste he come [home]<sup>289</sup> to us in Inglande for here is his principall seate<sup>290</sup>, here he oughte to be resident, here is the exercyse of his royall function, here be his revenues and here he oughte to expende the same, and if he have any revenues in France, he bringeth them hither, he infeeblith france herby and not England. And so we see that the Lawe of disabilitie by foreine birthe can not take place in this case but lacketh utterly his effecte and reason, and is therefore no lawe in this case. And so I conclude that the lawe or maxime of forreyne birthe taketh no place in this case of the Crowne. And where is there any other lawe to disable the Frenche man? Further it is to be considered that no alien is disabled to purchase landes in the realme, but to retaine that purchase he is disabled. <sup>m</sup>< 14. b. 4><sup>m</sup><sup>291</sup> And therefore Hanckforde said truely that if an aliene purchase landes it shall be seased into the kinges handes *quod curia consessit*. If that be the payne, that can not be had againste the king if he being an alien purchase or atteine lande, for there is none to enter upon him, and so the case of the subjecte Alien, and the king alien differ.

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<sup>289</sup> home] Interpolated from D: 34v; C: 48v; M: 60v; Y: 55r.

<sup>290</sup> principall seate] ‘princely seate’, M: 60v; Y: 55r.

<sup>291</sup> Marginal annotation also found in R. The same citation is embedded within the body of text in D, C, M, and Y. {Hil. 14 Hen. IV, pl. 23, ff. 19b-20a. Seipp Number: 1413.023}

The ligeance of the naturall bodye after one is kyng is discharged againste him to whom the naturall body did owe lygeance before.

Cap. 9.

But here perhaps there will be an objection of greate force (as it semeth) made againste me, and perchance it will be said by myn owne affirmance: for firste I have affirmed that this Frenchman borne was a subjecte and [15r] of the faithe and ligeance of the frenche king, and then what acte is there wroughte why he shoulde be discharged of his ligeance towarde the <same> Frenche kyng, and whye shoulde the Frenche king lose his interest in him? If he remaine still subjecte to the Frenche kyng and of his faithe and ligeance, then it will perchance be said that he is more strongly disabled to receive the kyngdome of Englande then he was to receive any pece of lande, or any manor, or towne of englande by discent or purchase. For if this frenche borne be subjecte to the frenche kyng, and we subjecte to the Frenche borne, by this meane all this realme is made subjecte to the Frenche kyng, which were an inconvenience intollorable. Sir herunto I answer that this Frenche borne (if you respecte his naturall body alone) is indeed, and so by me before confessed a subjecte of the frenche kyng, and of his faithe and ligeance: but by the discente of the body politicke of the kyng of Englande to his naturall body, the naturall body is magnified and extolled by the sublimitie of his<sup>292</sup> estate Royall above his former degree: and by this consolidation with his<sup>293</sup> other bodye conteigning the dignitie royall is altered in qualytie and discharged by reason of his highe function of all duety due to<sup>294</sup> his naturall body in respecte of his former ligeance to the Frenche kyng, and of his subjecte he is made his brother, and of his vassall, his compaignion. For nedes muste the naturall body rule the body politicke, <and drawe the effectes therof to him> and beare the preeminence: or else muste the body politicke rule the

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<sup>292</sup> his estate] 'the State', D: 35v; C: 49v; M: 62r; Y: 56v.

<sup>293</sup> his] 'the' D: 35v; C: 49v; M: 62r; Y: 56v.

<sup>294</sup> to] 'by', D: 35v; C: 49v; M: 62r; Y: 56v.

body naturall <and drawe the effectes therof to him> and have the superioritie. And sithens highe estate maketh every body naturall of higher pryce then it was before, as the estate of a Bisshopp or archbisshopp maketh the person naturall more reverende, and the estate of an earle, or a duke maketh it more honorable, so muste the estate of a kyng extoll the body naturall to a higher renowne. For a kyng is the name of an office under god constituted for direction of the people, and where<sup>295</sup> he is officer under god for the governance of the people of a realme free from the Frenche Jurisdiction if the naturall body by reason of the preeminence whiche the frenche king had over it, sholde make the body politicke of the king of englande of his degree and make him and by him all the realme of englande (whiche before was free) subjecte to the frenche ligeance, were not this a great inconvenience? Were it not lesse inconvenience the Frenche kyng sholde lose his interest in this case in the bodie naturall of the said subject? Putt the case on the other syde, that the kyngdome of France shoulde discende to an englishe man, woulde the Frenche man thinke it reasonable that the king of Englande shoulde still have his<sup>296</sup> jurisdiction over his englishe man and therby make all the Frenche subject to englande? Or woulde they not thinke that [the]<sup>297</sup> lawe maker were of lytle providence? Yea surely woulde they, and so mighte they do justly. For it is not reason that the pryvate person of a man shoulde by reason of his office bryng a subjection to all those over whom he hathe rule by reason of his office, and whiche before were free: but rather that the aleration of his degree shoulde take away from the owner his intereste of subjection or bondage whiche he had in the body, if so be that bothe can not stande together, as in dede they can not in this case. And that consideration hathe our lawe, for if the kyng had a bounde man, the boundman had entred into religion and ben professed within a Cloyster, nowe his estate is altered, and it standeth not together that the kyng shoulde take him out of the cloysture and sett him to bonde service, and that he shoulde

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<sup>295</sup> where] ‘when’, D: 36r; C: 49v; M: 62v; Y: 57r.

<sup>296</sup> his] ‘the’, D: 36r; C: 50r. Neither ‘he’ nor ‘the’ appears in M or Y.

<sup>297</sup> the] Interpolated from R: 24v; D: 36r; C: 50r. ‘that’, M: 63r; Y: 57v.

continue in his order, and therefore our lawe hathe ever taken it more reasonable that the kyng shoulde lose his interest in the<sup>298</sup> body, then he shoulde be taken out of his order. And so [15v] by [the]<sup>299</sup> lawe of this realme, this order taken, hathe taken away the kynges intereste of his bondage in his body, lyke lawe were if the kynges warde entred into religion the interest the kyng had in his body were gone therby. And if the king have a bounde woman and she taketh a husbnde without the kynges lycence, by this degree in mariage the kyng hathe loste his interest in her body, for nowe her husbnde hathe interest in her body<sup>300</sup> and his interest & the kynges interest stande not together and the<sup>301</sup> king hathe loste his interest. And where a whole realme hathe interest in the body of one, shall not that interest take away the pryvate interest of a king whiche can not stand together with that interest? Yes surely. <sup>m</sup><*vide Polid. li. 16. p. 312*><sup>m</sup><sup>302</sup>

Polidore semeth to assent, and all englishe cronicles be that Richarde Earle of Cornewall who was brother and subjecte to kyng Henry the therde (a man of great prowes<sup>303</sup> and wisdom) was chosen and made Emprerour, and crowned at Aquesgrane in Germany by the bisshopp of Coleine<sup>304</sup>. Nowe woulde I aske when he was Emperour whether therby he were not discharged of his ligeance towerde the king of Englande: or mighte the king of englande have comanded him to come hooome to Englande, and to serve at his comandement, and was he of duety bounde to forsake the affaires of the empyre to obey & serve him as he was before he was Emperour?

Surely no. For the greatnes of his crowne discharged him of his obedience to the kyng of Englande, for empire possessed him wholly and the king of England nothing at all. And Stephen sonne to the erle of Bloys was a frenche man and subjecte to the Frenche kyng, and after that

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<sup>298</sup> the] 'his', D: 36v; C: 50v; M: 63v; Y: 58r.

<sup>299</sup> the] Interpolated from D: 36v; C: 50v; M: 63v; Y: 58r.

<sup>300</sup> for nowe ... her body] Does not appear in R.

<sup>301</sup> the] 'therefore', D: 36v; C: 50v; M: 63v; Y: 58r.

<sup>302</sup> Marginal annotation also found in R, D, Y. {All references to Polydore Vergil's *Anglica Historia* are from Dana F. Sutton's hypertext critical edition: <<https://philological.cal.bham.ac.uk/polverg/>>. See Vergil, *Anglica Historia*, XVI. 27. <<https://philological.cal.bham.ac.uk/polverg/16lat.html#27>>}

<sup>303</sup> prowes] 'power', R: 24v.

<sup>304</sup> Coleine] 'Boloynes', R: 24v.

king Henry the firste was deade he was king of Englande, and therby was become of the Frenche kynges subjecte, his fellowe, and therefore was dischargd of his obedience and ligeance to the frenche King. And yet I will graunte it stode with his estate to do homage to the frenche kyng for the erldome of Bloys, as it did with the estates of the kynges of Englande for to do homage to the frenche king for Gascoyne and Angeou, for that was in respecte of those countryes holden of him, and not in respecte of the interest he had in their persons. For that interest is of an other degree and nature, for he that doth that service doth yelde to the frenche kyng but the duety of lande due to him, but to yelde the service of his person due for his person to the frenche king as his superior is of an other degree & in another respecte whiche<sup>305</sup> lawe nor reason suffereth <not>. For if it shoulde then his person shoulde attende upon the Frenche king and be employed upon his busines and not upon his owne realme. And so I conclude that when the body politicke of the king of this Realme doth come to the body naturall of the Frenche borne discended of the seconde brother and of the bloud Royall that not only by the lawe of this realme but by the lawe of France *et per ius gentium* his body naturall was discharged of the ligeance to<sup>306</sup> the Frenche king.

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<sup>305</sup> which lawe] ‘whiche neither lawe’, D: 37r; C: 51r; M: 64v; Y: 59r.

<sup>306</sup> to] ‘of’, M: 64v; Y: 59v.

If the foreine borne be subjecte to none other, then it is clere<sup>307</sup> there is no diabilitie to receive the Crowne of England.

Cap. 10.

But if this frenche man discended of the seconde brother had ben subjecte to non other nor was of the ligeance of none, but a kyng of himselffe then the case had ben the clerer of his syde and then this laste objection coulde not have ben made againste him. And sir the same is our case [16r] for the Quene of Scottes<sup>308</sup>, for she is a quene herselffe and not a subjecte, so as if Scotlande had ben out of the ligeance of the king of Englande and the subjectes of Scotlande had bin in case of the subjectes of france yet can it not be one case for the quene of Scottes who<sup>309</sup> is not a subjecte nor the said objection can not be made<sup>310</sup> that she is under the ligeance of an other and therefore shoulde make this realme subjecte to her ligeance. But the case at the leaste wyse touching her is clearer by so muche.

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<sup>307</sup> clere] 'clearer', D: 37v; C: 52r; M: 65r; Y: 59v.

<sup>308</sup> of Scottes] Does not appear in C.

<sup>309</sup> who] 'which', D: 37v; C: 52r; M: 65r and in Y: 60r.

<sup>310</sup> nor the ... be made] 'neither can the said objection be made', D: 37v; C: 52r; M: 65r-65v; Y: 60r.

The confutation of the assertion that the lawe or maxime of foreyne birthe extendeth to the Crowne because it is a body politick. That the maximes of the lawe whiche extende but to bodyes naturall only, can not be applyed to bodies politicke. Examples therof, and of foreine birthe to be non impediment from receipte of that that maketh a body politick, & so not from receipte of the Crowne. Examples therof and the conclusion therupon.

Cap. 11.

Sythens I have already shewed the cause and reason of the Commen Lawe concerning foreine birthe, whye the same was firste made, and why it disableth aliens, and have therin shewed that the reason therof nor the lawe extendeth <not> to the Crowne it selffe: I have therin geven some cause to the Author of the [said]<sup>311</sup> printed boke to be satisfyed who saithe <that> this lawe of disabilitie for persons [borne]<sup>312</sup> out of the obedience of Englande to take any inheritance in England is a maxime, and therefore saith he whosoever is not able to shewe further any particuler lawe for the disposing of the Crowne otherwise muste nedes confesse and yelde that the same lawe hath full force strengthe & vertue in inheritance of the Crowne. Sir to this I answer that this maxime extendeth only to bodies naturall, and doth not extende nor never was applyed to bodyes politicke. The state royall is a body politicke, then I saie that maxime taketh no place in this body politicke but this body is out of this maxime, as it is of others. For it is a maxime that no person atteinted of felony or treason can take any inheritance to his owne use, but yet the Aucthor graunteth that Henry the seventh being atteinted of highe treason mighte take and receive the Crowne to his owne use, but he understandeth not the reason therof. The reason is because the Crowne conteigneth a body politicke, and the maxime taketh no place but in subjectes and inferior persons atteinted, and therefore the Crowne is not tyed to that maxime. It is a maxime in our lawe that all the inheritance of fee simple in this realme (if the owners have

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<sup>311</sup> said] Interpolated from D: 38r; C: 52v; M: 66r; Y: 60v.

<sup>312</sup> borne] Interpolated from D: 38r; C: 52v; M: 66r; Y: 60v.

no sonne) shall discende to the doughters equally and eche shall have a lyke parte. But if the king that hath the crowne in fee simple hathe no sonne but dyvers doughters and dyeth the Crowne shall discende only to the eldeste & the other shall have no parte of the inheritance therof, for if they shoulde, then shoulde the subjectes have dyvers rulers, and then woulde one rule one waie, and an other an other waye *Et nemo potest duobus dominis servire* and perchance if the lawe were so they should have sixe or seven Lordes or soueraignes, and if the Comen lawe of partipation shoulde holde place betwene them they woulde devyde the realme into vi or vii partes and so muche inconvenience shoulde insue. And therefore the Crowne goeth not after the maxime, for where it is, there is a body politick, and the maxime taketh place only emong subjectes and <of> bodyes naturall, as the reste of the maximes do. And if a man have issue a sonne and a doughter [16v] by one wyffe, and a sonne by an other wyffe, and dyeth seased of lande in fee simple and the sonne entrethe and dyeth without issue the doughter shall have the lande, for it is a maxime in [the]<sup>313</sup> Lawe *quod possessio fratris de feodo simplici facit sororem esse heredem*. But putt the Case of the crowne that the king hathe the crowne in fee simple and hathe issue a sonne and doughter by one wyfe and a sonne by an other wyffe & dyeth, the eldest sonne entrethe into the kyngdome and dyeth without yssue, the yonger sonne shalbe kyng and the sister shall not have the kyngdome. And so thoughte Justice Moyle, to whome Justice Danvers seameth to assent. <sup>m</sup><P. 34. b. 6. fo. 38 in quare imp. brought by them of gods howse in Canterbury><sup>m</sup><sup>314</sup> For the maxime being a generall maxime in lawe taketh place but emongest subjectes of pryvate inheritance whiche the body naturall enjoyeth and not of the possessions whiche any body politicke injoyeth for it were inconvenient that the sister shoulde be preferred in<sup>315</sup> the Crowne before the brother. And so a man may see howe farr he<sup>316</sup> is wyde in measuring the Crowne by maximes of Comen lawe

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<sup>313</sup> the] Interpolated from D: 38v; C: 53v. ‘our’, M: 67r; Y: 62r.

<sup>314</sup> Marginal annotation also appears in R, D, M, Y. {Pash. 34 Hen. VI, pl. 1, ff. 34b-35. Seipp Number: 1456.018. Fitz. Abr., Quare Impedit 88. II: 126v}

<sup>315</sup> in] ‘to’, D: 39r; C: 54r; M: 67v; Y: 62v.

<sup>316</sup> he] ‘that man’, D: 39r; M: 67v; Y: 62v. ‘this in lawe’, C: 54r.

provyded for subjectes. There is a lawe of the realme that if a Infante under the age of one and twenty yeres geveth away any his inheritance he maye avoyde it at full age, but if the kyng being an infant geveth away any of his inheritance he shall never avoude it, for the lawe is but for subjectes <and> that holde thinges in their bodyes naturall but extendeth not to the king that hathe a body politicke nor to the possessions that the body dothe enjoye, so that generall lawes of the realme extende not to the Crowne. There is a maxime in the lawe that if a man be seased in fee of lande and taketh a wyffe if the yssue he might by possibilite have by her shoulde inherite the same landes then that if the husbände dye she shall have the therde parte of the same landes for her dowre, yet if the kyng of this realme take a wyffe by whom he may have issue (yea and hathe yssue) that shall inherite the Crowne and all the landes to it and dyeth, his wyffe shall have no dower at all of any parte of his landes, for he holdeth them in his body politicke & enjoyeth them in the righte of his corporation, and therfore his wyffe shall not be indowed, no more then the wyffe of a bisshop shalbe of the landes of the bisshopricke. For a bisshop hathe two bodyes a body naturall and a body politicke, and many allowe that lawe as reasonable for the bisshop, and thinke it no reason that his wyffe whiche dothe more pleasure to his body naturall, then they thinke<sup>317</sup> she dothe good to his body politicke shoulde be indowed of the possessions of his<sup>318</sup> body politicke. And so we see that the maxime of the Comen lawe of dower for subjectes serveth not in the prynces case. And therfore the kyng is wonte by his letteres patentes to assigne to his wyffe some portion for her lyving. And lyke lawe is if the Quenes highnes that nowe is shoulde mary and have issue and after dye, her husbände shoulde not be tenant by the courtesy for the cause afforsaid. And [therfore]<sup>319</sup> the auctor of this prynted boke misconceiveth the lawe, and the Capitulations upon the mariage betwene kyng *Phillipp* and quene *Mary*. For saithe he the Lordes of the Counsell understanding that in Inglande generally by the

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<sup>317</sup> they thinke] Does not appear in M or Y.

<sup>318</sup> his] 'the', M: 68v; Y: 63r.

<sup>319</sup> therfore] Interpolated from D: 39r; C: 55r; M: 68v; Y: 63v.

Lawe of the realme, the husbnde after the deathe of the wyffe doth possesse and enjoy all the movables of the said wyffe and that there was no particuler lawe of force to shewe there againste for movables of the Crowne, did thinke that if the matrimony had ben concluded without any Capitulation or provysion made for the same, if the Quene shoulde dye before the kyng that then the kyng mighte lawfully have pretended that all the movables of the Crowne had ben his, and therefore [(said he)]<sup>320</sup> lyke grave and sage Counsellors they determined upon capitulations before, and agreed that if the quene shoulde departe before the kyng, that then the kyng shoulde not have or make clayme to any of those movables that belonged to the Crowne whiche they woulde not have don if they had not foreseene the inconvenience & understode that the lawe in force and valoure<sup>321</sup> in other things had not ben of lyke force streingthe and valoure<sup>322</sup> in lyke matters pteing to the Crowne. [17r] These be the wordes of<sup>323</sup> the printed boke, whiche shewe the wryter of them to be decieved bothe in the lawe and in the thoughte of Quene Maries counsell, for the quene had in her the body politicke of the Crowne of the realme conteing in it a Corporation of whiche Corporation she was the heade and the Subjectes the members, and the goodes she had were the goodes of the Realme, and she possessed them in the righte of the body politicke, albeit she mighte have departed with them by guyfte in her lyffe (as Abottes mighte with the goodes of their Corporation) yet she coulde have made no testament of them, nor<sup>324</sup> her husbnde by his mariage with her had any interest in the goodes: but her capacitye remayneth distincte from her husbandes, nor needed not to have ioyned her husbnde with her in her gyfftes or grauntes, but her letteres patentes made in her owne name had ben good ynoughe if the acte of parliament had not in that pointe ordeigned it otherwyse. For the husbnde shoulde not have ben tenante by the Courtesye of the lande of the Crowne, but her

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<sup>320</sup> (said he)] Interpolated from D: 39r; C: 55v; M: 69r; Y: 64r.

<sup>321</sup> valoure] ‘vigor’, R: 27r.

<sup>322</sup> valoure] ‘vigor’, R: 27r.

<sup>323</sup> of] ‘in’, M: 69r; Y: 64r.

<sup>324</sup> nor] ‘neither’, D: 40r; C: 55v; M: 69v; Y: 64v.

capacity possessions and power remayned distincte as it was before. And therefore there neded no capitulation or provision in that case by the necessitie of the lawe, but it was don upon good consideration<sup>325</sup>, and the rather because the kyng knewe not our lawes. And therefore the quene and the realme thoughte to deale playnly with the kyng in this poynte, and did therfore notifie and establyse the matter by acte of parliament. And so this Aucthor of this prynted boke and Mr Hales whom he seameth to followe (who labour muche to make the Crowne subjecte to the lawes and maximes ordeigned for subjectes) be quyte deceived. And the cause therof is because they do not well understande, or at the leastewyse marke the two bodyes of the kyng, and the conjunction of them, and the nature qualitie and effectes of them. And that maketh them to measure the Crowne and the discent of this bodye politicke (then whiche there is none other body politicke in this realme<sup>326</sup> that discendith) after the measure of discentes of landes from naturall bodyes only, and so one lawe to serve to Crowne and for subjectes, then whiche there was never greater error. For very fewe of the maximes or lawes that rule the subjectes take place in the Crowne as by these cases afforesaid, and by many other (almost innumerable) that may be putt, it may manifestly appeare. And in this case of foreine birthe the lawe of disabilitie serveth to disable the naturall bodyes only of inferiors to the Crowne, and not the inheritors of the Crowne to receive the body politicke of the Crowne. For it disableth not [other persons that be]<sup>327</sup> strangers borne and of others obedience<sup>328</sup> to receive bodyes politicke in the realme of Inglande. <sup>m</sup><vide in lectione sua de prerog. regis. ca. 12><sup>m</sup> <sup>328</sup> And therefore Frowicke (who was shortly

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<sup>325</sup> consideration] ‘discretion’, D: 40v; C: 56r; M: 69v; Y: 64v.

<sup>326</sup> then whiche ... this realme] Does not appear in C.

<sup>327</sup> other persons that be] Interpolated from D: 40v; C: 56v; M: 70v; Y: 65v.

<sup>328</sup> Marginal annotation also found in D, M, Y. {**Thomas Frowyk’s reading on *Prerogativa Regis*, Inner Temple, Lent 1495. Frowyk’s reading on *Prerogativa Regis*, cc. 1–3 is printed by Margaret McGlynn, *The Royal Prerogative and the Learning of the Inns of Court* (Cambridge: Cambridge University Press, 2009), pp. 261–94. However, McGlynn does not print the section of Frowyk’s reading discussed by Plowden. Plowden’s manuscript source for this reading could not be identified. For a list of extant texts, see J.H. Baker, *Readers and Readings at the Inns of Court and Chancery* (London: Selden Society, supplementary series, xiii, 2002), p. 70.}**

after chiffe Justice of the Comen place) declared the lawe truely that an alien mighte be a Bisshopp Abbot or parson within this realme, and that the lawe or maxime touching aliens did not disable them therto. For it disableth none but the bodye naturall to receive landes in the capacitie of the body naturall: but a bisshope hathe two bodyes, a body naturall and a body politicke and maie receiveor purchase to the one body or the other. Therefore an Alien may be a bisshopp without offence to the lawe of disabilitie, and maie receive &<sup>329</sup> purchase landes to him & his successors in the Capacitie of his body politicke: but he can not purchase and reteigne to him & his heires in his body naturall, for in that parte the lawe of disabilitie meeteth with him, but not in the other. And therof there have ben many examples sithence the Conqueste. <sup>m</sup><*vide li. 9. p. 156*><sup>m 330</sup> For it appeareth by Polidor that the famous and learned Archebisshop of Canterbury [called Lanfranke was an Italian. And soe was his scholler and next successor]<sup>331</sup> named Anselmas who as Polidore wryteth <sup>m</sup><*vid. li. 11. p. 185*><sup>m 332</sup> was borne in Augusta, a Citye at the foate of the Alpes. <sup>m</sup><*vid. li. 10. p. 178*><sup>m 333</sup> He wryteth that John Bisshopp of Welles (who encreased the revenue of that Bisshopricke by uniting the abbey of Bathe to it, and who therupon was firste of all other called bisshop of Bathe and Welles) was a frencheman. <sup>m</sup><*lib. 11. pa. 192*><sup>m 334</sup> And he wryteth also that Henry sonne of Earle Bloys in Fraunce was Abbot of Glassenbury and bissop of winchester. And he wryteth of [17v] of many more oute landishe men to have ben Abbottes and bisshoppes of this realme all whiche had capacities to receive their promotions without lycence or legittimations therunto from the kyng of this realme. I fynde these to be bisshoppes let me see who can fynde them to be made denizens. Also the bisshop of

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<sup>329</sup> &] ‘or’, D: 41r; C: 56v.

<sup>330</sup> Marginal annotation also found in R, D, M, Y. {Vergil, *Anglica Historia*, IX. 5. <<https://philological.cal.bham.ac.uk/polverg/9eng.html#5>>}

<sup>331</sup> called Lanfranke ... next successor] Interpolated from D: 41r; C: 57r; M: 71r; Y: 66r.

<sup>332</sup> Marginal annotation also found in R, D, M, Y. {Vergil, *Anglica Historia*, XI. 6. <<https://philological.cal.bham.ac.uk/polverg/11lat.html#6>>}

<sup>333</sup> Marginal annotation also found in R, D, M, Y. {Vergil, *Anglica Historia*, X. 16. <<https://philological.cal.bham.ac.uk/polverg/10lat.html#16>>}

<sup>334</sup> Marginal annotation also found in R, D, M, Y. {Vergil, *Anglica Historia*, XI. 12. <<https://philological.cal.bham.ac.uk/polverg/11lat.html#12>>}

rome did use to make the Bisshops of Sarum and Worcester within this realme, and ofte yea of late tyme bestowed them upon aliens who were not disabled to receive them by their alienage, but were able to sue in our lawe for any thing touching the possessions of their same bodyes politickes, and to purchase to that bodye althoughe they could not purchase and retaine in the capacitie of their bodye naturall. And the Mayor and comunalltye of a Cytie may choise an alien to be their Mayor or one of their Corporation, and his alienage is no disabilitye to him to receive that body politicke and to enjoy landes or possessions pteigning<sup>335</sup> to that office. But if an alien be Bisshop or parson I will not denye but assent with Frowicke in that poynte that if warres chance to be betwene this realme and the realme of the prynce where the alien was borne, that the kyng during the warres maie sease the landes of the bisshopricke or of the [landes of the]<sup>336</sup> parsonage, as was used of pryors aliens before Henry the fyvth tyme, when warres were betwene this realme and France. Then if the lawe or maxime of non abilitie of aliens is intendible only to take place of purchase or having landes or tenamentes in the body naturall, and hindreth [not]<sup>337</sup> the receipte of the meane & inferior bodyes politicke, but will very well suffer suche bodies politicke<sup>338</sup> and take place in the same bodyes naturall being alien or foreyn borne. Then I thinke no man can doubtte but the higheste body politicke of all whiche conteigneth the Crowne of the realme is not interrupted by forreine birthe from setling in the nexte of bloude royall, sithens that bodye politicke is able to make free and make denizen any foreine borne and to purge from him all disabilitye by forriene birthe as well as he can<sup>339</sup> of all fellony or treason, yea of atteinder and delyver him from all imbecilitie of nonage or other defecte. And of suche cases as have fallen of kynges of this realme sithens the Conquest that have ben forein borne, althoughe it have not often fallen the experience goeth that waye. For it appeareth by the accompte made by

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<sup>335</sup> pteigning] ‘belonging’, M: 71v; Y: 69r.

<sup>336</sup> landes of the] Interpolated from M: 71v; Y: 67r.

<sup>337</sup> not] Interpolated from D: 41v; C: 57v; M: 72r; Y: 67r.

<sup>338</sup> but will ... bodies politicke] ‘to vest’, C: 57v.

<sup>339</sup> can] ‘maie’, D: 41v; C: 57v; M: 72r; Y: 67v.

Polidore of the age of William *Rufus* that he was nyne yere olde when his father William Conqueror came firste into Englande, wherof followeth that he was borne in Normandy or els<sup>340</sup> out of the ligeance of the [then]<sup>341</sup> kyng of Englande, yet he was kyng after the deathe of his father and not disabled by his foreine birthe from the receipte of the body politicke of the kyng of this realme limitted to him by his fathers testament. And although he were the kynges sonne, yet was not his father kyng at the tyme of his birthe: and so oute of the explanation of the acte or treatyse in the xxvth yere of king Edward the therde. And lykewyse kyng Henry the seconde a frenche man borne and sonne of a frenche subjecte had the kingdom by discent. And where the prynted boke allegeth that it was by agrement had with king Stephene and by the auctoritie of parliament. Sir that agrement was not to geve good tyle to king Henry the second, but to geve good tyle<sup>342</sup> from Mawde and her sonne to king Stephen who was an unjste usurper, for howe coude Stephen that had no good tyle himselffe or any parliament called by him geve tyle in the Crowne to a stranger? But therby was Stephen made lawfull king for liffe, whiche was the chieffe poynte of the acte, and Mawdes contentation that her sonne & heire inheritable to the Crowne shoulde succede Stephen was not had in that respecte that her sonne shoulde therby gett tyle as a mere straunger but as one that was heire apparant to the Crowne to whom as to an inheritance<sup>343</sup> therof and not as a mere stranger the mother was contente to geve place. And there appeareth not in any Cronicle that ever I sawe or [18r] or hearde of that ever that objection of forreyne birthe was layde againste or ever moved, for sithence he was discended of the bloude royall they toke him not disabled by his birthe. And it is untrue that the said prynted boke saithe that Arthure sonne of Geoffrey seconde brother to king Richarde the firste was excluded to be kyng by his birthe out of the Realme. It appeareth not by Pollidore or [by]<sup>344</sup> any other testimony

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<sup>340</sup> or els] 'and', D: 42r; C: 58r; M: 72r; Y: 67v.

<sup>341</sup> then] Interpolated from D: 42r; C: 58r; M: 72r; Y: 67v.

<sup>342</sup> to king ... good tyle] Does not appear in C.

<sup>343</sup> inheritance] 'inheritor', M: 73r; Y: 68v

<sup>344</sup> by] Interpolated from D: 42v; C: 58v.

that ever I sawe where he was borne. And if he had ben borne out of the ligeance of Englande, it had not ben materiall, for he shoulde have ben adjudged of the faithe and ligeance of his father upon the causes before recyted. But king John toke the kingdome upon him unjustly by the helpe and meane of Huberte bisshopp of Canterbury and woulde neuer cease untill he had founde the meanes to distroy Arthure having in dede righte and tittle to the kingdome, whiche he neded not so diligently to have practised if Arthure had ben an alien and disabled to the kyngdome by Lawe. And Huberte in his oration made for John to be kyng seameth to assent that the<sup>345</sup> right of inheritance of the Crowne was not due to John but to Arthure, for his wordes be *Ne studium vestrum eo forte in alium vertere libeat quod regnum iure hereditario alteri potius quam ipsi debere videatur me auditis oro* etc, and his reasons he makethe to have John kyng, be not because he had righte, but for [other]<sup>346</sup> occasions, and because Arthure was within age, and a childe and John of full age able to judge of thinges, that he seameth covertly to note as a pointe to further John and hinder Arthure. It appeareth playnly by Pollidore that Charles the faire king of France brother to Isabell mother of king Edward the therde dyed, his wyffe being with childe with a doughter and had non other yssue, and this doughter (who was called Blanche) dyed anone upon<sup>347</sup> her birthe. By reason wherof kyng Edward the therde being nexte of bloude to Charles his uncle and to the said Blanche his cosin germanie claymed the kyngdome of france. And by that tittle our Sovereigne Lady the Quene that nowe is wrytethe her selffe quene of France. I thinke that no man will saie that that clayme was unjuste because kyng Edward the therde was borne in Englande: whiche was a forreyne realme and out of the ligeance of France. And yet (as I heare) the lawe of foreyne birthe holdeth place there yeven as it dothe here, yet the frenche men althoughe they soughte by all meanes<sup>348</sup> to resiste the clayme of Edward the therde did never

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<sup>345</sup> the] 'by', D: 42v; C: 59r; M: 73v; Y: 69r.

<sup>346</sup> other] Interpolated from D: 43r; C: 59r; M: 73v; Y: 69v.

<sup>347</sup> upon] 'after', D: 43r; C: 59r; M: 74v; Y: 69v

<sup>348</sup> by all means] 'always', D: 43r; C: 59v; M: 73v; Y: 70r.

objecte<sup>349</sup> that he was a foreine<sup>350</sup> borne out of the ligeance of Fraunce & therfore disabled to receive the kingdome for they understode that that allegation had ben voyde of all sense and reason. For kingdomes go by discente to the next of bloude & proximitie<sup>351</sup> of bloude is the generall lawe for kynges throughte the worlde. And so I [maie]<sup>352</sup> conclude that no more then our tyle to Fraunce was taken away by forreine birthe out of <sup>i</sup><the ligeance><sup>i</sup> of France, no more shall this Frenche mans tyle or a Scottishe mans tyle to the kingdome of Inglande be taken away by forreyne birthe out of the ligeance of England. For foreine birthe is no disabilitie to a kynges person no neither yet to the quene whiche is the kinges wyffe. For Pollidor sheweth and it appeareth so otherwise most manifest that Philippa wyffe to kyng Edward the therde was an alien and borne in Flanders out of the ligeance of Englande, and yet it dothe appeare in anno 30 Edward 3 that she broughte a wrytt of warde against Simkyn Symon and had judgement geven for her by the Judges of the Comen place to recover the warde. <sup>m</sup><P. 30 E 3 pa. 8 et 18><sup>m</sup>

<sup>353</sup> And what made her [being]<sup>354</sup> an alien borne out of the ligeance of englande able to sue for a warde in the kynges Court sithence other aliens can not so do? Surely sir her mariage with the kyng by whiche mariage she was made participate of the prerogatyve of the kyng: and they bothe being made but one fleshe must by reason be of one<sup>355</sup> fredome of body. Then if the body politicke of the kyng joyned to his body naturall be of suche vigore and efficacye that it will remove from [18v] the persone joyned in mariage and societie with his body naturall all disabilitie disgrace and impediment of Capacity of landes or tenamentes within his realme will not that body politicke take away and remove from the body naturall being nexte of bloude Royall all disabilitie disgrace & impediment of Capacitie of the same body royall? Yes forsothe, *a fortiore*

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<sup>349</sup> object] ‘albeit’, M: 74r; Y: 70r.

<sup>350</sup> a foreine] ‘an alien’, D: 43r; C: 59v; M: 74r; Y: 70r

<sup>351</sup> proximitie] ‘propinquity’, R: 29r.

<sup>352</sup> maie] Interpolated from D: 43r; C: 59v; M: 74r; Y: 70r.

<sup>353</sup> Marginal annotation also found in R, D, Y. {Pasch. 30 Edw. III, pl. 9, f. 6b. Seipp Number: 1356.030; Mich. 30 Edw. III, pl. 14, ff. 14-14b. Seipp Number: 1356.060}

<sup>354</sup> being] Interpolated from D: 43v; C: 60r; M: 74v; Y: 70v.

<sup>355</sup> one] ‘like’, D: 43v; C: 60r; M: 74v; Y: 70v.

*argumento*. I thinke no man will be so simple to judge<sup>356</sup> that the said Edward the therde did make, or that it was nedefull to make, his wyffe denizen before the mariage. If any do so purchase he will be laughed at, as he was in the Parlaiment house that in the treatyse touching the acte for the mariage of king Phillipp and quene Mary moved the house to have an Acte to make kyng Phillip denizen. And this I will make an ende of this poynte: affirming the lawe or maxime of disabilitie of foreyne birthe is not taken in lawe or ever was applyed to any body politicke and that *a fortiori* it ought not to be taken or applyed to the body politicke of the kyng, and that the cause of the firste making of that lawe or maxime hathe not the reason for the Crowne as it hathe for others, and that by<sup>357</sup> experience it hathe not be accompted any disabilitie in our realme, or in any other Realme. And so I conclude that the said Frenche borne descending from the seconde brother and of the bloude royall oughte to have the kyngdom of Englande and is not disabled by his birthe, and then can the quene of Scottes be in no worse case and therupon I saie<sup>358</sup> that foreyn birthe is no disabilitie to receive the Crowne of Inglande if in bloude she shoulde be nexte in discent [as in truith she is]<sup>359, 360</sup>.

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<sup>356</sup> judge] ‘thinke’, D: 43v; C: 60v; M: 75r; Y: 71r.

<sup>357</sup> by] ‘in’, D: 44r; C: 60v; M: 75v; Y: 71v.

<sup>358</sup> saie] ‘will conclude’, D: 44r; C: 61r; M: 75v; Y: 71v.

<sup>359</sup> as in truth she is] Interpolated from D: 44r; C: 61r; M: 75v; Y: 71v.

<sup>360</sup> Witnesses M and Y both include the following: ‘The Ende of the First Booke’, M: 75v; Y: 71v.

The seconde parte of this treatise:

That neither Scotlande nor<sup>361</sup> the scottes be out of the ligeance of Englande, nor disabled by their birthe to receive inheritance in Englande.

Cap. 1.

I enter nowe into a mater not seeming to my selffe so doubtfull as I knowe it will be to others and take in hande to prove that the Scottes by meane of their subjection to the Crowne of Englande be not disabled by birthe to receive inheritance in Englande<sup>362</sup>. And I shall have lytle thanks of the Scottes in making their realme subjecte to Englande: but because it is <sup>i</sup><not><sup>i</sup> my parte to suppress trueth<sup>363</sup>, therefore I will shewe herin auctorities and boke cases as they be to be considered whether the principall pointe taken in hand <sup>i</sup><be proved><sup>i</sup> or not: submitting all things herin to be weighed in the ballance of your<sup>364</sup> judgement, and so to the matter. If the case<sup>365</sup> fall out this in the Case of the frenche man, then it is cleare for the Quene of Scottes that she can be in no worse case then is aforesaid. But if the lawe shoulde be doubtfull for the Frenche man, or cleare againste him, yet it seameth not so against the Scottishe quene, for it is wrytten and beleved<sup>366</sup> clerely<sup>367</sup> that Scotlande is holden of the kyng of Englande. And it is taken that it was first gyven to Albinacte seconde sonne of Bruite the firste king that possessed this realme, to holde of Locryne his eldeste brother king of Englande, and ever sithence it hathe bene holden of Englande as by the Cronicles and recordes & other testimony it may appere. And

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<sup>361</sup> nor] ‘neither’, D: 44v; C: 62r; M: 76r; Y: 72r.

<sup>362</sup> be not ... in Englande] Does not appear in M or Y.

<sup>363</sup> and I ... suppress trueth] ‘And yf hereat any offence shall be taken, my defence is, yt is not my parte to suppress trueth, at least as I conceyve yt since yt woulde be prejudiciall vnto themselves’, D: 44v; C: 62r; M: 76r; Y: 72r-72v.

<sup>364</sup> your] ‘true’, D: 44v; C: 62r; M: 76v; Y: 72v.

<sup>365</sup> case] ‘lawe’, D: 44v; C: 62r; M: 76v; Y: 72v.

<sup>366</sup> beleved] ‘held’, M: 76v; Y: 72v.

<sup>367</sup> clerely] ‘certaīnlie’, D: 44v; C: 62v; M: 76v; Y: 72v.

homage hathe ben don by the kinges of Scottes to the kinges of Englande not only before the tyme of William Conqueroure but sithence. For these kynges received of the Scottishe kynges homage, that is to saie William Conqueroure and his sonne William Rufus, after that his brother king Henry the firste, and his doughter Mawde the empresse, and Henry sonne to king Henry the seconde being Crowned kyng in his fathers tyme and who dyed in his fathers tyme, and after him kyng Rycharde the firste, [19r] and after that king John, and after him kyng Henry the therde, and after that king Edwarde the firste, and after kyng Edwarde the therde, <sup>m</sup><li. 19. f. 364><sup>m</sup><sup>368</sup> who as Polidor wrytethe invaded Scotlande and slewe an infinite nombre<sup>369</sup> of Scottes, and the truest cause of that warre, he wrytethe to be denyall of homage for these be his wordes. *Cetorum authores habeo aliam huiusce belli causam fuisse et eam omnino veriore[m] qui tradunt Edwardum regem ideo bellum fecisse David regi quod ille pernegasset more maiorum in eius verba iurare ut ne per id Anglorum terrae Scotiae dominum se agnovisse fateretur.* <sup>m</sup><Rex Angliae terrae Soctu dns><sup>m</sup><sup>370</sup> And after that and lastely kyng Henry the sixthe received homage of the kyng of Scottes at that tyme being. And who soe ever is desyrous to see the certainty of the names of the said kynges of Scottes that did the homage and the place where it was done, and the other circumstances therof lett him reade the prynted boke late sett forthe by our late kyng & soveraigne Lorde king Henry the eighte in his later dayes when he had prepared an Army to invade Scotlande, and there shall he see the certainty therof, and many other thinges tending to that purpose. And Polidore (if I be not forgetfull) sheweth all those homages. And not only Polidor but dyvers other historiograffers that wryte the history of Englande testify that the kynges of Scotlande were homagers to the kynges of Englande, and to them did homage, amongst whom I thinke good to recyte the wordes of *Newbrigensis* whiche he wryteth in the very laste ende [of his second booke]<sup>371</sup> of his

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<sup>368</sup> Marginal annotation also appears in R, D, M, Y. {Vergil, *Anglica Historia*, XIX. 5. <<https://philological.cal.bham.ac.uk/polverg/19lat.html#5>>}

<sup>369</sup> nombre] ‘company’, C: 62v.

<sup>370</sup> Marginal annotation also appears in R, D, Y.

<sup>371</sup> of his second booke] Interpolated from D: 45v; C: 63r; M: 77v; Y: 74r.

Cronicle of Inglande touching the homage that William kyng of Scottes and his nobilitie did in Yorke Churche to kyng Henry the seconde wherof he coulde not well be ignorant being a northerne man himselffe and lyving in that tyme, for he wryteth he was borne in the firste yere of kyng Stephen, and he lyved all the raigne of the same kyng Stephen and of kyng Henry the seconde, & untill the latter ende of kyng Richard the firste. And the actes of those kinges he wryteth at large. He saithe that kyng Henry the seconde came to the Cytie of Yorke: *Quo cum venisset optimatum suorum vallatus frequentia, occurrit ei Rex Scotorum cum universis regni sui nobilibus, qui omnes in ecclesia beatissimi apostolorum principis Regi Anglourum*<sup>i</sup> <homagium><sup>i</sup><sup>372</sup> *tanquam principali domino hominum cum ligentia id est solemnni cautione standi cum eo, et pro eo contra omnes homines rege proprio precipiente fecerunt. Ipse quoque rex Scotorum coram univ[er]sa multitudine nobilium utriusque regni regem Anglorum modis solemnibus dominum suum seque hominem et fidelem eius declaravit: eique tria precipua regni munimenta scilicet Rotesburg, Berwike et Castellum pullarum loco obsidum tradidit.* And so we see by this wryter lyving in that age howe not only the kyng of Scotlande, but also all his nobles did homage to the king of England, and the worde *hominum* he usethe not only there but in all other places throughe his boke, for homage as a worde as apte and more fyne in Latyne then *homagium*. And the season<sup>373</sup> of the said three townes wherof Edenboroughe called in Latyn *Castellum puellarum* was one can not but geve notice of the truethe of the cause to all the worlde. And that homage was not for any possessions the Scottishe king had in Inglande, for then the Nobles of Scotlande oughte not to have don homage for that: but it was for the whole kyngdome of Scotlande. And in dede the homage of the nobles neded not, for they be not imediate homagers to Inglande, but they are imediate homagers to their kyng, and their king imediate homager to Inglande, but their homage was for the fulnes of the duety of homage of Scotlande to Inglande, and for a testimony that their kyng owed homage to Inglande rather then for any nedfullnes. For when all the Nobility of Scotland did it, it wolde stoppe their mowthes to denye but that

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<sup>372</sup> *homagium*] Unique to H.

<sup>373</sup> season] 'seisin', D: 46r; C: 63v; M: 78v; Y: 75r.

Scotlande is holden of Englande<sup>374</sup>, and so there was pollicy in receiving the homage of the nobles rather then necessitye. Morover Mathewe Parys monke of Saint [19v] <sup>m</sup><*de gestis Jobis*><sup>m</sup><sup>375</sup> Albons in his Cronicle of Englande & <sup>i</sup><in><sup>i</sup> his begining of his boke *de gestis Regis Johanis* wrytethe this & alledgeth firste that John king of Englande, and William king of Scotlande were bothe at Lyncolne. *Et eodem die convenerunt ipse et rex Scotorum extra civitatem in montem arduum, et ibidem [in conspectu]<sup>376</sup> omnis populi Rex Scotiae fecit homagium Regi Jobnni de omni iure suo, et postea juravit ei fidelitatem super crucem Huberti cantuariensis archiepiscopi de vita et de membris et honore terreno contra omnes homines, coram cunctis magnatibus regni.* This homage was don the same daye that Sainte Hughe Bisshopp of Lyncolne who dyed at London and was broughte to Lyncolne to be buryed, where the said two kynges did upon their shoulders helpe to cary the dede Corps of that holy man to the Churche. And after & in his boke *de regis gestis henrici tercii* in whose tyme he lyved and therfore had the better knowledge of the actes of that age, the same Mathewe wrytethe that kyng Henry the therde raysed an huge Army against Allexander king of Scottes, who to withstande him had a marvelous army also to wete above an hundred thowsande fotemen besyde horsmen, and one of the causes of this warre was that the kyng of Scottes had recetted the kyng of Englandes enemyes and fugityves, *quasi conniventer voluit<sup>377</sup> subtrahere sibi homagium quod ei tenebatur.* And at leingthe as kyng Henry was going with his Army at Newe Castle upon Tyne, a peace was concluded betwene the kinges, and a Charter of the king of Scottes was there made, whiche he recyteth emong other thinges to have these wordes following. *Alexander dei gratia rex Scotiae omnibus Christi fidelibus hoc presens scriptum visuris vel audituris salutem, ad vestram volumus pervenire notitiam, nos pro nobis et heredibus nostris concessisse et fideliter promississe charissimo et ligo domino nostro*

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<sup>374</sup> and for ... of England] Repeated in Y: 75v.

<sup>375</sup> Marginal annotation also appears in R, D, M, Y. {*Matthaei Parisiensis, Monachi Sancti Albani, Chronica Majora*, ed. Henry Richards Luard (7 vols., London: Longman, 1872-83), II. 272}

<sup>376</sup> *in conspectu*] Interpolated from D: 46v; C: 64r; M: 79r; Y: 75v.

<sup>377</sup> *voluit*] 'volens', D: 46v; C: 64v; M: 79v; Y: 76r.

*Henrico tertio dei gratia regi Angliae illustri &c et [eius]<sup>378</sup> heredibus < suis > quod in perpetuum bonam fide ei servabimus pariter et amorem &c.* And so the Scottishe king calleth the kyng of Englande his lige lorde and byndeth him and his heires to kepe theirre faithe to the kyng of Englande, whiche muste be taken that faithe whiche is due to the kyng and his heires for their tennure of Scotlande, to whiche faith he byndethe himselffe by oathe upon his homage, whiche muste be taken for all Scotlande. For if it had ben but for a parte, or for any lande in Englande, he oughte in his Charter to have expressed the parcell, and he shoulde not have called him generally his liege Lorde as here he dothe, for this worde (liege) is<sup>379</sup> more than a homager is bounde to use to his lorde, for in that he calleth him his lige lorde he admittethe himselffe his subjecte, for a liege lorde oughte to have allegiance of him of whom he is liege lorde for allegiance is the bonde and duety of him that is a subject to his prynce and not properly of an homager to his Lorde.

Furthermore Thomas Walsingham a monke of St Albans in his Cronicle of Inglande beginning at the firste daye of the raigne of king Edwarde the firste where Mathewe Parys ended and continuing the history untill the sixth yere of the raigne of kyng Henry the fyffthe wryting that the kyngdome of Scotlande for that Margaret the doughter of the kyng of Norway and of Margaret his wyffe, doughter of Alexander kyng of Scottes then lately deceased was voyde of a kyng by reason that Margaret was dead without yssue, and it was doubted who was heire to the same Margaret the doughter (her mother being deade) the kyngdome of Scotlande was rightly discended from the firste Alexander her grandfather. And therupon kyng Edwarde the firste (as the same Walsingham in the acte of the sixth<sup>380</sup> yere of his raigne wryteth) [required]<sup>381</sup> that the Scottes shoulde stande to his judgements in decyding the right of the kyngdome, and to whome it did belong, challengding the same judgement by meanes he was Chiffe Lorde of Scotlande.

And therupon the Scottes made some staye saing without an heade they could not answeere, and

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<sup>378</sup> *eius]* Interpolated from D: 47r; C: 64v; M: 79v; Y: 76v.

<sup>379</sup> *is]* ‘ymplieth’, D: 47r; C: 65r; M: 80r; Y: 77r.

<sup>380</sup> *xixth]* ‘xxixth’, M: 80v; Y: 77v.

<sup>381</sup> *required]* Interpolated from D: 47v; C: 65v; M: 80v; Y: 77v.

that they were ignorant that the kyng of Inglande had suche [20r] superioritie over the kyngdome of Scotlande.<sup>382</sup> And the king of Englande caused a serche to be made in all the monasteries of England Scotlande and Wales to knowe his righte in that behalffe. And it was founde in the Cronicles of Marian the Scott, William of Malmsbury, Roger of Hoveden, Henry of Huntington and Raffe Huzett, that in the yere of our Lorde 910, kyng Edwarde did subdue the kyng of Scotlande & Cumberlande, and also that in the yere of oure Lorde god 926, Adelstane kyng of Inglande overcame Constentyne kyng of Scotlande and suffered him to raigne under him. And that Edred brother to king Adelstane kyng of Inglande overcame Scotlande<sup>383</sup> and the people of Northumberlande whiche submitted themselves and did their fealtie. And that kyng Edgar kyng of Inglande overcame Ryma<sup>384</sup> kyng of Scottes, and was kyng of Englande Scotlande Denmarke and Norway. And that Saint Edwarde gave the kingdome of Scotlande to Malcolyne sonne of the king of Comberlande to holde of him. And that William the Conqueroure overcame Malcolyne and received fealty of him, and that William Rufus did the lyke against Malcolyne & his two sonnes that raigned successyvely after him, and that Alexander succeded his brother Edgar in the kyngdom of Scotlande [by the consent of kinge Henry the firste]<sup>385</sup>. And that David kyng of Scottes did homage to kyng Stephen, and that William kyng of Scottes did homage to kyng Henry the therde sonne of Henry the seconde at his Coronation, and againe to Henry the father the xxth yere of his raigne as appeared by an instrument of agreement betwene them made. And Hovenden saithe that William kyng of Scottes cam to his Lorde king Henry into Normandy, and the lyke he did to kyng Richarde, and also to kyng John to Lyncolne. And also it was founde in the Cronicle of Saint Albanes that Alexander king of Scottes did at Yorke marry Margaret king Henries doughter in the xxxvth yere of his raigne and did to him homage. The

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<sup>382</sup> A marginal note in M, at folio 81r, instructs the reader to return to the earlier part of the manuscript — ‘*Ante 40b*’ — where the continuation of Plowden’s argument from part II, chapter 1 is found. This error is disussed in the editorial introduction.

<sup>383</sup> Scotlande] ‘the Scottes’, D: 47r; C: 65v; M: 41r; Y: 78r.

<sup>384</sup> Ryma] ‘Reinard’, C: 66r. ‘Rinade’, D: 48r. ‘Rymande’, M: 41r; Y: 78r.

<sup>385</sup> by the ... the firste] Interpolated from D: 48r; C: 66r; M: 41v; Y: 78r.

same was founde in the Charters of the kynges of Scotlande. And it was founde in the Popes bulles directed to Scotlande that the kynges of Scotlande were excommunicate because they woulde not obey their Lordes the kynges of Englande. All this appeareth in Walsinghams Cronicle in the tyle *Declaratio iuris regii in regno Scotiae*. Herupon the king of Englande shewed <sup>i<to></sup> the Competitors of the kyngdome of Scotlande, Florence Earle of Holande, Robert de Bruys, John Balioll & sixe others who<sup>386</sup> severally Challenged the kyngdom of Scotlande, his superioritie and Seignorie over the kyngdome of Scotlande, and that the conusans to heare and determyne the righte of the kyngdome belonged to him, and informed them of the reasons therof wherupon the Competitors agreeing made these letteres acknowledging the kinge of Englandes superioritie and their submission to him in forme following. *Omnibus presentes literas visuris vel audituris Florentius comes Hollandiae Robertus de Bruis dominus vallis Avandiae Jobanes de Balliolo dominus Galwidiae Jobanes Hastings dominus Abargavainae Jobanes comine dominus de Badenaw Patritius de Dinbar comes Marchio Jobanes de Vesci vice patris sui, Nicholaus de Sules Willelmus de Ros salutem in domino; cum nos in regno Scotiae, ius habere credamus, et ius illud coram illo qui potiore habet potestatem jurisdictionem et rationem examinandi jus nostrum declarare vindicare et probare intendamus, nobilisque princeps Edwardus dei gratia Rex Angliae per bonas sufficientesque rationes nos informaverit, quod ad eum spectat et habere debet superius dominum regni Scotiae, et cognitionem in audiendo examinando et definiendo just nostrum: nos de propria nostra voluntate sine omni violentia et coactione volumus et concedimus ut recipiamus ius coram eo tanquam superiori domino terrae. Volumus insuper et promittimus quod habebimus et tenebimus firmum et stabile factum suum, et quod ille habebit regnum cui coram eo ius potius illud dabit. In testimonium istorum nos litteris istis apposuimus siggula nostra. Data apud northumb feria [tertia]<sup>387</sup> post assentionem &c. [20v]*

whiche recognition made and submition received the king of England did demande that the Casteles and all the whole lande of Scotlande shoulde be delyvered to him so as by the peacyable seasyn therof the righte of Superiority therof whiche they had confessed by their said wryting

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<sup>386</sup> who] ‘which’, D: 48v; C: 66v; M: 42r; Y: 79r.

<sup>387</sup> *tertia*] Interpolated from D: 48v; C: 67r; M: 42v; Y: 80r.

might appeare to all folkes. To whiche demande the Competitors agreed, and therupon the same Competitors made their wryting of delyverie of seasyn of all the realme of Scotlande to the kyng of Englande whiche was as followeth. *Omnibus presentes literas visuris vel audituris Florentius Comes Hollandiae Robertus de Brus dominus Vallis avandiae Jobanes de Balliolo dominus galwidiae Jobanes de Hastings dominius Abargavaene, Jobanes comine dominus de Badnaw Patritius de Dinbar comes Marchio Jobanes de Vesci vice patris sui, Nicholaus de Sules Willelmus de Ros salutem in domino: Quia de bona voluntate nostra et comuni assensu sine omni coactione annuimus et concessimus nobli principi domino Edwardo de gratia regi Angliae quod ipse tanquam superior dominus terre Scotiae possit audire examinare et definire vendicationes nostras et quis intendimus ostendere et probare pro iure nostro recipiendo coram eo tanquam superiori domino terre, promittentes in super quod factum suum [habebimus]<sup>388</sup> firmum et stabile, et quod ille obtinebit? regnum Scotiae, cuius ius potius declaratur coram eo, cum autem non posset prefatus rex Angliae isto modo congitionem facere nec complere sine iudicio, nec iudicium [debet]<sup>389</sup> esse sine executione debet, nec executionem possit debito modo facere sine possessione et sesina eiusdem terrae et castorum eius volumus annuimus et concedimus quod ipse tanquam superior dominus ad perficiendum predicta habeat seisinam totius terrae Scotiae, et Castrorum eius quousque ius in regnum petentibus fuerit satisfactum, ita tamen quod antequam habeat seisinam bonam et sufficientem faciat petitoribus et costodibus communicati regnum<sup>390</sup> Scotiae restituendi et idem regnum cum tota regalitate, dignitate domino libertatibus consuetudinibus iusticiis legibus usibus possessionibus, et quibuscunque pertinentis in eodem satu in quo erant ante sesinam sibi traditam illi liberabit [illi]<sup>391</sup> cui iure debetur secundum iudicium regalitatis salvo regi Angliae homagio illius qui rex erit.* After whiche so made the kyng toke seysine of the kyngdome of Scotlande and the Castells accordingly. And sent bothe the said letteres or wrytinges under his pryvey Seale to dyvers monasteries of Englande to be entred into their Cronicles *ad perpetuam rei memoriam*. After this the tytles of eche Competitor were shewed and declared before the king of Englande. Hanging whiche matter Ericus kyng of

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<sup>388</sup> *habebimus*] Interpolated from D: 49r; C: 67v; M: 43r; Y: 80v.

<sup>389</sup> *debet*] Interpolated from D: 49r; C: 67v; M: 43r; Y: 80v.

<sup>390</sup> *regnum*] ‘regni’, D: 49r; C: 67v; M: 43v; Y: 81r.

<sup>391</sup> *illi*] Interpolated from D: 49r; C: 67v; M: 43v; Y: 81r.

Norway clayming as it seamid from the said Margaret his daughter deceased who was also daughter to Margaret wyffe to Ericus daughter to the said Alexander king of Scottes, sent his Ambassadors under his Commission to shewe his tyle to the kyngdome of Scotlande, whiche Ambassadors woulde not shew his tyle nor saie any thing untill they had spoken with their kyng, and woulde then no further prosequite. Wherupon the kyng of Inglande after full delyberation had proceding to sentence gave Judgment for John Balioll who was discended of the elder daughter of David king of Scottes and disalowed of the tyle of Roberte Bruis, who was nerer of bloude to the said Davyd because he discended of the seconde daughter of David, whiche John Balioll was after Crowned kyng of Scotlande and did homage to the king of Inglande, as this wryting following dothe testiffye. *Videlicet, Domine Edwarde rex angliae superior domine Scotiae, ego Johanes de Baliolo rex Scotiae me hominem vestrum cognosco de toto regno Scotiae et omnibus pertinentiis et iis quae ad hoc spectant quod regnum meum teneo et de iure debeo et clamito tenere hereditarie de vobis et heredibus vestris regibus Anglia et de vita et de membris et terreno honore contra omnes homines qui putant? vivere et mori. Et Rex angliae recepit homagium in forma predicta suo et alteris iure salvo.* After homage received the [21r] kyng [of England]<sup>392</sup> made restitution of the said kyngdome of Scotlande wholly with the appurtenances to the said John Balioll the newe king of Scottes. All this dothe appeare in the Cronicle of the said Walsyngham. All whiche proceding dothe so full prove that Scotlande is holden of Inglande as it will admitt non exception againste it, if it be true as it muste be taken: and that the tenure is of the whole realme of Scotlande, and that the homage & service were done for the whole realme of Scotlande, and not for the landes the kyng of Scotlande had in Inglande for the seysin delyvered of all the kingdom of Scotlande and the wordes of the homage *de toto regno Scotiae* and the other circumstances will not admitt the tenure of lesse [or other than]<sup>393</sup> then the whole kyngdome of Scotlande. One other thing I note in this discourse that when Alexander kyng of Scottes had married his daughter to Ericus king of

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<sup>392</sup> of England] Interpolated from D: 50r; C: 69r; M: 44r; Y: 82r.

<sup>393</sup> or other than] Interpolated from D: 50r; C: 69r; M: 44v; Y: 82v.

Norway, and they had a daughter called Margaret whiche as it muste be taken was borne in the kyngdome of Norway out of the aligeance of the kyngdome of Scotlande that yet she was not disabled therby to receive by discente the kyngdome of Scotlande, but inabled therto by the judgment of the Scottes and of the kyng of Englande also. For Alexander the kyng of Scottes married Margaret the daughter of the king of Englande by whom he had issue Margaret wyffe to the said Ericus, and they had yssue the said Margare the daughter that was quene of Scotlande. And so the kyng of Englande had to do with the cause for his kynswoman, and was consulted withall. For the said Walsingham wryteth of the two laste Margaretes that is to saie of the mother and daughter, *filia vero Margareta regi Norvegie<sup>394</sup> desponsata, filiam unicam peperit nomine Margaritam quae matri mortuae supervixit, hanc consulto rege Anglia, magnates Scotiae recognoverunt heredem, qua accersita per nuncios reges Angliae <muntios> cum per navigum tenderet in Scotiam infirmata in mari apud ochades insulas est defuncta.* And so by the censure of the two realmes Margaret borne in a foreyne kyngdome was inheritable to her grandfathers kyngdome of Scotlande. And then I aske why is not the quene of Scottes borne in a foreyne realme as well inheritable to her [great]<sup>395</sup> grandfathers realme of Englande (if our quene shoulde faile without issue) as this Margaret to her grandfathers realme of Scotlande? I knowe no cause, nor any lawe of Englande to be againste it by the place of her birthe. And Reason woulde that kynges children, nor their progeny shoulde not be disbled in that case. For as it is convenient <sup>i</sup><for subjectes><sup>i</sup> to marry their daughters within the realme, so is it for kinges to marry their daughters out of the realme, for reconsiliation<sup>396</sup> of foreine amytye and of traffique into forreyn partes, and for strengthe of the realme. In whiche case if by marrying according to their degree & estate, and for commoditie of the realme their childrens children and their off spryng shall not be capable of the inheritance by meanes of the place of their birthe, then shoulde these kynges have greate cause of grieffe, and

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<sup>394</sup> *Norvegie*] ‘Northugia’, D: 50v; C: 69v; M: 45r; Y: 83r.

<sup>395</sup> great] Interpolated from D: 50v; C: 69v; M: 45v; Y: 83r.

<sup>396</sup> reconsiliation] ‘procuring’, D: 50v; C: 70r; M: 45v; Y: 83v.

so shoulde they have that be married, and their yssues that shall suffer disinherison <for &> by suche a cause. And I muste neded affirme that suche a lawe were folyshe and unreasonable, but for this matter in hande the matter<sup>397</sup> is more cleare then the case of the said Margaret by meanes the quene of Scottes & her father were borne within the aligeance of Englande. And albeit I intended to have ben shorte in this pointe, yet I thinke it not my parte to omitt in silence the lettere that Walsingham wrytethe the Pope did sende to kyng Edwarde the firste in the xxixth yere of his raigne and the answeere therunto, and an other of his nobilitie, touching this pointe of superioritie over Scotlande claymed and exercysed [21v] by the kyng of Englande. For wheras the said John Baylioll and his prelattes earles and Barons <contrary to their oathes had conspyred and rebelled against the kyng of Englande, and> had invaded Englande with fyre and sworde and destroyed innumerable townes and people <, kyllled women in chyldbode and the englishe children in their Cradells, fyred scoles, and burned a great nombre of Scholars in the same, destroyed the monasteries of Englande, and fyred the kynges shippes, and did other most horrible actes>. The kyng of Englande forced therto gathered his army and so defended his people and realme and revenged his injuries<sup>398</sup> as the Scottes had no cause to enjoye<sup>399</sup>, but the king was gladd to resigne his kyngdome to the king of Englande<sup>400</sup>. Whyles these matters were in hande Pope Boniface sent his letteres to kyng Edwarde the firste alledging therein that the king of Englande had no superiorityty over Scotlande, and sett downe certaine causes why whiche be of smale force, as everie man that readeth them maie see. And further did alleige that the kingdome of Scotlande did belong to the Church of Rome, and therefore did admonishe the king to lett the scottishe kynges captives <to be> at lybertye, and revocate his liuetenantes and officers out of Scotlande, and if he woulde affirme that he had any ryghte in Scotlande, that then he shoulde

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<sup>397</sup> matter] ‘case’, D: 51r; C: 70r; M: 45v; Y: 83v.

<sup>398</sup> injuries] ‘enemies’, R: 34r.

<sup>399</sup> enjoye] ‘rejoyce’, R: 34r.

<sup>400</sup> and revenged ... of England] ‘and pursued the kinge of Scottes in suche sorte that he resigned his kingdome vnto him’, D: 51r; C: 70v; M: 46r; Y: 84r.

sende his Ambassadors and messengers instructed with all his wrytynges and minumentes touching that matter to the sea Apostolicke where he sholde receive Justice in the premisses. After these letteres received the kyng called a parliament at Lincolne where he did imparte these letteres to his nobilitie and Comens, and touching the tyle of superioritie and righte he himselffe sent a lettere of answeere to the Pope in whiche he discourceth all at lardge, shewing that Brute cam hither in the tyme of *Hely and Samuel*<sup>401</sup> the prophetes, and howe he devyded the whole Islande emong his three sonnes. That is to saye Englande to his eldiste sonne, Scotland to his seconde sonne to holde of the eldeste, and Wales to his therde sonne, and sheweth in particularity howe the bryttans as long as they helde the lande had superioritie over Scotlande and service of the kynges of Scotlande, and punyshed them when they rebelled and sheweth whome particularly. And howe Angaselus kyng of Scottes at king Arthurs great feaste *apud civitatem legionum* whiche is Caerlion bare the sworde before the king<sup>402</sup>, being the service due for his kyngdome of Scotlande. And after the Brytons tyme when the Englishe men cam in and expelled the Brytons he [then]<sup>403</sup> shewed what englishe kynges did the lyke as the bryton kynges. And after them what kynges of Denmarke whyles the Danes possessed the realme and the lyke. And after the Conqueste William the Conqueror, and all other kynges of Englande untill his the said kyng Edward the firstes daies yea and he himselffe had received homage of the kynges of Scotland, as of their liege men and subjectes to englande. And also shewed that dyvers popes by their wrytynges had allowed the subjection of Scotlande to Englande, and had commanded it shoulde be firmly kepte and performed. And in the ende besoughte the Pope to have consideration to the premisses and not to Creditt suggestions to the Contrary. Whiche answer of kyng Edward the firste if you take paine to reade it, you can not but thinke the tyme well spent, for it caryeth fullnes of mater and certainty of tymes, places and other circumstances and

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<sup>401</sup> *'Hely and Samuel'* appears as a marginal annotation in D: 51v; M: 46v; Y: 84v.

<sup>402</sup> the king] 'Arthur', D: 51v; C: 71r; M: 47r; Y: 85r.

<sup>403</sup> then] Interpolated from D: 51v; C: 71r; M: 47r; Y: 85r.

varietie delectable to the reader. And save that it is somewhat long I woulde have recyted it worde by worde and the Popes letteres also. And as touching the laste poynte moved by the Pope that the mater shoulde be hearde and ended by him, to that the king woulde not answer, but referred that to his nobilitie, who wrotte to [22r] the Pope as followeth (for since the answeare is but shorte, I have thoughte it good to cyte it worde by worde). *Sancta Romana jure ecclesia per cujus ministerium fides catholica in suis actibus cum ea (ut firmiter credimus et tenemus) maturate procedit quod nulli prejudicare sed singulorum jura conservari velit illesa. Sane convocato nuper per serenissimum dominum nostrum Edwardum de gratia Anglie regem illustrem parlamento apud Lincolniam generali idem dominus noster quasdam litteras apostolicas quas super certis negotiis conitionem et statum regni ex vestra parte exceperat<sup>404</sup> in medio exhiberi et seriose nobis fecit exponi. Quibus auditis et diligentius intellectis tam sensibus admiranda, quam hactenus inaudita in eis audivimus contineri. Scimus enim pater sanctissime et notorium est in partibus nostris ac nonnullis aliis non ignotum, quod a prima restitutione<sup>405</sup> regni Anglie reges eiusdem regni tan temporibus Britonum quam Anglorum superius et directum dominum regni Scotia habuerunt in possessione vel capitanei superioritatis et recti domini ipsius Scotiae successivis temporibus extiterunt<sup>i</sup> <nec ullis temporibus ipsum regnum in temporalibus pertinuit><sup>i</sup> vel pertinet quovis jure ad ecclesiam supradictam. Quinimmo idem regnum Scotiae progenitoribus dicti regis nostris regibus Angliae, atque sibi feudale extitit ab antiquo; nec etiam Reges Scotorum et regnum aliis quam regibus Anglia subfuerunt vel subijci consueverunt neque reges anglie super juribus in regno predicto aut aliis suis temporalibus coram aliquo iudice ecclesiastico vel seculari ex preeminentia status sui regiae dignitatis et consuetudinis cunctis temporibus irrefragabiliter observatse, responderunt, aut respondere debebant. Unde habito tractatu et deliberatione diligenti super contentis in litteris nostris memoratis communis concors et unanimis omnium nostrum et singulorum consensus fuit et erit inconcusse (deo propitio) in futurum quod prefatus dominus noster rex super juribus regni Scotiae aut aliis suis temporalibus nullatenus respondeat judicialiter coram vobis nec iudicium subeat quoquo modo aut jura sua predicta in dubium questione deducat nec ad vestrum presentiam procuratores aut nuntios ad hoc mittat, precipue cum premissa cederent manifeste in*

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<sup>404</sup> *exceperat]* ‘receptat’, D: 52r; C: 72r; M: 47v; Y: 86r.

<sup>405</sup> *restitutione]* ‘institutione’, D: 52v; C: 72r; M: 48r; Y: 86r.

*exheredationem juris corna regni Anglie et regiae dignitatis ac subvercionem status eiusdem regni notoriam nec non observatione et defensionem ex debito prestiti iuramento astringimur, et que manutenbimus toto posse et totis viribus cum dei auxilio defendemus, nec etiam permittimus aut aliquo modo permittimus sicut non possumus nec debemus premissa tam insolita indebita prejudicia aut alis in audita prelibatum dominum nostrum regem etiam se vellet facere seu modo quolibet attemptare. Quocirca Sanctitati vestre reverenter et humiliter supplicamus quatenus eundem dominum nostrum regem qui inter alios principes orbis terre catholicum se exhibet et romane ecclesiae devotum iura sua libertates et consuetudines et leges predictas absque diminutione et inquietudine pacifice possidere ac illibata persistere benignius permittatis.* And so this mater ended without any effecte wroughte by the Popes letteres. But yet this discourse may geve you full satisffaction <sup>406</sup> that the kynges of Englande have <full> superioritie over Scotlande, and that the kynges of Scotlande be tenantes and homagers to Inglande for all the Realme of Scotlande<sup>407</sup>. Furthermore the said Walsingham emongest all the actes don in the seventh yere of kyng Edward the therde wryteth that Edwarde Baylioll kyng of Scottes that [22v] yere did his homage to the kyng of Englande for all the kyngdom of Scotlande, and the Isles lying to Scotland, for his wordes be these. *Hoc anno rex Edwardus Scotiae 14<sup>o</sup> calendis Julii apud novum castrum super Tynam in domo fratrum predictatorum fecit et juravit homagium et fidelitatem regi Angliae Edwardus tercio pro toto regno Scotiae et insulis Scotiae adjacendibus.* And so the Scottes can not saie<sup>408</sup> that the homage was don for any landes that the kyng of Scottes had in Englande as oftentymes hath been alleged<sup>409</sup> for the wordes *pro toto regno Scotiae et insulis Scotiae adjacendibus* will not suffer them to have any suche evasion. But indede Walsingham wryteth that by occacion of this homage the Commenalty of Scotlande rose againste bothe the kynges but in the ende the kynges repressed them and plagued them as Rebels are wont to be, that rys against their kynges upon unjust cause. <And surely the warres betwene

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<sup>406</sup> The remainder of Plowden's argument from part II, chapter 1 continues in M at f. 81r.

<sup>407</sup> and that... of Scotland] Does not appear in M or Y.

<sup>408</sup> the Scottes can not saie] 'it can not be said that', D: 53v; C: 73v; M: 81r; Y: 87v.

<sup>409</sup> as oftentymes ... been alleged] 'whiche is their shyffte they were wont to make in avoydance of their homage', D: 53v; C: 73v.

Englande & Scotlande and the slaughter of the scottes have ben exceeding greate in the tymes of kyng Edward the firste kyng Edward the seconde kyng Edward the therde and kyng Richarde the seconde as Walsingham sheweth. And the Chiffe cause therof hathe ben for withdrawing the homage and service from the kynges of Englande, or after it don for rebelling, and as other rebells the kinges of Scotlande have ben punysshed from tyme to tyme, and god hathe not prospered them but hathe suffered them to be scourged for their mutabilitie and unconstancy in their duetys & service towerds Englande>. And so I leave further prouffe by Cronicles althoughe mutche more do appeare in the same, for my meaning is not to dwell long upon the [proof of the]<sup>410</sup> Cronicles, but to trippe and go<sup>411</sup>. *m<v. b. 7><sup>m</sup>*<sup>412</sup> And in the firste yere of kyng Henry the seventh *folio 10* of the latter printe appeareth as foloweth, to wete the Chiffe Justice said that in the tyme of kyng Edward the firste the Pope sent his letteres to the kyng that he should take peace with Scotlande, that was holden of him, and that he shoulde putt the matter to him, and the kyng by the advise of his Counsell wrotte to the Pope that he had not in any temporall matters any persons above himselffe, but he was imediate under god, and all the Lordes did wryte to the Pope that althoughe the kyng woulde geve his righte that he hathe in Scotlande from him, yet he shoulde not do it, for he that is king of Englande is alwaies chieffe Lord of Scotlande. And so it appeareth by the saing of the Chiffe Justice then whose name was Hussey that had ben long the kynges Attorney and sene the kynges recordes that as well by the confessall of the Pope as by the assertion of all the Lordes that Scotlande was holden of Englande, and the kyng of Englande is supreme Lorde therof. And it semeth that the letteres specified by Hussey be the same that be before recyted, whiche Hussey had sene among the

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<sup>410</sup> proof of the] Interpolated from D: 53v; C: 73v; M: 81v; Y: 88r.

<sup>411</sup> to trippe and go] 'briefflie to touche that which serveth this purpose', D: 53v; C: 73v; M: 81v; Y: 88r.

<sup>412</sup> Marginal citation also appears in R and D. Hil. {1 Hen. VII. pl. 10, f. 10a. Seipp Number: **1486.010**. Plowden's reference to the 'latter printe' likely refers to Richard Tottell's 1563 re-publication of the Year Book of Henry VII, first printed by Tottell in 1555. In both the 1555 and 1563 publications, the case in question appears on f. 10r}

Recordes of the kyng of Englande in the Treasury, and it is lyke that they there remaine to this daye. And therby hath Walsingham the greater Credit. And besydes that as I heare there be many recordes extant in the eschequer testifying the homage and other maters proving Scotlande to be within the obedience of Inglande. And the staye of doing of homage sithens the tyme of king Henry the sixte was cyvill warres within this realme, and the affinitie betwene [23r] this realme and Scotlande by the marriage in king Henry the seventh tyme, had betwene kyng James and the eldest daughter of king Henry the viith, and of the nonage of their sonne kyng James, who was twenty yeres within age after the death of his father, for whiche cause & for proximitie<sup>413</sup> of bloude, his uncle king Henry the viiith in his said boke dothe alledge he did forbear the homage. And the homage and service of the kyng of Scottes hathe ben forbore for a season either by wante of demande, or by flatte denyall, yet that dothe not take away the tenure or superioritie due to this realme nor doth discharge nor take away the lygiance of them, no more then if there be Lord & tenante & the Lord demandeth not his rent or his service, or if he demandeth it & the tenant refuse to paye it, yet that dischargeth not the tenant, nor maketh not the lande out of the fee &<sup>414</sup> seignorye of the Lorde, and indede he were a very badd Lawier that in that case woulde pleade *hors de son fee*. And the cases of resemblance putt by Mr Hales and the prynted boke also be nothing lyke to the case of Scotlande: for the contrey and Soyle of Normandy, Gascoyne and Callice were the kynges of Inglande, and therefore when the frenche kyng toke them away by Conquest that was in nature of a dissesyn in our Lawe to the kynges of Inglande, and therefore it is the frenche kynges untill the contrey and soyle be recovered by the princes<sup>415</sup> of Englande, and in the meane tyme the people borne there be the subjectes of the french kyng and in his ligiance, for the soile taken away from us by force & inhabited by the frenche kynges subjectes must nedes yelde obedience to the frenche kyng. But the soile &

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<sup>413</sup> proximitie] 'propinquitye', R: 35v.

<sup>414</sup> fee &] Does not appear in M or Y.

<sup>415</sup> princes] 'kinges', M: 83r; Y: 89v.

contrey of Scotland is not the kinges of Englande <(as I take it)> nor dothe belong to them of righte but hathe alwais justly belonged to the Scottishe king as lawfully firste geven to him by the kynges of Englande to holde of the Crowne of Englande by homage and fealty, and so doth our late Lord king Henry the viiith affirme in his [said]<sup>416</sup> boke. Then sir the keping of Scotlande from us is non injury to us, as the keping of Normandy and Calice is <: but the keping of the homage and service from us is the injury to us if any be. For whiche deteigned it is lawfull for the kyng of Englande (sithence he can not impeache them by suyte in lawe as he maie his subjectes in Englande that be under the proces of his courtes) to invade Scotlande and to take the Countrey from them, to them firste geven for the service, for it is the lawe of prynces to revenge with armes the injuryes don that otherwise will not be recompensed, and therby to satisfie themselves>. And so we see the examples of Normandy and Calice are not to be compared with the case of Scotlande, to the soyle or freholde wherof we have no ryghte, and out of whiche we have nothing but the superioritie and seignorye. And the staying of the homage or service (whiche acknowledgeth the superioritie) dothe not make it out of the fee or seignory of Englande, for if we have tittle to the Contrey and soyle itselffe, then coulde we have seignorye or service out of it, and so we see their examples differ. But nowe will Mr Hales and the author of the prynted boke saie, I have in this my former assertion & the incydent sequeles therof, yelded to them so farr that in the ende they will overthrowe me by a mere consequent [23v] for they wryte that Scotlande of itselffe is a distincte realme from Englande. And so in dede affirme it to be. They say that the kynge of Scotlande in Ambassage is delte [and intreated]<sup>417</sup> with as a forene prynce, and surely I saie the same. They saie in tyme of warres we impute them as enemyes and not as rebells, and they be usualy ransomed upon their taking lyke enymies, and not executed, and surely I saie the same. <And therefore I allowe the wrytt in the register emong the wryttes of trespas there conteigned. *Quare vi et armis domum ipsius A. apud W. in qua idem A quendam*

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<sup>416</sup> said] Interpolated from M: 83r; Y: 90r.

<sup>417</sup> and intreated] Interpolated from D: 55r; C: 75v; M: 83v; Y: 90v.

*Humfridum de Scotum et per ipsum in guerra captum tanquam prisonem suum quosque sibi de centum libris per quad idem G redemptionem suam cum prefato A pro vita sua soluanda fecerat satisfactum foret detinuit et ipsum Humfridum ceperunt et abduxerunt, et alia enormia.* By whiche wrytt it appeareth that the subjectes of the kyng of Englande mighte kyll and or ransom a scott taken in the warres, and whiche wrytte sheweth that a Scott in that case shall be used as an enemye and not as a traytor. <sup>m</sup><titlo trans. fo 549><sup>m</sup><sup>418</sup> And lykwise I allowe the lawe to be, as it semeth to be allowed to be in the case sett forthe in the newe boke of entrees, where one broughte an action of trespass for breaking his house and taking away fyve horses and fyve kyne of his, and the defendant pleaded that the plaintiff was an alien borne in Scotlande whiche was of the enymitye of the kyng, and that men of those parties were enemyes to the kyng & the kyngdome of Englande and to all the kinges people of the kyngdome of Englande, and for that the same playntiffe at the tyme of the trespas supposed did presume to come into the kyngdome of England unto the said place having no sauffe Conducte or other letteres of the kyng that he shoulde be intreated as one borne within the realme. Therefore (the defendant at the tyme of the trespass alleiged) entred into the said house to take the plaintiff then being in the same as the kynges enemye, and to do the will of the deffendant upon him, as upon his prysoner, and the said horses and kyne then & there toke and drove away as he lawfully mighte do. And to this plea (whiche as it seamed was a good justification) the plaintiffe answered and in avoydance therof pleaded that he was borne in England &c. Wherof it is to be gathered that if the playntiff be a scott the deffendant may do his will upon him as upon his prisoner, whiche he mighte not do if he were as an englishe man, for then he is a traytor and muste be indicted of treason and arraigned, and if he be founde gylty his body is the kynges who may do his will upon him, and so no subjecte can do. Also here the deffendant dothe justify the taking his goodes to his owne use whiche he coulde not do if he

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<sup>418</sup> Marginal annotation unique to H. {**William Rastell, *A Colleccion of Entrees, of Declaracions, Barnes, Replicacions, Reioinders, Issues, Verdicts, Iudgements, Executions, Proces, Contynuances, Essoynes, & Diuers Other Matters* (London, 1566), ff. 549v-550r.**}

were a traytor, for then the king oughte to have the goodes and the playntiff here oughte not to loose them untill his atteinder, and so herbye it seameth that the Scottes be accompted enemyes and not traytors or rebelles. <sup>m</sup><*h.33. h. 6. fo 1 in dett*><sup>m</sup><sup>419</sup> And so it seemeth by the Case in 33 Henry 6. where one sued the marshall for letting a prysoner condempned at his suite, <sup>420</sup> in a certain some escape he not being satisfyed. And the marshall pleaded for his discharge that the pryson was broken by a great multitude & the prysoners with force taken away, and it is there thoughte that if they were the kynges subjectes that did it, that the marshall mighte have remedy againste them, and in that case the marshall shoulde not be discharged, but if they were enemyes and not traytors or rebels then he shoulde be [24r] discharged, for that he had no remedy againste them as tenant for lyffe shoulde for waste don by them if they shoulde fyre his house he holdethe for lyffe. And therupon the marshall amended the plea and pleaded that there were foure thousand of Scottes and of other enemyes of the kynges with the traytors, and it semeth by the boke that if he pleade that plea certainly that it shoulde discharge the marshall, and so we see that the Scottes be taken as enemyes and not as traytors, as imediate subjectes of the kyng of this realme be.><sup>421</sup> <sup>m</sup><*m. 8. R. 2 & in Fitz; t. continual claym. pl. vltio*><sup>m</sup><sup>422</sup> And in an assize broughte in anno octavo Richardi secundi, the tenant pleaded in barr a fyne levied before the statute of non clayme, and did averr that the plaintiff a yere and a daye after the fyne levied was out of pryson & of full age and within the foure seas and did not make his clayme and prayed that he shoulde be barred, and the plaintiff said he was in Scotland all the yere & the daye spoken of by the

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<sup>419</sup> Marginal annotation also appears in R and D. {**Hil. 33 Hen. VI. pl. 3, ff. 1-1b. Seipp Number: 1455.003.**}

<sup>420</sup> ‘escape’ struck through in H.

<sup>421</sup> And therefore I allowe the wrytt in the register ... realme be] Does not appear in D, C, M, Y. However, a note in M&Y indicates the omitted material: ‘And that is sufficiently proued both by the Register of the booke of Entryes fol: 549. And by the case in 33. h. 6: fol. 10’, M: 83v; Y: 90v.

<sup>422</sup> Marginal annotation also found in D, M, Y. {**Mich. 8 Ric. II. pl. 30. Year Books of Richard II: 8-10 Richard II (1385–1387)**, ed. L.C. Hector and Michael E. Hager (Cambridge, MA: Ames Foundation, 1987), pp. 141-42. **Seipp Number: 1384.060am Fitz. Abr., Continuall claime 13. I: 180v.**}

tenant without that he was in Inglande as the tenant hath alledged. And that plea was challenged because he did not deny but he was within the foure Seas, but because Scotland was an other lande, and an other Realme by it selfe the issue was holden good & sufficient. Loe if this case and the cause being worde for worde as it is here recyted, and of the other before cyted cases it dothe manifestly appeare that Scotlande is a distincte realme of it selfe, and <that the scottes be accompted enemyes and not traytors nor rebells, and therefore> so far I will graunte. Then will Mr Hales and his follower saie, and do saie in dede, that if Scotlande be a distincte realme from Inglande and if it so be admitted by the kinges of this realme by dealyng and treaty with the kynges therof by ambasage as is used with foreine Prynces. And if the lawe of this realme take the Subjectes therof as enemyes and not traytors or rebells, ergo the Scottes are adjudged by the lawe of this realme to be of the lygeance & faithe of the king of Scottes. To this ergo & conclusion I i<yelde>i & allowe <sup>423</sup> it as a sequele to the precedentes. Then perhaps will they go further and make an other<sup>424</sup> consequent & saie ergo the Scottes be not of the kyng of Inglandes ligeance but out of his ligeance and faithe. This ergo and conclusion I allowe not, nor it semeth not a good consequent. For <firste> Scotlande was lawfully geven to Albinacte first kyng of Scottes to holde of Locryne his eldest brother king of Englande by homage and service therto due, and so dothe king Henry the eighte affirme in his said boke, and the Cronicles of Inglande also. But whether that be true or not [is doubtful]<sup>425</sup>, yet certaine it seemeth that Scotlande was geven away by the kyng of Inglande, for the tenure and homage declare that. For no tenure can be made but upon the firste gyffte of the thing geven for whiche the tenure is. And because the kyng of Scottes holdeth the realme of Scotlande of the Crowne of Inglande there maie be therof justicly deduced this conclusion, *ergo* the realme of Scotlande firste cam from and was geven by the Crowne of Inglande to holde of the Crowne of Inglande: if it so be

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<sup>423</sup> ‘not nor it seameth any good consequent’ struck through in H.

<sup>424</sup> an other] ‘a further’, M: 84v; Y: 91v.

<sup>425</sup> is doubtful] Interpolated from M: 84v; Y: 91v.

then is the whole and everie parte therof (not <sup>i</sup><withstanding><sup>i</sup> whatsoever particuler estate sithence made) holden of the Crowne of Englande, and therof foloweth it that althoughe the subjectes of Scotlande be in the lygeance of the king of Scottes imediatly, yet be all they mediatly, and the king himselffe imediatly within the ligeance of Englande because they be borne & be within the fee and seignorie of Englande. And the matter will be the better perceaved by consideration of the Comen case of Lorde measure & tenant, as for example a king of this realme, as namely William Conqueror when he had conquered Englande, and mynding to advance some noble Captaine to nobility made him an Earle, and for the mayntenance of his estate gave him a greate [24v] quantitie of lande as for example as mucche as is in a Shyre to place therupon himselffe his famylie, [his souldiours,]<sup>426</sup> servantes, frendes, kynffolke, and alyes, all whiche he myndeth shall inhabite and continewe in this realme, and reserveth therfore homage fealty knyghte service and an hundred pounce rente and this is so made his earldome called in Frenche a Countie. The earle having this greate territory geveth some parte therof to one kynsman & his heires to holde of him by certain rent & service, and some other peces to some other worthie souldiers and their heires reserving mucche or lytle rent and reserving other service either knight service, or socage as it shall pleas him. And some parte therof percuse he letteth for yeres yelding the value: they to whom the Earle graunted the lande to have to them & their heires be called tenants *quia tenet terram id [est]<sup>427</sup> habent terram*. The Earle is called meane, and in latyne *medius, quia est medius inter tenentem et dominum*. The king from whom the lande first came is called Lorde & in latyne *Dominus quia habent dominum* over all the lande. And if one of these tenants gyve parcell of that lande or all his portion to an other to holde of him by service then is he meane<sup>428</sup>, and so two meanes<sup>429</sup>, then is there Lorde, meane<sup>430</sup>, meane<sup>431</sup>, and tenant, and so if

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<sup>426</sup> his souldiours,] Interpolated from D: 56r; C: 77r; M: 85r; Y: 92v.

<sup>427</sup> *est*] D: 56v; C: 77r; M: 85v; Y: 92v.

<sup>428</sup> meane] ‘measure’, R: 38r.

<sup>429</sup> meanes] ‘measures’, R: 38r.

<sup>430</sup> meane] ‘measure’, R: 38r.

<sup>431</sup> meane] ‘measure’, R: 38r.

more gyfftes be made over therby there be more meanes<sup>432</sup> made and more meanalties, and in this sorte is all the lande in subjectes handes holden that is to saie mediately or imediately. And in this case the tenantes to whome the earle gave the Lande shall do service for their lande to the earle, and the earle for them all, and for the lande to the kyng being the Lord paramount. And in this case may the kyng distraigne all the tenantes of the lande for his service and duties being behynde, for the lande firste came from the kyng, and therefore to whose handes soever it come, it is subjecte to his service. And they that be tenantes oughte to beare favour to their Lorde, and by the same reason to the Lorde of their Lorde: for they holde of their lord imediatly, and of the lorde of their lorde mediately, and therefore there is two favors here, two faythes, and two ligeances. And therefore if there be lorde measure & tenant, the Lorde and a stranger be in sulte, and at an yssue, [and the tenant is impanelled as one of the jurye to trye this yssue]<sup>433</sup> it is by our Lawe a good pryncipall challenge for the partie to challenge the tenant as one not indifferent to trye this matter, <sup>m</sup><*m. 38. E. 3 fitz in chalenge p. 92*><sup>m</sup><sup>434</sup> not only because the tenant is within the distresse of the Lorde above, but as it semeth also beareth to him affection, love, faithe, and obedience, and so it is thoughte mete in lawe he shoulde althoughe he holde not of him imediately but mediately. So when the kyng of this noble<sup>435</sup> islande of Englande and Scotlande having perchance lande ynoughe in Englande to place his owne people in gave Scotlande to some other noble man or Captaine to inhabite and place his people in, and to holde of the kyng of England by homage fealtie, and to do knightes service in tyme of warre, the same Captaine perceaving the largeness of his contrey, made and created dyvers Earles, Barons, knightes & others and gave to them & to their heires, and to dyvers Bisshops and spirituall men and their Succesors lardge possessions for the maintenance of their estate and reserved to himselffe dyvers

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<sup>432</sup> meanes] ‘measures’, R: 38r.

<sup>433</sup> and the ... this yssue] Interpolated from D: 57r; C: 78r; M: 86v; Y: 93v.

<sup>434</sup> Marginal annotation also found in D, M, Y. {**Mich. 38 Edw. III, pl. 25, per Fitz. Abr., Challenge, 92. I: 174v. I have not been able to locate this case in the Year Books, nor am I able to offer a Seipp Number for this case.**}

<sup>435</sup> noble] ‘whole’, D: 57r; C: 78r; M: 86v; Y: 93v.

tenures & services, and out of all those were estates infinyte made, and at leingthe the noble man & Captaine or his heires perchance by the Creation of the kyng of Englande, or otherwise became kyng of that Contrey. In this case the realme of Scotlande muste and dothe still remayne subject to Inglande, and the people therof oughte to do their service to the king of Scottes, and the king for them all oughte to do service [25r] to the king of Englande, and they holde of their kyng, and he of oure kyng. And so by the same reason they holde of our kyng mediately, and their kyng of our kyng imediately, and they in his lygeance imediately, and he in our kinges ligeance imediately, and they be in the ligeance of our kyng mediately and their kyng of our kyng imediately and so there hathe ben always a mediate and an imediate ligeance or obedience to our kyng of Inglande, the mediate of the subjectes of Scotlande and the imediate of the kyng of Scotlande. And therof followeth that if they owe an imediate ligeance and obedience to the Scottishe kyng, that there if he commande them to invade Englande, and to use againste it sworde and fyer, that they oughte not therin to be adjudged traytors to Englande, for they can not be indicted or arraigned here for Treason or forfeit to our kyng their goodes or landes that be in the Realme of an other kyng, into whiche kyngdome the proces of Englande to seas their goodes or landes is not allowable or to be obeyed, for there our king hathe non officers to whom he may wryte, or who oughte to obeye him. And therefore they of Scotlande can not be used as traytors to Inglande, but they being of the imediate ligeance to the kyng of Scottes and but of the mediate lygeance of Inglande, oughte not to be accompted but<sup>436</sup> as enemyes [in times of war]<sup>437</sup> sithens they obey their nexte lorde. And our lawe punisshethe none as traytors but subjectes or obedientes imediate whiche the Scottes be not, for they can not be subjectes or lieges imediate to two kynges. *Nam nemo potest duobus dominis servire.* But in that they oughe imediate faithe to the kyng of Scottes and a mediate faithe to the kyng of Englande as those that be borne in his fee & seignorie, and for whome their imediate kyng dothe service to the Crowne of Inglande therefore

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<sup>436</sup> but] Does not appear in M or Y.

<sup>437</sup> in times of war] Interpolated from D: 58r; C: 79r; M: 87v; Y: 95r.

we can not accompte them (as it semeth to me) by their birthe and by their ligeance owed to their imediate kyng to be out of the ligeance of Englande, but they be under the ligeance of the kyng of Scottes and of the kyng of Englande also, and so their ligeance to the king of Scottes dothe not utterly take away their ligeance to Englande, but bothe stande together. And therefore the scottes be not disabled to purchase in Inglande and reteigne, nor therin is there any inconvenience, sithens they and their kyng oughte to attende upon the Crowne of Englande in the warres of Englande. And in prouffe that notwithstanding that Scotlande be a realme of it selffe distincte from Inglande, and that it is so accepted and taken by the dealing with them by Ambassadors and leagues, and that our lawe alloweth not their enemytie to be treason, but yet the birthe there dothe not dissable persons to receive inheritance in Englande, <sup>m<h. 42. E. 3. f. 2></sup><sup>m 438</sup> I thinke it good brieffely to recyte the Lord Beamondes case whiche is in 42 Edward 3 confessed by the Author of the said printed boke but not avoyded. There it appereth that the Lorde Beamonde and an other as Coperceners did sue a *scire facias* to have execution of certaine landes, and it was pleaded in abatement of the said suite that there was a therde coperconer alyve whiche oughte to have joyned in the said suite & whiche was not named, and therefore it was prayed that this suite mighte abate. And therunto it was answered that the same therde<sup>439</sup> copercener was borne in Scotlande, and afterwarde it was shewed in what place, to wete in Ros in Scotlande. The counsell of the one partie said that all Scotlande was holden of the king of England and within his ligeance: the Counsell of the other partie denyed that, and said there was but parte of Scotlande within the ligeance of the king, and that Ros was no parte of that whiche was within his [25v] ligeance. And upon this mater the Counsell of bothe parties did abyde in lawe. And because the Judges did not knowe whether all Scotlande or but parte therof were within the ligeance of the king of Englande, nor whether Ros were parcell of that whiche was

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<sup>438</sup> Marginal annotation also appears in D, C, M, Y. {Hil. 42 Edw. III, pl. 9, ff. 2b-3a. Seipp Number: 1368.009}

<sup>439</sup> therde] Does not appear in R or C.

within the lyeance of the king, and thoughte that the kyng had it inrolled whiche townes were in the lyeance & whiche not, did will that the partie that woulde soneste spede the matter to sue a certificat out of the Rolles to certifye them whether all Scotlande were within the lyeance of the king or without. Wherof it is to be justly collected that if all scotlande were within the lyeance of the king of Inglande than then (althoughe it were a severall realme and so used by ambassages and leagues and the people in tyme of warres shoulde be accompted enemyes and not traytors yet) the people there borne are not to be disabled here in Englande by their birthe there, but that they may receive here inheritance by discent. And if but parte, then they borne in that parte are not disabled here. But here it is to be noted that king Edward the therde (as I have hearde) had parte of Scotlande in his owne handes and the revenewes therof as I have hearde some of the eschequer saie were answered in the kynges Eschequer at Westminster. And touching that parte he made lawes by parlaiment here in Englande, for by the acte of Parliament made in the eleventhe<sup>440</sup> yere of kyng Edward the therde it was inacted that no person of Inglande, Irelande, Walles or of the kynges power in Scotlande (excepte the kyng the quene & their children) shoulde ware no clothes excepte it were made in Inglande, Irelande, Wales or Scotlande within the kinges power upon paine of forfeiture of the same, and that within the lande of Inglande, Ireland, Wales and Scotlande within the power of the Lord our king a man mighte make make cloathes as long or as shorte as he woulde. And there is a prohibition lykewyse made that no man shall bring within the lande of Inglande, Ireland, Wales or Scotland within the power of our Lord the kyng clothes elsewhere then there made. And that none within these places (certaine excepte) shoulde weare any boughte furr in any of their cloathes. And it was further enacted that all cloathe workers of foreine contreys that woulde come into Englande Irelande, Wales, and Scotlande within the power of our Lord the king might come sauffly & freely<sup>441</sup> in the kinges protection there to dwell where they woulde. And to the intent that the same workers should

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<sup>440</sup> eleventhe] ‘tenth’, R: 39v.

<sup>441</sup> freely] ‘surely’, D: 59v; C: 81r; M: 90r; Y: 97v.

have the more great will & desyre to come into & dwell there, the kyng woulde graunt to them liberties suche and so many as should suffice them. By whiche generall wordes<sup>442</sup> of the said acte it is proved that the king had then some partes of the said realme in his owne handes, and power so as he mighte make lawes to the dwellers there and grante libertie of habitation to suche as woulde come thither and priveledge to them. But sir the Judges in the said case did not meane only those parcels, for they willed suche of the parties as woulde have spede to sue a certificate to certify them whether all Scotlande were within the ligeance of the king of Englande or without: meaning as it semed that in the Recordes of the eschequer of the homage of the Scottishe kyng there it mighte appear whether all Scotlande or but a parte therof were holden of the Crowne of Englande for there was no homage or other service don to the kyng of Englande by the king of Scottes for suche parte as kyng Edward the therde had in his owne handes, for that was taken from the kyng of Scottes by Conqueste and therefore no service due for that, but it was for the [26r] reste [which]<sup>443</sup> the king of Scottes had by juste tittle, for whiche he mighte and oughte to do homage. And the forme of their homage sett forthe by king Henry the eighte in his said boke as it is made is this, I John kyng of Scottes shalbe true and faithful to you Lorde Edward [by the grace of god]<sup>444</sup> king of Englande the noble and superior Lorde of the kyngdome of Scotlande, the whiche I holde of you, and I shall beare to you my faithe and fidelytie of lyffe & lymme & worldlye honor against all men, and faithfully I shall acknowledge & shall do to you my service due to you of the kyngdome of Scotlande afforesaid as god me helpe and these holly evangelistes. And so herof <sup>i</sup><appeareth><sup>i</sup><sup>445</sup> that all Scotlande is holden of the Crowne of England and that the people so borne within that so holden be not accompted, nor disabled as aliens or adjudged as strangers. It appeareth in the eleventh yere of king Edward the therde that a woman broughte a wrytt of dower against John Earle of Richmonde being gardain of the body

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<sup>442</sup> wordes] ‘pointes’, D: 59v; C: 81r; M: 90r; Y: 97v.

<sup>443</sup> which] Interpolated from M: 90v; Y: 98r.

<sup>444</sup> by the grace of god] Interpolated from D: 60r; C: 81v; M: 90v; Y: 98r.

<sup>445</sup> appeareth] ‘you may see’, D: 60r; C: 81v; M: 90v; Y: 98v.

& lande of an heire. <sup>m</sup><*vidim titlo bref p. 474*><sup>m</sup> <sup>446</sup> *Perning* Serjante that was of Counsell with the earle pleaded that the earle was duke of Britaigne and not named duke in the said suite and therefore did demande judgment of the writt. For if a man said he bryng a writt againste Edward Balioll, if he be not named in the wrytt kyng of Scotlande, the wrytt shall abate. To whom it was answered that whether he be duke or not it can not be knowen in this lande if the other denye it, and the wrytt was adjudged good. Herof you maie see a difference betwene Brytteigne and Scotland, for the lawe of this realme forceth not a man to call the duke of Briteigne duke because that dukedome was not of the ligeance of the kyng of this realme. But the lawe of this lande<sup>447</sup> forceth a man in his suite here againste the king of Scottes (for dyvers of the kings had Huntingonshire and dyvers other landes in this realme that mighte be cause to minister suites in the Courtes of the kynges of this realme) to call him kyng of Scottes. And the cause is for that Scotlande is within the ligeance fee & seignorie of the kinges of Englande, and therefore knowledge muste be taken of the tytles of dignitie that men beare of place within the ligeance of this realme. <sup>m</sup><*titlo br. p. 516*><sup>m</sup> <sup>448</sup> And for further prouffe therof the case in 29<sup>449</sup> Edward 3 is very necessarie to be recuted where it appeareth that one broughte a wrytt of ravishment of warde against Gilbert Humfrey, the same Gylbert cam in and pleaded that he was earle of Angos and [not]<sup>450</sup> named earle and did demande judgment of the wrytt, and the Counsell of the plaintiffs parte said that the earldome of Angos was not within the realme, so as it coude not be tryed whether he were earle therof. To whom serjante Kyrton being of the earles Counsell said that he was somoned to the parliament and the greate seale of Englande sent to him, and after

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<sup>446</sup> Marginal annotation also found in R, D, Y. {*Pasch. 11 Edw. III, pl. 13. See Year Books of the Reign of King Edward the Third: Years XI and XII*, ed. and trans. Alfred J. Horwood. Rolls Series no. 31, part B, vol. 1 (London: Longman, 1883), pp. 74-81. Seipp Number: 1337.028rs. Fitz. Abr., Briefe 473. I: 145v-46r.}

<sup>447</sup> lande] 'realme', D: 60v; C: 82r; M: 91r; Y: 99r.

<sup>448</sup> Marginal annotation also appears in R, D, C, M, Y. {*Mich. 39 Edw. III, pl. 43, f. 35b. Seipp Number: 1365.117. Fitz. Abr. Briefe 517. I: 147v*}

<sup>449</sup> 29] '39', D: 60v; C: 82v; M: 91v; Y: 99v

<sup>450</sup> not] Interpolated from D: 60v; C: 82v; M: 91v; Y: 99v.

the wrytt was abated by judgment. Lo in these cases we may see that in a suyte had in the kynges Court againste one that is duke of Britteigne a subjecte in respecte of his earldome of Richmond he nede not be called duke but in a suite against the earle of Angos being an earldome in Scotlande he muste be called earle. And what is the difference therin? Forsoath the dukedome is without the ligeance fee & seignorie of the kyng of Englande and the earldome within the ligeance fee and seignory of the kyng of Englande, and therin resteth the [26v] difference. And the saing of Serjant Kyrton is to be noted that the said earle was somoned to the parliament, and the greate Seale was sent to him, for I have ofte hearde that the kyng of Scottes, yea and as many of his nobilitie as it shoulde pleas the kyng of Englande to somon by wrytt, are bounde to come unto and appeare at our parlamente and that there be recordes and monimentes extant therof. And nowe I woulde<sup>451</sup> conclude and yelde so farr that Scotlande is a distincte realme of it selffe and so ussed by Ambassadors and leagues as other realmes be, and allowed by the lawe in accepting of the subjectes as enemyes and not traytors [in times of warr as aforesaid]<sup>452</sup>, and yet deny the subjectes ther borne to be disabyled to receive by discent or otherwise inheritance here, or that the quene of Scottes by her birth there is disabyled to receive by discent or otherwis the Crowne of Englande or any pryvate inheritance, if she weare as a comen Scott is. And if it shoulde be so taken that but parte of the realme of Scotlande is holden of the Crowne of Englande, and so within the ligeance of Englande, yet surely Edenboughe (where the Quene of Scottes that nowe is was borne) being within forty foure myles or therabouts to Englande muste neded be holden of Englande and so within the lygeance of Englande: but I will not confesse that parte only of Scotland was holden of the Crowne of Englande but the whole realme. But I referre him that is desyrous to understande the fulnes therof to the Quenes highnes Recordes of the eschequer and Chauncerye where he shall fynde ynoughe to satisfye him therin, for kyng Henry the eighte saieth that there instrumentes sealed with the Seales of Scotlande testifying the

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<sup>451</sup> woulde] 'will', D: 61r; C: 83r; M: 92r; Y: 100r.

<sup>452</sup> in times of war as aforesaid] Interpolated from D: 61r; C: 83r; M: 92r; Y: 100r.

homage in forme afforesaid do remaine, and so dothe the instrumentes of Parliament of  
Scotlande graunting the superioritie of the Crowne of Englande, and the doing of homage.

That the quene of Scottes is not out of ligeance of the Crowne of Englande albeit it were granted that the subjectes of Scotlande were.

Cap. 2.

This mutche have I saide of the Subjectes of the kinges of Scotlande but nowe touching the quene of Scottes her selffe, the case is of muche more clearnes howsoever it be for the subjectes therof, bothe by her byrthe and by the<sup>453</sup> present estate. For as touching her birthe she is (as before I have at lardge discoursed '*<touching others>*') by lawe adjudged of the alligeance of her father, and her father was of the same allegiance that she is nowe of, that is to wete not as a subjecte of Scotlande, but as king of Scotlande<sup>454</sup> that oweth not mediate ligeance to the Crowne of this realme but imediate. For the Quene of Scottes is an homager to the Crowne of Englande, and then to saie that an homager to the Crowne of Englande is out of the ligeance and obedience of the Crowne of Englande is too too strange and can not be objected without passing great ignorance & folly. And therefore to the ende that it maie fully appeare than an homager to the king of Englande is a subjecte to the king of Englande within his ligeance and protection and so capable of inheritance in Englande I thinke [27r] it good to sett forthe the cerimonies circumstances and effectes of homage, to the ende that all men may see the subjection of an homager unto his lorde, his greate faithe professed to his Lorde: the acceptance of the Lorde of his homager into his favor and protection, and the mutuall bonde of the one to the other. Foure pointes or ceremonies or signes of humblenes are requisite by the lawe, and used by him that dothe homage to his Lorde [in doing his homage]<sup>455</sup>, whiche oughte to be don to his Lorde sitting. The firste is, the homager oughte to knele on bothe his knees. The kneling signifiyeth that he enfeeblythe himselffe before his Lorde abasing his power and disabling himselffe, and

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<sup>453</sup> the] 'her', D: 62r; C: 84r; M: 93r; Y: 101r.

<sup>454</sup> Scotlande] 'England', M: 93r; Y: 101r.

<sup>455</sup> in doing his homage] Interpolated from D: 62r; C: 84v; M: 93v; Y: 102r.

standeth at his Lordes choise to be overthrowen if he lyste. For when the knees be stretched out, then man hathe his full streingthe, and in bowing them the streingthe is diminished, and humilitie shewed: <sup>m</sup><*Ad Phillipens cap. 2*><sup>m</sup><sup>456</sup> and so Saint Paule toke it when he wrotte *in nomine Jesu omne genu flectatur celestium terrestrium et infernorum*, taking there by a metaphore <sup>457</sup> the knee for power, whiche is as mutche to saie in the name of Jesus lett the powers of all Creatures in Heaven earth and hell bowe and humble themselves, for the angells or Saintes in heaven, nor the dyvells in hell have no knees, but by the knee streingthe and power is signified generally as is said, and by bowing of his knee abasement of his power, and humilitie to him to whom the knee is bowed. And so sithens there is no power to be spoken of in respecte of Jesus he willeth all at his name to abase themselves and shewe humilitie in them, and exaltation and soveraingtie in him. And upon that grounde when the gossell is reade & therin Jesus named all Christen people use to bowe their knees signifying therby as afforesaid. And according to that example the homager in effeeblyng himselffe and shewing his humilitie to his Lorde, and in extolling his Lorde, to whose power he comitteth himselffe dothe knele at the doing of his homage to his Lorde on bothe his knees. The seconde pointe is the homager oughte to be ungyrded, and that is upon this reason as I take it. A man hathe in his waste in whiche parte his loynes be (as I have hearde of Credit) twelve lytle bones or Joyntes whiche be partes of his loynes, and if they be gyrded straitly, [then]<sup>458</sup> therby they be strongly united and therby is the steingthe in his backe the greater and he able to carry the greater burthen: but if he be ungyrded then be those bones or Joyntes more loose & dissipated, and therby is his backe the weaker and his streingthe the lesse, and not able to Carry so muche as in the other case. <sup>m</sup><*Luc. cap. 12*><sup>m</sup><sup>459</sup> And upon that occacion Christe said in his Gossell *sint lumbi vestri precincti*, meaning therby is the guyrding the loignes

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<sup>456</sup> Marginal annotation also found in R, D, M, Y. **{Philippenses 2: 10 (Vulgate). The version of the Bible likely used by Plowden is discussed in volume 1, p. 123, n. 79.}**

<sup>457</sup> 'the powers of all Creatures' struck through in H.

<sup>458</sup> then] Interpolated from D: 63r; C: 85r; M: 94v; Y: 103r.

<sup>459</sup> Marginal annotation also found in R, D, Y. **{Lucas 12: 35 (Vulgate)}**

unyteth those bones together and so geuith streingthe to the body and makethe the body apte to receive bourdeins, and mete to labor, so woulde he have men to knytte and unyte the inwarde virtues of the mynde or soule together and therby to make strong the mynde, and able to endure any labor or burthene stoutly that shoulde be layde upon them for virtues sake<sup>460</sup>, and to do suche worke as shoulde be acceptable to god. And so guyrding the loines or waste is a streingthe to the body, and the ungyrding therof is a weakness. And because the homager shoulde not be stowte nor sturdy, or of force or streingthe againste his lorde, but humble, therefore he is ungyrded when he dothe his homage to the ende he shoulde transffer that ceremonye of the body to the inwarde mynde and remember by that utwarde acte [27v] once done the inwarde obeidyence and humilitie alweis that therby he professeth [alwayes]<sup>461</sup> to his lorde in mynde. The therde poynte is the homager oughte to holde bothe his handes together<sup>462</sup> stretched out betwene the Lordes knees: this ceremony signifyeth as the others do, the abasing of the power of the homager and his humilitie to his lorde, and his extolling of his Lorde, for the power a man hathe & his abilitie to do resteth in his handes. For whatsoever streingthe he hathe otherwise if his handes be tyed together or the use of them taken it away it serveth to lytle purpose: for the handes be the Chiffe agentes in mans actions. And therefore by a similitude they be taken for power. And therefore usually the kyng in his lettres patentes touching thinges he hathe to bestowe as offices and other lyke saithe *iam in manibus nostris existunt*, whiche is to saie it is in my power to geve, or bestowe. <sup>m</sup><*Sabinus in epist. helone*><sup>m</sup> <sup>463</sup> And the Poet that wrott *An nescis longas regibus esse manus* never mente that kynges had longer handes then others, but he asked whether he did not knowe that a kynges power raughte farr? And Saint *Augustine* in his boke *de essentia divinitatis*

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<sup>460</sup> or burthene ... virtues sake] Does not appear in C.

<sup>461</sup> alwayes] Interpolated from \*

<sup>462</sup> together] Does not appear in M or Y.

<sup>463</sup> Marginal annotation also appears in R, D, M, Y. {See Ovid, *Heroides; and Amores*, ed. and trans. Grant Showerman (2nd edn., revised by G.P. Goold, Cambridge, MA: Harvard University Press, 1977), pp. 224–44. The identity of ‘Sabinus’ is discussed in volume I of this thesis, pp. 192-93.}

where Scripture hathe *sicut lutum in manu figuli, ita in manu mea domus Israel* expoundeth in *manu mea* to be there in *potestate mea*, and so handes by a resemblance signify power, and the restrainte of them purporteth inbecylity and lacke of power. And so the homager in putting bothe his handes (whiche be the instruments to execute streingthe power and the actions of the body) betwene the Lordes knees (whiche is as mutche to saie as in the Lordes power, the same handes being stretched out and therby having lesser power then when they be clytchte together, for the fyngers being clytched together the fyste hathe greate streingthe, and is able to geve a great blowe) dothe mervelously enfeble himselffe and sheweth his humilitie to his Lorde & therby the more extoll his lorde.<sup>464</sup> The fourthe pointe is the homager when he dothe his homage must be bare headed whiche Ceremony dothe lykwise signifye the abasing of himselffe and subtraction of all power from himselffe in the presence of his lorde & his humilitie towerdes him, for the heade as it is the higheste parte of the body, so it is the Chiffest parte. And therefore in the warres the soldiars howsoever they be armed in other places be sufficientlye furnished with a sallett or other pece upon their heade whiche is to them a protection of the chiffe parte of their body and cause of boldnes. And as the Serjantes at lawe at their Creation use to have coyffes in similitude of a salett to putt on their heades as a ceremony signifying that as Sallatted souldiars oughte to be bolde in warr so oughte they in their clyentes cause and not to shrynke for feare or any other cause whatsoever. So the homager having his heade bare & uncovered or undefenced dothe therby promesse to his Lorde that he will be to him without defense or power, and to do all actes of humilytie & reverence for as the putting <off> of Cappes by one to an other usually don amongst us doth signifye humblenes & reverence so dothe it most chiffly in the homager, who by usage and lawe oughte to be bare headed. And so we see that the homagor by his kneeling, by his being ungyrded, by his handes being stretched out and putt betwene the Lordes knees, and by his being bare headed dothe abase [28r] himselffe all he maie and renownce in respecte of the

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<sup>464</sup> & therby ... his lord] Does not appear in M or Y.

lorde all power and force and humble himselffe to him as lowly as he can, and therby he dothe as muche as he can extoll and magnify his lorde. And besydes his promisses by these done Ceremonies, the homager by expresse wordes byndeth himselffe, and saithe to his lorde, I become your man from this daye forwarde, of lyffe and member and of earthly honour, and to you shall be faithefull and loyall, and faithe to you shall beare for the lande I clayme to holde of you, saving the faithe I owe to my Lorde the king. And the Lorde sitting shall kysse him. Here it is to be noted what [a mervailous]<sup>465</sup> lynke or knott is made and knytt betwene the homagor and his lorde. For the homagor by [his]<sup>466</sup> vowe made becometh the Lordes man, and so in lawe he is after accompted. <sup>m</sup><14. b. 6. in titlo gr. in fitz; p. 9><sup>m</sup><sup>467</sup> And therefore Cheynie and June Justices thoughte that if the king graunte to me that I and my men shall be acquyted of tolle, that I and myn homagers shall be acquyted of tolle by that graunte as well as my villains be, because the wordes of the homage be I become your man. <sup>m</sup><b. 33. E. 3. titlo gr. in fitz; p. 83><sup>m</sup><sup>468</sup> And lykwise Justices Wilby and Sharde thoughte that if a man graunte estovers to me & to my men, that that shalbe extended to my homagers and villaines and to none other. And the wordes of lyffe and member and of earthly honor be to be noted for if he become his man of lyffe and member, then his lyffe and members he should adventure in defense of his Lorde, and geve him all earthly honor. And Glanville somtyme chiffe Justice of Englande the eldest wryter in our Lawe, after he hath sett forth the wordes of homage, wryteth of the homager whiche he termeth, the Lordes vassall this: <sup>m</sup><Glanvile li. 9 cap. 1><sup>m</sup><sup>469</sup> *Ex hoc liquet quod vassallus non potest dominum suum infestare salva fide homagii sui, nisi forte se defendendo, uel nisi ex praecepto principis cum iuerit*

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<sup>465</sup> a mervailous] Interpolated from D: 64v; C: 87r; M: 96v; Y: 105v.

<sup>466</sup> his] Interpolated from D: 64v; C: 87r; M: 97r; Y: 105v.

<sup>467</sup> Marginal annotation also appears in R, D, M, Y. {14. Hen VI. pl. 43, f. 11b-13. Seipp Number: 1436.043. Fitz. Abr., Graunt 9. II: 20v.}

<sup>468</sup> Marginal annotation also appears in R, D, M, Y. {Hil. 33 Edw. III, per Fitz. Abr., Graunt 83. II: 25v. This case is only found in Fitzherbert and does not appear in the printed canon of Year Books.}

<sup>469</sup> Marginal annotation also appears in R, D, M, Y. {See *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill*, ed. G.D.G. Hall (London: Nelson, 1956), pp. 104-05 (IX. I).}

*cum eo contra dominum suum in exercitum, et generaliter nihil de jure facere potest quis salua fide homagii quod vertat ad exberedationem domini sui, vel ad dedecus corporis sui.* And after he saith: *Patet itaque quod si quis aliquid ad exberedationem domini sui fecerit, et super hoc convictus fuerit, feodum quod de eo tenet, de jure amittet et haeredes sui. Idem quoque erit si manus violentas quis in dominum suum iniecerit, eum ledendo, vel atroci iniuria afficiendo, et hoc fuerit in curia versus eum legitime comprobatum.* And so we see his opinion howe the homager is bounde by his homage to desiste from offending or greving his Lorde, and not to do any thing to his disinherison or to his shame, and if he do any thing to his disinherison, or shall laye violent handes on him, or shall do any other bitter offense to him, that he shoulde forfeite to his Lorde all his lande he holdeth of him. And so we see that ever it hathe ben taken that greate is the bonde of the homageor by his homage. And if I be not forgetfull I have readd that if the homageor kyll his lorde, it is treason, and it hathe in it some reason, sithens he hathe so treacherously broken the faithe and obedience whiche he had so solempnly vowed to his lorde, and it is agreeable with the meaning that the lawe hath in making the kylling of the master by the servant treason. The kysse of the Lorde is to be noted, for the kysse whiche is an outwarde Ceremony, signifyeth that the Lord accepteth the tenant into his favor frendshipp & protection, for the conjunction of their mowthes together in the kysse is a signification of the coniunction of their hartes in amytye. Saint Augustine in his boke *de* [28v] *amicitia*<sup>m</sup> < *Aug. de amicitia* ><sup>m</sup> 470 saith *est osculum corporale quod impressione fit labiorum, quod non est ostendendum nisi certis et honestis horis, ut in signum reconciliationis in signum pacis in signum dilectionis* &c. and after he saith *et porrigitur et suscipitur* &c. and after he saith *osculum spirituale proprie amicorum est, qui sub una lege*

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<sup>470</sup> Marginal annotation also appears in R, D, M, Y. {In a contemporary *opera omnia* edition of Augustine's works, *Liber de Amicitia* was attributed to Augustine. See *Tomus primus [-decimus] operum omnium d. Aurelii Augustini Hipponensis Episcopi* (Paris, 1555). However, the 'Book on Friendship' attributed to Augustine in 1555 was, in fact, an abbreviated version of *De Spirituali Amicitia* by Aelred of Rievaulx. For an authoritative text-in-translation, see *Aelred of Rievaluax: Spiritual Friendship*, trans. Lawrence C. Braceland, ed. Marsha L. Dutton (Collegeville, MN: Cistercian Publications, 2010). The passage to which Plowden refers is at p. 76. Plowden's error is discussed in volume 1, p. 196}

*amicitia tenetur. Non enim fit oris attractu sed mentis affectu.* And when Judas kyssed Criste therby he presented frendshipp to him in apparance. <sup>m</sup><2<sup>o</sup> Regio ca 15><sup>m</sup><sup>471</sup> And Absolon pretending to rebell againste his father David of whom it was wrytten *cum accederet ad eum homo ut saluaret illum extendebat manum suam, et apprehendens osculabatur eum* meante by his kysse to signify greate frendship towerdes those he kyssed, and so to wyn their hartes. And so kyssing is a ceremony signyfeng a conjoyning of love and frendshipp in the hartes of them whose lypps were joyned in the kysse. And <the Lord> if the homageor and his auncestors whose heire he is have holden of the Lorde & his auncestors whose heire he is tyme out of mynde, as the Scottishe quene and her auncestors did of the Quene of Englande and her auncestors<sup>472</sup> then that homage is called homage auncestrell. And then oughte the Lorde to warrant and defende the homageor against all former pretences and tytles made to his lande if he be made pryvey by the vouchor, and if he can not defende the tytle, then he muste recompence him with as muche of his owne lande as is recovered from the homageor: if so be he have receiued homage of his homageor, and then he can not disclayme in the Segniory. And therupon was the Statute of magna Carta made, whiche ordeigneth *quod dominus non habebit custodiam heredis nec terrae suae antequam homagium eius ceperit*, which is meant in case of homage auncestrell because after homage received he can not disclayme. And so the Quene of Inglande is bounde by her lawe to warrant to the heire of Scotlande that holdeth of her by homage ancestrell Scotlande from all former pretenced tytles, and if she can not being made pryvey therto in due order, then upon petition of suche heire of Scotlande she is bounde by her lawe to make recompence of her owne lande to the heire of Scotlande<sup>473</sup> according to the value of the losse. And our quene albeit she have not received homage [yet she]<sup>474</sup> can not disclayme in the Seignory because she enjoythe the seignory of

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<sup>471</sup> Marginal annotation also appears in R and D. ‘2 Kings Ca. 15’, M: 98r; Y: 107r. **{II Samuelis 15: 5 (Vulgate). For a discussion of this scriptural reference, see volume 1, p. 196, n. 35.}**

<sup>472</sup> did of ... her ancestors] Does not appear in M or Y.

<sup>473</sup> she is... of Scotland] Does not appear in M.

<sup>474</sup> yet she] Interpolated from D: 66r; C: 89r; M: 99r; Y: 108r.

Scotlande in the righte of the Crowne of Englande whiche she enjoyeth and hathe in the capacity of the body politicke, & none that injoyeth any hereditamentes in the Capacitie of a Corparation or bodye politicke can disclayme as Littelton and many other bokes tell us. And of these thinges a man maie see the greate subjection of the homager to his Lorde, and the great protection of the Lorde to his homageor, and the lynke, bande, greate ffrendshipp and amitie betwene them: whiche of all other is the greatest that is in the realme betwene man and man excepte the loyalty and ligeance that the subjecte oweth to the prynce. <sup>m</sup><li: 9. cap. 4><sup>m</sup><sup>475</sup> And Glanvile wrytethe truely whose wordes be these. *Mutua quidem debet esse domini et homagii connexio ita quod quantum homo debet domino*<sup>476</sup> *ex homagio tantum illi debet dominus ex dominio preter solam reverentiam unde si aliquis alicui donauerit aliquod tenementum pro servicio et homagio su quod aliquis distractionauerit tenebatur quidem dominus tenementum id ei warantizare vel competens escambium ei reddere.* This reciprocitie<sup>477</sup> or mutuall connexion betwene the Lorde and his tenante allowed and the lawe being as I have affirmed it before: can it be said that the Quene of Scottes that was an homageor to the Crowne of Englande, and so was her father and other her ancestors whose heire she was tyme out of mynde, and helde by homage ancestrell of the kynges of this realme, is a stranger to the Crowne of Englande or an alien? Or by reason of [29r] her birthe she is not capable of the Crowne of Englande of the whiche her father at the tyme of her birthe, and she after his deathe, did holde the Realme of Scotlande by homage ancestrell? Shall we saie that her father who in his lyffe and after his deceasse were bounde to knele on bothe their knees to the king of Englande, to be ungyrded, to putt bothe their handes betwene the king of Englandes knees to be uncovered of the heade, and to make a vowe to the king of England as the father oughte to have don, to be his man of lyffe and of lymme, and of earthly honor and to be faithfull and loyall to him, and whom the king of Englande by his kysse taketh into his protection to be alienated from the Crowne of

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<sup>475</sup> Marginal annotation also appears in D, M, Y. { *Glanvill*, ed. Hall, p. 107 (IX. 4). }

<sup>476</sup> '*preter solam reverentiam*' struck through in H.

<sup>477</sup> reciprocitie] 'reciprocally tie', D: 66v; C: 89v; M: 99v; Y: 108v.

Englande? Shall we saie the chiffe homager of the Crowne of Englande hathe no societie nor affinity with Englande, but is a mere stranger? Phye, Phye, that is to farr oute of the way.<sup>478</sup> The Subjection by homage counter pleadeth it. And albeit homage were not don by the queen of Scottes father, or her selffe, that is no matter. For the not doing it is equivalent in this case to the doing it<sup>479</sup>, sithens it oughte to be don, and the doer and he to whom it oughte to be don be bothe bodyes politicke, in whiche case the not doing is but a differring, and not a taking awaye of that due, nor the body politicke can not deveste the righte therof without the assent of the Realme. And so I muste conclude that the quene of Scottes and her father were homagers to Englande, and borne within the fee and seignory of Englande. <And as the said Chartre of Alexander king of Scottes made by the assente of all or moste parte of the nobilitie of Scotlande named particulerly by the said Mathewe Parys in his said boke purporteth they be subjectes of Englande, and owe not duety only as homageors but also allegiance as subjectes: for in that Chartre he termeth the kyng of Englande his liege lorde, and byndeth him and his heires to kepe faithe to the kinges of Englande.> And so <touching><sup>480</sup> the lawe in this poynte of disabilitie by foreine birthe in any place is not a disabilitie to receive by discente the Crowne of Englande, & mutche lesse in Scotlande, and leste of all of the Quene of Scottes.

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<sup>478</sup> Phye, Phye... the way] ‘That were senseles and voyd of all reason’, D: 67r; C: 90r; M: 100r; Y: 109r.

<sup>479</sup> it] ‘that’, interpolated from D: 67r; C: 90r; M: 100r; Y: 109r.

<sup>480</sup> touching] Does not appear in C, M, Y. It was written in D (f. 67r) but struck through.

Cap. 3.

The opinion of king Henry <sup>481</sup>the seventh touching the Comodities or <sup>482</sup>incomodities<sup>483</sup> that this Realme should have if it discended to the quene of Scottes.

I have thoughte good as a subjunction to the matter <sup>i</sup><to adde><sup>i</sup> the opinion of king Henry the viith touching the Comoditie or incomoditie<sup>484</sup> that shoulde ensue to this realme if the same shoulde come to the quene of Scottes, whiche I do by the provocation of the author of the prynted boke, who wrytethe that greate incomoditie should insue to us by the conjunction of this realme to Scotlande. For saithe he we and our Countrey shoulde be bounde to a forreine nation and that we maie be putt to a generall sacke, or lyve in servitude & bondage, and he rekeneth up all the myseries that he can, lyke (in his opinion) to fall upon us. But sir<sup>485</sup> you shall have<sup>486</sup> the opinion of King Henry the seventh in this pointe. <sup>m</sup><pol. li. 26><sup>m</sup><sup>487</sup> Polidor Virgill in his sixe and twentieth boke wryteth that after that James the Scottishe king [29v] had opened to the Bisshopp of Durham his desyre to marry with Margaret the eldeste daughter to kyng Henry the seventh, and after that the bisshopp had shewed<sup>488</sup> this matter to the kyng, and after that the Scottishe Ambassadors were come to the Courte to desyre for their kyng the said Margaret in marriage, the king opened this matter to his counsell and some of them did imagyn that it mighte after chaunce that the inheritance of this kyngdome mighte come to Margarett, and therfore they thoughte good she shoulde not be bestowed upon a foreyne prynce. *Ad ea Rex respondet, quid tum? si enim tale quid acciderit (quod omen Deus avertat) video futurum, ut nostrum regnum nihil inde dampni faceret:*

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<sup>481</sup> 'the eighth' struck through in H.

<sup>482</sup> or] 'and', M: 100v; Y: 109v.

<sup>483</sup> incomodities] 'discomodities', R: 45v.

<sup>484</sup> incomoditie] 'discomoditie', R: 45v.

<sup>485</sup> sir] Does not appear in M and Y.

<sup>486</sup> have] 'hear', D: 67v; C: 90v; M: 101r; Y: 110r.

<sup>487</sup> Marginal annotation also found in R, D, M, Y. {Vergil, *Anglica Historia*, XXVI. 41

<<https://philological.cal.bham.ac.uk/polverg/26lat.html#41>>}

<sup>488</sup> shewed] 'opened', M: 101r; Y: 110v.

*quoniam accessio Angliae non ad Scotiam sed ipsius Scotiae ad Angliam fieret tanquam ad totius insulae caput multo nobilissimum cum semper quod minus est solet ad decus et honorem ad id adiungi quod est longe maius, quemadmodum Normandia in ditionem et potestatem venit Anglorum maiorum nostorum, ita laudata regis sapientia et cunctis una voce rem probantibus Margareta virgo Jacobo pacta est.* Which maie be englisshed this. To that the kyng answered, what then? If it shoulde so chance (as<sup>489</sup> god forbede) I see it wolde not come to passe that our kyngedome should take any hurte therby: because therby Englande shoulde not come to Scotlande, but Scotlande to England as the most noble head of the whole Isle, sythens always the lesse is wonte for his honor and renowne to be adjoynd to the greater as once Normandy came into the power and dominion of Inglishe men our Auncestors. And in this the kynges wysdome Comended, and all they with one voyce allowing the matter Margaret was promised to king James. Lo this you see the judgement of this kyng who by wryting extante is compared to Saloman for wisdome and to Ulisses for worldlye policie. Here may our Sovereigne Lady the Quene see the judgement of her grandfather and we the Subjectes of this Realme of our late great master, loving prince and governor who tendered the honor and<sup>490</sup> advancement of this realme above all others & the commoditye of [us]<sup>491</sup> the subjectes of the same: and not onlie of him but also of all his whole Counsell being as grave a Counsell as any prynce in those dayes had, who comended the kynges judgment and wysdome as aforesaid. Nowe whether there be cause why we sholde beleve the judgement of the Author of this prynted boke before the judgement of this kyng and his Counsell in the Comodities and discomodities that shoulde come to this realme by the Conjunction of the same to the Scottishe kyngdome I referr it to your Judgement.

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<sup>489</sup> as] 'whiche', D: 68r; C: 91v; M: 101v; Y: 111r.

<sup>490</sup> honor and] Does not appear in M or Y.

<sup>491</sup> us] Interpolated from D: 68r; C: 91v; M: 102r; Y: 111v.

[30r] A recapitulation of the whole contentes of this treatise and the Conclusion thereof with a prayer of the author.

Ca. 4.

Nowe at leingthe sithens (as I thinke) I have sufficiently proved the matter taken in hande, to wette that the Quene of Scottes is not by her birthe disabled to receive by discente the Crowne of Inglande, if none other obstacle were to the contrary, I will make an ende with recytall, for revyving of your memory of the contentes of the whole treatise devyded into two partes, as in the prologue is recyted, and before in the whole worke dothe appeare<sup>492</sup>. The firste poynte or steppe of the firste parte therof setteth forth the two bodyes that the lawe of this realme dothe adudge in the king: to wete the body naturall and the body politicke whereof they consiste and howe they are created, what members they have, and their severall degrees and qualities, and the severall offices and actions that the lawe dothe ascrybe and appointe<sup>493</sup> to them. The seconde steppe settethe forthe the conjunction of the two bodyes, and the making of an unyon of them bothe, and one body indivisible, and howe in this consolidation the body politicke being the worthier drawethe unto him the name, and that name includethe bothe the bodyes, and receiveth and departethe with<sup>494</sup> other additions. The therde steppe sheweth that the conjunction of the two bodyes in one confoundethe not the severall capacities, but the Capacitie of eche body remaineth to reteigne thinges before acquired, and to bring in newly two wayes. The fourthe steppe sheweth that the actes of the bodye politicke whiche is the more precious is<sup>495</sup> not imbelished by this conjunction with the body naturall being the more base, and howe the body politicke being the greater atteignethe the superioritie and draweth unto him all the effectes

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<sup>492</sup> make an...dothe appeare] 'ende this part with a brieffe recytall (for the revyvinge of your memorie) of that which hath passed', D: 68v-69r; C: 92r; M: 102v; 112r.

<sup>493</sup> appointe] 'appropriate', D: 69r; C: 92r; M: 103r; Y: 112v.

<sup>494</sup> with] 'without', D: 69r; C: 92r; M: 103r; Y: 112v

<sup>495</sup> is] 'be', D: 69r; C: 92v; M: 103r; Y: 112v.

according to his propertie. The fyvthe steppe sheweth howe the naturall body is extolled by his conjunction with the body politicke, and alterethe in qualitie and in use touching thinges enjoyed in the capacitie of the body naturall, and howe he is participate of the prerogatyves & the state Royall, and hathe amplexes and fulnes of power & lybertie, and howe he is by meanes of the body politicke magnified. The sixthe stepp setteth forthe howe the pryveis in bloude, and disabled in lawe by causes criminall, maie receive the Crowne by discente or by acquisition and howe by the accesse of the body politicke to the body naturall, the body naturall is purged and discharged of all Criminall offences, and can not be disabled by causes sufficient to disable other naturall bodyes. The seventhe stepp showeth foreine birthe to be no disability to receive the Crowne by discente or by acquisition and two objections against it, the confutation of the firste, whiche is he borne beyonde the sea can not be knowen to be discended of englishe bloude. The eighte stepp sheweth that the seconde objection that is to wete borne in the ligeance of others is allowed againste inferior persons to the Crowne, and who shalbe accompted so borne and who not, and the exposition of the acte made in the xxvth yere of kyng Edwarde the therde of those borne beyonde the sea, and of *prerogativa Regis* cap. 12, howe farr Aliens be disabled, and the reasons why they be disabled, whiche can not take place in the Crowne. And then sithence the lawe for subjectes, and the reason extendeth not to the Crowne, there is none other lawe speciall that foreyne birthe is a disability to receive [30v] the Crowne, and concludeth therfore that foreine birthe holdethe no place in this case of the Crowne<sup>496</sup>. The Nynthe stepp sheweth that the ligeance of his naturall body after he is kyng is discharged againste him to whom the naturall body did before owe ligeance or obedience, and sheweth causes why and examples. The tenth stepp sheweth that if the foreine borne be subjecte to non other then it is clere he is not disabled to receive the Crowne of Englande. The eleventh pointe or article confuteth the assertion that the maxime of foreine byrthe extendeth to the Crowne because it is a body politicke, and

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<sup>496</sup> and concludeth ... the Crowne] Does not appear in M or Y.

sheweth that the maximes of the comen Lawe, whiche extende but to bodyes naturall only can not be aplied to<sup>497</sup> bodyes politicke, and sheweth examples therof, and of foreine byrthe to be non impediment from receipte of that that makethe a body to be a body politicke, and conteigneth the conclusion that foreine birthe is no disabilitie to the nexte of bloude wheresoever he were borne to receive by discent the Crowne of Englande. And touching the second parte of this treatise, the firste therof sheweth that the scottes nor Scotlande be not out of the ligeance of Englande, and that <sup>498</sup> the subjectes of Scotlande owe an imediate ligeance to the king of Scottes and a mediate ligeance to the king of Inglande, and all the scottes by their kyng do service to the Crowne of Inglande for the realme of Scotlande, and that therefore they borne there be not disabled in this realme. The seconde steppe therof sheweth that the quene of scottes is not out of the ligeance of the Crowne of Inglande albeit it were graunted that the Subjectes of Scotlande were, and that the quene of Scottes is an imediate homager to the Crowne of Inglande. The therde steppe sheweth the opinion of kyng Henry the seventhe touching the comodities or incomodities<sup>499</sup> that this Realme shoulde have, if it discended<sup>500</sup> to the Crowne of Scotlande, whiche I have don by the provocation of the author of the prynted boke. Fourthly and lastly I have made this recapitulation of the whole contentes of this treatyse for reviving your memory therin. And this I make an ende of the whole matter praying to god that he will blesse oure Sovereigne quene Elizabeth with long lyffe and many Childerne, and that she & they and their yssues by lyniall discent may inherite and continue this kyngdome *et nunc et semper et in secula soculorum Amen*, and make frustrate all this my deceptation upon this poynte: and if not, then I pray god to settell the kyngdome there where of righte it oughte to be. Amen.<sup>501</sup>

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<sup>497</sup> bodyes naturall ... aplied to] Does not appear in C.

<sup>498</sup> 'that' repeated and struck through in H.

<sup>499</sup> incomodities] 'discomodities', R: 47r.

<sup>500</sup> discended] 'should descend', Y: 115r

<sup>501</sup> Witnesses M and Y both include the following: 'Finis. Note that this Treatise was Compiled by Edmond Plowden Esquier of the Middle Temple', M: 105v; Y: 115v.

A briffe Declaration of the invaliditie of the laste will of the late kyng of famous memory King<sup>502</sup> Henry the viiith to make the imperiall Crowne of this realme to passe to those named in the same, in case everie of the children of the said king, to wete king Edward the vith quene Mary and our Sovereigne Lady quene Elizabeth, should dye without yssues of their bodyes, the same<sup>503</sup> kyng having non other issue. And a Refutation of suche assertions and objections as be invented to geve streingthe to the same laste will.

[31r] The prologue declaring the cause of the wryting of this declaration, and the devisiō of the matter treated upon.

After long pause taken by you upon the reading of my treatise made in proving that the Scottishe quene by the birthe of her or her father in Scotlande is not disabled to receive the Crowne of England by discente if in Case our Sovereigne Quene Elizabeth (whom god blesse with long lyffe and many Children) shoulde dye without yssue, if none other matter were cause to the contrary, whiche worke I made partly at your requeste, and whiche you extoll above the worthines therof. You nowe againe have made unto me a newe motion, and that earnest that I shoulde take some further paine, and wryte unto you myn opinion touching the validitie or invaliditie of the laste will of king Henry the eighte, by whiche it is said he appointed to others, if he and all his children shoulde dye without issues of their bodyes, and what I have heard or do knowe touching the same, and what I can saye in answering of such thinges as should geve or take streingthe to or from the same, and other dependances therupon. For saie you without that, my former treatise is to non effecte. For what avaylethe it saie you to knowe who is heire to the Crowne that shoulde have it by discente unles the same be in case to discende? For if it be convaied awaie by the said laste will, and therefore can not discende, to dispute to whom it

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<sup>502</sup> King] Does not appear in R.

<sup>503</sup> same] 'said', R: 47v.

shoulde have discended is in wayne. And you resemble it to a contention betwene two sonnes, which of them shoulde have their fathers inheritance, whereas their father had non inheritance at all. Therefore firste it must be graunted the father had inheritance, secondly which of the sonnes oughte to have it. So here you saie firste it muste be graunted that the Crowne is in case to discende, so that the seconde pointe is not disputable unles the firste be firste graunted. And if the laste will of kinge Henry the eighte conveied away the Crowne to others after our quenes death without yssues then it can not discende, and then to dispute to whom it oughte to discende is nedeles. And that so the laste pointe by me largely<sup>504</sup> handled shoulde not be in vaine, you nowe urge me to treat of the firste, and so you drawe me further. Sir in dede I graunte the disputation of the laste poynte is nedeles if the laste will have conveied the Crowne away: but whether it have or not restethe upon matter in dede, and not upon matter in lawe, and I a lawier rested upon lawe (to knowe whiche, belongeth to men of my science), but matters in dede belongeth to witnesse & other circumstances, and therefore I meante to referr that to you to trye that is matter in dede, as you coulde by others, and not to deale therin my selffe, and the rather because I do not knowe any thing therin of myn own knowledge, but that whiche I can saie is upon knowledge of others. But sithens your desire to me is [soe]<sup>505</sup> greate, and sythens also you are soe greatly occupied in Judittiall causes, and have lytle leasure to busye yourselffe in serche of these thinges, I (having some leasure at this tyme to wrtyte) will herby shortly manifeste to you what I have heard, or knowe in these premisses, and myn owne opinion also in thinges [31v] touching the same, requiring knowledge of lawe. And touching the order of my proceding I will firste lay my foundation, by shewing the veritie of the facte, and the testimonies, and presumptions that move Credit therunto. Secondly I will confute the assertions and objections made to oppunge my foundations layde. And so to the matter.<sup>506</sup>

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<sup>504</sup> largely] 'latelie', R: 48r.

<sup>505</sup> soe] Interpolated from R: 48r.

<sup>506</sup> The title page and prologue to Plowden's *Brief Declaration* does not appear in D, which skips from the end of his *Treatise* to the start of chapter one of the *Brief Declaration*.

The cause why the laste will of king Henry the eighte is not sufficient to convey awaie the Crowne to others if he and his children sholde dye without yssue.

First<sup>507</sup> it muste be confessed of all men for a truth without contraversye that the acte of 35 *Henrici octavi*, whiche establissheth the Crowne after the deathe of kyng Henry the eighte, and of kyng Edwarde the<sup>508</sup> sonne without yssue of either of their bodyes lawfully begotten, to quene Mary in tayle, with remaynder over to our soveraigne Lady the quene that nowe is in taile, power and auctoritie was geven to the same King Henry the gyve dispose and lymitt by his graces letteres patentes under the greate Seale or else by his highnes laste will made in wryting & signed with his moste gracious hande the imperiall Crowne of this realme to be remayne and come after the deceasse of the same kyng and all his issues without heire of any of their bodyes lawfully begotten, to suche person in remaynder or revercion as as shoulde pleas his highnes, and according to suche estate, and after suche manner and forme as shoulde be expressed in his letteres patentes or by his laste will in wryting signed with his moste gracious hande. And lykewise it muste be confessed of all men as a truth without contraversy that the same kyng made his laste will in wryting and by the wordes of the same did gyve and lymitt the imperiall Crowne of this realme to come and be after the deceasse of the same kyng and of all his yssues without heires of any of their bodyes lawfully begotten to the heires of the body of the lady Frances his sister Maryes doughter in tayle with remaynder over to the heires of the Ladye Elinor one other <sup>i</sup><of the sisters><sup>i</sup> of the said Lady Frances in taile. But any gyfte or lymitation by any letteres patentes under the greate Seale he never made, nor there was never any that alledged any letteres patentes to be made, as farr as ever I hearde. And albeit he made the said gyfte and limitatyon by the wordes of his laste will in wryting as is afforesaid, yet the same is not sufficient lawe as I thinke to make the Succession of the Crowne unles the same wryting were signed with

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<sup>507</sup> First] 'The first', R: 48v.

<sup>508</sup> the] 'his', D: 72r.

his hande. For sythens he coulede make no will by comen lawe of the Crowne whiche he enjoeth in his body politicke, but is therunto aucthorised by the acte using a certaine order and forme, he must of necessitie followe the same order and forme if he will execute the power geven him by the acte. As for example the acte of 32 Henry 8 geveth power to everie subjecte by his laste will in wryting to gyve or will two partes of his lande holden by knightes service: if in that case a man by his laste will made by worde without wryting woulde gyve two partes of his landes that will is insufficient to make any parte of the lande to passe because before the act he could have gyven no parte of his lande by will, and nowe the acte doth aucthorise him to geve it by his will in wryting, and then if he make his will [32r] without wryting the Statute is not pursued, and so the authoritie not executed: and yet for goodes and other thinges testamentorye, a man may make his will without wryting, but in the said case the gyffte can not be good because he hath not pursued the aucthoritie geven to him. Soe in this case the acte that geveth power to the king to dispose of the Crowne by his will in wryting signed with his hande is not pursued when his laste will is made and not sygned with his hande. And upon that grounde a man may putt cases infinite: but to try a matter nothing doubtfull, to bring examples is nothing nedefull, and so I will conclude that if his will in wryting be not signed with his hande, it is insufficient to make the Crowne passe. And whether it were so signed with his hande or not the question dothe reste. And as touching that poynte I have cause to thinke that the said laste will made in wryting as afforesaid was not signed with the hande of the said late kyng, but the stampe was only putt therto. For I being of the comen howse of Parliament in the firste yere of Quene Mary dyd heare William then Lord Pagitt (who cam into the same comen howse to testify his knowledge touching kyng Henrye the eightes assent by letteres patentes to the pretendid acte of the surmysed atteinder of the late Duke of Norfolke deceased grandfather to this Duke that nowe is) saie and affirme on his honor that he was privey to the beginning, proceding and ending of the said laste will, and that the same was not subscribed by the hande of the said kyng, but the Stampe only putt therto: and he tolde by whom, to wete by William Clarke. Loe what should I

thinke of<sup>509</sup> this his testimony? Why shoulde not I and the worlde beleve it to be true? He had cause to knowe the troath for he was then the kynges secretorie, and he was pryvey to the said will. And if I be not mervelously forgetfull he tolde me he wrote the will it<sup>510</sup> selffe or the firste draughte therof with his owne hande, and sawe the same prosecuted to the ende, and so had full cause of knowledge. The man was of greate Creditt, for he was the kynges Secretary, and besydes that at the tyme of his testimony he was a baron of this realme, whiche estate augmenteth his Creditt, he was not coacted to testify the same, but it was voluntary, and there was as then no question made of the Succession of the Crowne, nor then after lyke to aryse, because then yssye was then hoped for, both of quene Mary and the quene that nowe is. And so neede, manasse, or feare was not then to be presumed in him whiche might deface his creditt. And the place where he testified was suche that no man can presume that upon adyusement any man were he but of smale estimation woulde tell an untruth. And he lyved long after and dyed in this quenes tyme, and yet was he never reproved (as farr as I ever hearde) for that testimony as surely he should have ben if it had not ben true, for at the tyme of his testimony there were many witnesses in lyffe whiche were present at the publishing of the said will, and putting to the Stampe yeven as he was, and called therto as witnesses. And they, or at the leaste they to whom the Crowne was lymitted in Remainder by the said laste will woulde not have suffered that testimony (if it had ben untrue) to passe in sylence. These thinges considered I and all others have greate cause to beleve that the said kyng with his hande did not sygne the said will, if there were non other matter. But besydes this testimonye there is [32v] an other also in full lyffe that dothe verifie the former testimony of the Lorde Pagett, and that is Sir Henry Nevill knyghte who hath tolde me, and so he to dyvers others, that he was present at the publishing of the said laste will, and at the putting to of the stampe, and so fully agreeth with the Lord Pagett. This man was called to this as a witsnesse, his name is wrytten to it as a witness, and the will it selffe

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<sup>509</sup> of] 'by', R: 49v.

<sup>510</sup> it] 'him', R: 49v.

testifyeth that he was then either a grome or a gentilman of the kinges pryvey Chamber, and the rather had cause to knowe it. He is a knight, he is discended of a noble house, he is a greate Credit in his contrey, shall I thinke that he saieth untrue? Nay god forbed. There were many others present as witnesses whiche be all deade as I heare saving two with whom as yet I have not spoken in the pointe. And I would have ben loathe to have opened this to you of Sir Henry Nevyll & saing without his assent first axed saving that others tell me he telleth it to them. And to testify a<sup>511</sup> truth to every one that axeth it of him I allowe well in him. For a witnes shoulde never deny a truth to them that have to do in the matter, and demande his testimony, as everie subjecte of the realme being a member of the Corporation of the Crowne wherof the quene is heade hathe to do in this. And so the one of the witnesses addeth faith to the other, and they bothe deserve Creditt of all men, sithens the testimony of two is in all lawes sufficient for prouffe of the matter in contraversie. Besydes this by the originall will itselfe whiche Mr Hales in his boke calleth the prothocoll it maie be fully discerned that that signation that is to it was made with the stampe and not with the hande of the <sup>i</sup><said><sup>i</sup> kyng Henry the eighte. But first of all I will ease Mr Hales of greate greiffe he hath conceived because as he saieth in his boke the prothocall is imbesilled and is not extant, for whiche he exclaymeth marveillously and accuseth he knoweth not whom. But I will tell him good tydings, for it is founde, and further I will tell him it was never loste, but is and allwaies hath ben in the handes of him that oughte moste properly to have the Custody of it, that is of the Marques of Winchester Lorde Treasurer of Englande who was one of the executors of kyng Henry the eighte. And besydes that by [reason of]<sup>512</sup> his office of highe Treasuror of Englande, he hathe as I take it some oversight or interest in the Custody of the Recordes & wrytinges of the prynce of the realme resident in the escheker and treasury. And in the last parliament of our Sovereigne Lady the Quene that nowe is holden in the viiith yere of her raigne and sithence that not only dyvers of the nobles of this realme

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<sup>511</sup> a] 'the', D: 74r

<sup>512</sup> reason of] Interpolated from D: 74v.

being of the privey Counsell to the quenes highnes but also dyverse others did see it, by the shewing of the said Lord Treasurer. And to comfort Mr Hales I will tell him wherin<sup>513</sup> it is kepte. It is kepte in a rownde box or bagg of balcke velvett. And so I truste I have discharged Mr Hales of great grieffe whiche he had taken for the imbeaselling of the said originall will, and I woulde I coulde as well dischargde him of his greate folly commytted by his said temerarious rashnes in affirming by his boke that it was imbesilled. And some of those that have seene the said originall will and have diligently & circumspectly noted it for the purpose have tolde me that it sheweth it selffe plainly to be signed with the stampe, and not with the hande of the said kynge, and so they saie that they and the others that viewed it did lykewyse so take it. This being true addeth faith to the testimony of the former witnesses, and enforceth belyffe that the kyng signed it not with his hande. [33r] And besydes all this in enforcement of further beliffe in the said pointe. I thinke good to recyte one matter of presumption whiche is *presumptio violenta*. This it is by a divorce had before the bisshopp of Canterbury betwene king Henry the eighte and Quene Katherine his firste wyffe upon a cause whiche dissolved the matrimony betwene them from the beginning as it was taken and by the acte of 25 Henry 8 cap. 22 and the acte made in anno 28 Henry 8. cap. 7, whiche confirme the said sentence of divorce and make the matrimony betwene the said king and quene Katheryne voyde and adnililate, <sup>i</sup><Lady><sup>i</sup> Mary their childe was made illegittimate, and by expresse wordes of the acte of 28 it is enacted that she shall be so accepted and taken and so she was not capable of any inheritance in the Crowne by discente. And so she had non other righte or tyle to the Crowne, but only by the said acte of 35 Henry 8 and her estate right and tyle to the Crowne is geven to her by the said acte, but conditionally that is to saie that she shoulde kepe and performe such conditions whiche the same kyng should then after by his letteres patentes sealed under the greate Seale, or by his laste will in wryting signed with his hand declare and lymitt to the said state in the imperiall Crowne. And if she did not that then and

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<sup>513</sup> wherin] 'where', R: 50v.

from thereforth for lacke of heires of the severall bodies of the same kyng and of prince Edwarde lawfully begotten, the same imperiall crowne shoulde be and come to the Lady Elizabeth & to the heires of her body lawfully begotten in lyke manner and forme as if the said Lady Mary were then deade without yssue any heire of her body begotten. And albeit the said divorce & illegitimation of the said Ladye Marye afterwarde be repealed by the Statute made in the firste yere of her raigne, yet she had the Crowne not by discent but by the said Acte of 35 Henry 8 and so she helde her present estate therin subjecte to the conditions still, whiche by the said acte she was bounde unto, and so her estate was still tyed to the conditions and defeisable by not performing of them, if any suche Conditions were added to her said estate by her father by his letteres patentes or laste will signed with his hande. And as touching that poynte certaine it is that the said kyng Henry by his laste will did knitt and invest (for those be the wordes of the said will) to the said state of the said Lady Marye in the said imperiall Crowne this condition following, that is to saie, that she shoulde not take any person to her husbnde without the assent and consente of those appoynted by his highnes to his sonne prince Edwarde to be of his Counsell or the more parte of them then lyving therunto before the said mariadge had in wryting sealed with their Seales. And if she brake the same Condition that then and from thenceforth for lacke of heires of the severall bodies of the same king and of prince Edwarde lawfully begotten, the said imperiall Crowne shoulde wholly remayne be and come to the said Lady Elizabeth and the heires of her body lawfully begotten in such manner and forme as though the Lady Mary were dead without any yssue. And so we see that quene Mary by the acte of 35 and by the said laste will of her father (if the said laste will had all circumstances according to the said acte) had not helde the said Crowne but upon Condition, for breache of whiche Condition she shoulde loose her estate in the same. Whiche Condition by the Statute touching her mariage made in the firste yere of her Raigne was not taken away, but the assent and consente of the moste parte of the said persones appoynted counsellors to the said kyng Edwarde was still to be had in wryting [33v] with their Seales not withstanding the same Acte for the Quenes mariage or any other

matter if it so were that the said laste will had all circumstances requysite to make good the said Condition. And as I have cause to thinke by information of dyverse and otherwise, she before her mariage with king Phillip, no nor yet sithens had not the assent or consente of any of the said persones appoynted consellors to king Edwarde by meanes wherof it was objected against her, and that by pamphelletes in prynte throwne abroad in her tyme that she ceased to be quene, and in dede rightly as it semeth, were not one thing cause of the contrary, that is that the said laste will whiche addeth to her estate in the Crowne the said condition was not signed with her fathers hande. That being true she neded not to have any of their assentes to her mariage because the said acte of 35 geveth power to add conditions by his laste will signed with his hande, and not by his laste will whiche is not signed with his hande<sup>514</sup>. And so it is to be presumed that in that there was no assent had in wrytinge, that she right well understode before that it was not nedfull, because the condition was voyde by reason of wante of signing the last will with his hande. For it is to be thoughte that a man would not loose an acre of lande of inheritance in defaulte of a thing he mighte easely have, as the quene mighte have had this, for she mighte have had it for the asking. And then shall we thinke that quene Mary woulde have loste her kyngdome for lacke of a thing she might so easly have had, if it had ben nedefull? No surely<sup>515</sup> for that were beyonde all conjecture. But peradventure it will be saide she understode not her fathers will, and so was ignorante of the condition: but to remove that Scruple you shall understande that dyvers of the executors of kyng Henry the eighte being also of those persons that were appointed Counsellors to king Edward and whose assent was to be had to the said mariage were of Quene Maryes pryvey Counsell, and dyvers whose names were subscribed to the will as witnesses of the same and were present at the putting to of the stampe, were conversante, and in manner present dayly with the said quene Mary at and before her mariage. And herupon I have thoughte good to name all the kynges executors and counsellors appointed

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<sup>514</sup> and not... his hande] Does not appear in R.

<sup>515</sup> surely] 'surelie?', R: 51v.

to kyng Edwarde and lykewise those whose names be subscribed to the will as witnesses therto. The said kyng made syxtene executors whiche he appoynted to be of the pryvey Counsell with king Edwarde. To wete the Archbisshop of Canterbury, the Lorde Wriothesley then Chauncelor of Englande, the Lord Saint John then Lord greate master of his house and nowe Marques of Winchester, the earle of Herforde then great Chamberlaine of England. The Lord Russell Lorde pryvey Seale, the viscounte then Lysle highe admirall of England and after Duke of Northumberlande, the bisshop Tunstall, Sir Anthony Browne knighte, Sir Edwarde Montague knighte [chieffe Justice of the Commen place, Justice Bromley, Sir Edward North knight]<sup>516</sup>, Sir William Pagett knighte then his Chiffe Secretary and after that Lord Pagett, Sir Anthony Deny knigthe, Sir William Herberte knighte nowe earle of Pembroke, Sir Edward Wotton knighte and doctor Wotton his brother all whiche he made his executors and counsellors of the pryvey Councell with prynce Edwarde. And those that were present at the publishing of the said laste will, and called to be witnesses, and whiche as the same laste will testifyeth did wryte their names under the will were in nomber an elleven persons, to wete John Gates, Edmunde Harmon, William Saintbarke, Henry Nevile, [34r] Richard Coke, David Vincent, one Patricke, George Owen, Thomas Wendy, Robert Huicke and William Clarke. Of whiche persones named to be executors and counsellors to king Edwarde, the same Marques of Winchester the earle of Pembroke and the said Lorde Pagett were at the tyme of the said mariage of the pryvey counsell with the said quene Mary<sup>517</sup>. And the said George Owen and Thomas Wendy both doctors in physicke and were at that tyme & long before phisitions to the said quene and dayly attendant upon her person. Can any man be brought to beleve that non of those executors of the said laste will, and whiche had large legaces and money geven to them by the will, whiche before that they receieved & powched wel favoredly, whiche were of her pryvey counsell, nor none of those her

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<sup>516</sup> chieffe Justice...North knight] Interpolated from D: 77r.

<sup>517</sup> mariage of ... quene Mary] 'will sealed of the privie Councell with the said Queene Mary', R: 52r.

physicians that had subscribed the will wolde tell her the condition in the will annexed to her estate for breache wherof she sholde forfeite her estate in this kingdome? Shall we thinke suche unfrendlynes in them? Is it to be thoughte that they of her pryvey Counsell and the others being men of wisdom and integritie coulde be content to have her from the estate of a quene to becoame a subjecte, and all by their sylence, and that all actes don by her after as quene shoulde be frustrate and voyde in their defaulte? Coulede they susteine to suffer the realme to be illuded by one that was their loving frende thinking her selffe quene, and calling her selffe quene and doing actes as a quene and whiche by a circumstaunce easily to be brought to passe (if they had disclosed the thing) might have ben made to continewe [perfecte]<sup>518</sup> quene? Or was there non other of all those that had exemplifications of the same laste will under the greate seale (surely wonderfull many exemplifications were made) woulde admonisheth the quene before her mariage of the said condition added by the same laste will? Or was the quenes Counsell and parliament so diligent aboute the making the acte for her marriage with kyng Philipp foresseing these thinges requisite, and woulde not they foresee that that shoulde make her no quene at all if she were married without it? Surely these thinges be not only farr from truth but from all conjecture and imagination also. And therefore it is moste to be credited that she righte well understode of that condition, and that she lykwyse understode that it was of no validytie because of the wante of the signing with the proper hande of her father, and that onely was the cause why she had not the assent and consente in wryting of those lyving that were apointed for king Edward to her marriage. Some percase will yet saie it is lyke she was ignorant of the condition, for if she had knowen it she wolde yet for her surety have had their assentes sithence it hurted not, although it were not nedefull, and it woulde have clered all quarells and objections that mighte be made, and therefore wysdome woulde have requyred she shoulde have had it [& therefore if she had knowne it she would have had it]<sup>519</sup>. Sir to these I answere that if she had

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<sup>518</sup> perfectel] Interpolated from D: 77v.

<sup>519</sup> & therefore ... had it] Interpolated from D: 78r.

had their consentes as easly she mighte that woulde have made the worlde thike that it had ben nedefull to her to have had it and therin she had geven occacion to the worlde to thinke that the said laste will had ben signed with her fathers hande, and that had ben an enforcement of Creditt to the tyle of them to whome the revercion of the Crowne was lymitted for lacke of issues of the body of her & her sister Lady Elizabeth. And to do an acte to geve Creditt to that that oughte not to have Creditt, had ben evyll done and not answerable to the purenes of quene Marys conscience. And therefore [34v] we have cause to thinke that the opteigning of that assente to her mariage was pretermitted of purpose and not of ignorance, and the rather because the Lord Pagett one of the privey Counsell before the mariage had openly in the Parliament house affirmed upon his honor & Creditt that the king did not sygne the said laste will with his hande. And so I ende with this as with the foundation sufficiently layde.

The confutation of the assertion or objection that because the same originall will saith that the king hath signed it with his hande, and the inrolement or exemplification therof have those wordes, therefore all men be estoppte to saie the contrary.

In the ende of the said last will be these wordes In witnes wherof we have signed it with our hande in our Palace of Westminster the thertenthe<sup>520</sup> of December in the yere of our Lorde god a thowsande fyve hundred fortie and sixe after the computation of the Church of Englande and of our raigne the eighte and thertith yere, being present and called to be witnesses the persons whiche have wrytten their names herunder. Upon whiche wordes (in witnes wherof we have signed it with our hande) and upon other wordes before in the will testifying he hath signed the will with his hand and the inrolement of the same laste will, and of the exemplification graunted abroad under the great seale it is objected that it is not nowe questionable whether the will were signed wth the kynges hande or not, sithence the same will saithe it was signed with his hande and the enrolement whiche is matter of recorde and the exemplifation therof under the greateseale having in them the said wordes do conclude all men to saie the contrary. To this I saie he that objecteth this woulde have the kingdome gayned by estoppell, and not by truth. For albeit it be not true, yet with untruth and falcity he woulde upholde the matter. And so where the Comen Lawe, and the acte of 35 Henry 8 will not the Crowne shoulde passe but one of two wayes, that is by the kynges letteres patentis or by his laste will signed with his hande, these fellowes have founde out a therde waye, that is they woulde have it passe by estopell that is by conclusion that men shoulde not be received to tell truth, and truth must be murdered, and then falcity prevailing he will make a newe king without righte or tyle: yea and we all muste be bounde unto it. A proper knacke forsoathe. But sir the foresaid matter doth conteigne three severall pointes. The firste the wordes of the will that is signed with the kynges hande, the seconde the

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<sup>520</sup> thertenthe] 'thirtieth', D: 78v.

inrolement of the will, the therde that is exemplyfyed under the greate Seale. I will syffte these poyntes sonderly<sup>521</sup>. To the firste I saie the wordes of the will can be no witnes to the signing of it with the kynges hande, for the whole will (amongeste the wordes wherof the said wordes be) dothe in order procede the signing, and the signing cometh after the whole, and then the wordes of the will can not testify an acte coming after the wordes, no more than a witnes can testefye of a thing to come: whiche is not the office of a witnes but he muste tell thinges paste. And so wordes in a wryting can not testfye of a thing that shall be after the wryting. As for example I make an obligation, and saie in witness wherof I have putto my seale and have delyvered it as my deed. That suffiseth not in lawe to prove [35r] the sealing and delyverie for the sealing and delyverie be actes done after the wordes, whiche the wordes can not testifye, and if they be putt into wryting yet they be not of sufficiencie to prove the factes althoughe the veritie of the wryting of the obligation be not denied. And so if I make a feoffamente by dede and saie in the dede that I have made livery of seysyn to the partie, albeit I do not denye the dede but confesse it, yet I maie denye the liverye of Seysen at the evidence geving, or pleade *riens passa per le fait* for those wordes of tesifying the liverye in the dede be not of any effecte in the lawe because the liverye of seysen doth come after the wordes and after the delyvery of the dede, and therefore the dede can not be a sufficient witness to that whiche cometh after. And so the signing of the will doth in order and judgement of lawe come after the whole wordes as well of in witnes wherof, as of the wordes precedent, and therefore can not testifye the facte after. And I maie well resemble it to a case that is in dyverse bokes of our Lawe, that if a man be killed and the Coroner doth impanell a Jury *super visum corporis* they maie fynde all circumstances inducyng or occasioning the death of the man, as procurers and all other accessaries before the death. But if the Jury fynde accessaries sithens the deathe, as that suche a man sithens the death did feloniously harber and receive the murtheror, that is no sufficient Indictement for suche an accessory after. For the Jury

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<sup>521</sup> sonderly] ‘severally’, R: 53v.

is charged *super visum corporis*, and of all thinges occasioning the body they see to be deade, and they may tell of nothing after the death, for it is out<sup>522</sup> of their chardge, and so it hath ben adjudged in our Lawe. And so the wordes of the will can not witnes of thinges chaunced or done after the will. And surely he that drewe the will had intent that the king should have signed it with his hande and to that intent he wrote in dyvers places that the will was signed with his hande. But it chaunced as often thinges do, after the handlyng of connyng lawiers that drawe thinges with good and apte wordes, and geve order to their Clyentes howe to execute them, and yet the Clynetes by negligence or slacknes never execute them well. And so it seameth this king by neclygence or slacknes did never execute that whiche was well drawn<sup>523</sup>. And for<sup>524</sup> wante of signing with the kynges hande made frustrate not only the lymitation of the Crowne to those that should have sused in defaulte of yssues of him and his Children, but also the Conditions knitt to the estate of quene Mary and quene Elizabeth his children. And as touching the inrolement of the said laste will I knowe not certainly whether it were inrolled in the lyffe of the said kyng Henry or not, or whether it be inrolled at all, or whether more were but exemplifications made in the tyme of kyng Edwarde upon a *vidimus* or *inspeximus* whiche is noe inrollement at all. For so maie a man have all his evidence that he will in the Chauncery exemplyfied under the greate seale. But admitt moste strongly that the said laste will was inrolled in the tyme of king Henry that made the will: yet I saie that inrollement addeth no force to the originall will for the prothocall it selffe was no matter of recorde, but matter in faite, and was of no force aslong as the kyng lyved. For the will taketh his effecte and consomation by the death of the testators and not before and untill his death is in effecte but as an escrowe countermandable at the will of the testator, and the inrolement of it taketh not away the nature or qualitie of it, but still it resteth as an escrowe countermandable and is no matter of recorde. And if<sup>525</sup> I mighte [35v] have objected

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<sup>522</sup> out] ‘not’, R: 54r.

<sup>523</sup> that whiche was well drawn] ‘them well’, R: 54r.

<sup>524</sup> for] ‘so’, D: 80r.

<sup>525</sup> if] Does not appear in R.

before the inrolement that it was not signed with the kinges hande soe maie I still after the inrolement and after the kinges death. And if I make a dede of feoffment to one and saie in the same I have delyvered him liverye of seysen where in dede I did not, that shall not conclude me because the wordes can not testifye of a thing to come as I have saide. And if I inrolle the dede, yet I shall be received to saie I never made him livery and may putt the feoffes named in the dede out of the lande, for the inrollement can not conclude me in a thing that can not be testified by the wordes of the dede but is done after the dede <wrytten>. And because I inrolle it as my dede I can not deny after but it is my dede, but to saie the wordes of the dede be insufficient in lawe to prove this or that I shall saie not withstanding the inrollement. And albeit the said laste will were inrolled whiche testifyeth it was signed with his hande, yet shall the king or any Subjecte saie it was not signed with his hand, for that is matter in fait not triable by recorde, but lying in prouffe by witnesses or otherwyse, and can not be testified by the will it selfe for it cam after all the wordes of the will wrytten. For sithens the whole will is but one intire thing, the signing is after all, and so it is said by the wordes of the will. And the inrollement of a will can not add force to a will because it is but an escrowe before the inrolement and after the inrolement also, and is not a dede or of efficacy untill the testators deathe, and after his death it is not a will of Recorde althoughe it were inrolled in his lyffe but testifyeth still matter in dede. And if it be after exemplyfyed, yet is not the will of recorde but that exemplification is an exemplification of a matter in dede. And that exemplification albeit it be under the greate seale doth not prove it to be the kinges will but every man may be received to saie the kyng did after countermande or revoke it by worde or was not in perfecte memory at the tyme of his deathe or the lyke thing usuall to prove willes of no force. And if the inrolement prove any thing at all it is no more but that it was once his will, and yet I can not assent to that, for he may inrole it and never publishe it, and the inroleent is not a publication in my mynde nor doth not amounte to so mutche. And so the inrolement or exemplification doth not make it a matter of recorde, nor alter the qualitie of it, and is conclusion to no man, more then if it were not enrolled nor exemplyfyed.

And if you shoulde come into the Chauncerye and there shewe a forged release supposed to be made of Righte of lande by my graundfather to you, and upon a *vidimus* gett it exemplyed under the greate seale, as sometymes suche thinges chaunce in Courtes of Recorde yet may I deny the dede and saie *nyent le fait mon aye*, for the exemplifications under the great seale of a matter in dede upon a *vidimus* geveth no streangthe to it, but is it matter in dede still good or badd as it was before. And so I make an ende of this matter affirming the wordes of the will that is to saie it was signed with the kinges hande be no prouffe of it, nor by that, nor the inrollement of that, nor the exemplification under the greate seale grounded upon the inrollement or upon a *vidimus* or suche lyke is conclusion to non to deny the signing, but it is questionable as well as if it had never ben inrolled or exemplyfyed and so I leave truth as truth without conclusion by falcytie.

The confutation of the assertions or objections [to weete]<sup>526</sup> that the Stamppe putt to by the kynges commandment is his hande, and if it be not, yet the signing with hande is not materiall.

Albeit that it was as I have said that the said laste will is not signed with the hande but the stampe is only putt therto <sup>i</sup><yet some objecte that the stampe putt therto><sup>i</sup> by the kynges commandment (for the truthe is of the Case that William Clarke did putt to the stampe) is a signing with his hande. For the stampe putt to whiche conteigneth his name and his hande wryting of his name be all one, for signing with the hande if yt be taken for making his name or signe with his hande is but a kynde of [payntinge]<sup>527</sup> his name or signe manuell with penn and ynke by the acte of his hande. And as the putting the stampe to it himselffe is his owne acte, so if an other in his presence or in his absence by his Commandment putteth to the Stampe that is his acte and his putting to of the stampe. As if I commande a man to wryte an obligation in my name and commande him that wryteth it to putt to my Seale and delyver it to him as my dede to whom it is made. This maketh it my dede because all the actes don by the other be myn actes. And so the stampe putt to by William Clarke by the kynges commandment is the kynges putting to of the stampe, and is his signing with his hande of his name. And so the wordes signing with his hande generall putt into the acte be satisfied bothe in worde and in entente with putting to the stampe by William Clarke by the kynges commandment as well as with wryting with hand by the king himselffe. Is not this thrydde thinke you sir fynely sponn? But others (and of those Mr Hales in his boke semeth to be one) thinke that if there were no signing by hande or stampe that yet the will is sufficient to make the Crowne passe, for saie they the signing is not materiall but is a thing of forme without effecte, but the partes effectuall of the will be the wryting and publishing for therby his intent appeareth, but the signing is of non effecte. And albeit the Statute doth speake of it, yet if it be not of any momente it is not nedefull to performe it, for it

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<sup>526</sup> to weete] Interpolated from D: 81v.

<sup>527</sup> payntinge] Interpolated from D: 82r.

sufficeth to performe the effectuall wordes of Statutes and not the wordes that be voyde of all importance. And so they make a cleare matter that the wante of signing is no wante of effecte, and so they [make the]<sup>528</sup> matter shorte and quickly at an ende. To bothe these objections I answer that the signing of the last will in wryting with his hande is only intelligible to be intended as well in comen speache as by the intent of the acte to be wryting and drawing with hande, and that that [poincte]<sup>529</sup> of wryting and drawing with hand is matter of great weighte and importance, and not a thing only of forme without effecte. And for the full intelligence therof it is to be considered that man consisteth of two partes, of bodye, & of soule or mynde. The body is the baser, and the servante as it were to the soule or mynde to execute the will of the soule or mynde: and the soule or mynde is the governor or director of the body and therefore Salust saieth rightly *animi imperio, corporis servitio magis utimur*. And as the body to performe outwarde actions hathe his members and partes, so hathe the soule (wherof procedeth reason) his partes and members, of whiche among others there [36v] be three *memoria, intellectus et voluntas*, memory, understanding and will, necessarie all to the actions of the Soule or mynde, whose determinations the body doth execute. The makers of the<sup>530</sup> acte of 35 Henry 8 did consider fully as it semeth that they should graunte mutche in that they shoulde geve power to the kyng for wante of issue of him and children to dispose the Crowne where it pleased him. And for that they gave him power, to do that by two wayes. That is to saie by his laste will being more dark to the knowledge of his subjectes then the other, and that mutche sleighte and corruption mighte be used by those that sholde be about him at his laste tyme to bryng the Crowne to some of themselves, or some of their favorers by saying that this or that was his laste will, and that it was reade to him, and he consented and saied yea therto, and then question mighte be had whether he had his full senses or not (for what is it that for kyngdomes sake will not be soughte for or

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<sup>528</sup> make the] Interpolated from D: 82v.

<sup>529</sup> poincte] Interpolated from D: 82v.

<sup>530</sup> the] 'this' \*

objected?) thought for avoyding of all doubttes that might chaunce by such quareles or objections to have<sup>531</sup> one thing to the kinges laste will that should convey away the kyngdome out of his righte course that should playnly and manifestly prove that the kyng at the making of suche laste will shoulde have full and perfecte sense, and habilitie of body and mynde: and that is the signing with his hande. Whiche acte requyreth intelligence, will, and memory besydes the senses of the body. Intelligence of the cause, and purpose why he shoulde signe it. Will or appetyte to do it, and memory of the letters silables and forme of signing. And then laste of all the body whiche is servant to the soule or mynde shoulde execute by action and determination of the mynde by bodily facte, that is by holding the penn, drawing the letteres and forme of signing, to whiche facte he useth dyvers of the bodily senses as feeling the penn, seeing the paper or thing that he signeth and moving or sterring his fyngers and hande. And so these actes purporteth sense of body and mynde in the kyng that shoulde signe, whiche stamping dothe not so fully expresse, for he that can not wryte, or he that is blynde, may sett a stampe to a wryting, and if he be madde he may sett the stampe, lykwise although he wante reason understanding and memory, and if an other do it by his comande or bydding that is not equivalent to the kinges proper doing. For a man that is a sleape maie and often doth beade or do a thing, and he that is madde wanting intelligence or memory may beade or do a thing. And an acte that an other dothe by his sighte of eyes, touche, or motion can not be said to be don by sight of myn eyes<sup>532</sup>, or by my touching or motion. And so we see this facte of signing with the kynges hande whiche is in sense and meaning the kynges wryting by hande requyring intelligence will and memory, also touching seeing and motion, is not performed or satisfyed by puttyng to the stampe, nor that don by a stranger by commandment of the kyng is not to be taken the acte of the kyng himselffe. And so it is evident that signing with his hande is matter of substance and appropriate to the proper <sup>i</sup>hand<sup>i</sup> of the kyng only, and is not matter of forme only without effecte as is objected. And

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<sup>531</sup> have] 'add', D: 83r.

<sup>532</sup> touch, or motion ... myn eyes] Does not appear in R.

[therefore]<sup>533</sup> the case of sealinge [37r] and delyverie for me of an obligation by my commandement whiche is an acte at the comen lawe, and whiche I maie do by an other as well as by myselffe, as I may buy or sell by my bayly, or one appointed by me as well as I maye myselffe, is not to be resembled to this acte being but an Auctoritie geven by statute, and only to the person of the kyng by matter of Substance and forme lymited only and appropriate in wordes sense and meaning to the person of him. And so as I said the signing with hand is of greate moment, bothe for the powers of the mynde and body whiche can not be don by any other. And therfore the auctoritie of the acte is not executed and so the lymitation of the Crowne by that will is voyde.

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<sup>533</sup> therefore] Interpolated from D: 83v.

The confutation of the assertion that if signing with the kynges hande were necessary and it<sup>534</sup> not don, that yet the lymitation in the will to those to whom the crowne is appoynted by the same if the kyng and his children shoulde dye without yssues, is made good by the acte in the firste yere of the raigne of Quene Elizabeth intytled an acte of Recognition of the kynges highnes tyle to the imperiall Crowne of this Realme, and that it is treason in them that do any thing in interruption or disinherison of them wherby they might be disturbed<sup>535</sup> of the tyle of inheritance in the Crowne.

Albeit signing with the proper hande of the king were of necessitie to convey awaye the Crowne in revercion and yet was not had, yet saye the favorers of the lymitation by will, that there is one thing that supplyeth that defecte and salveth the matter clene, and maketh that those that do anything to or for the interruption or disinheritance of those to whome the lymitation is made, wherby they mighte be disturbed in body or tyle of the inheritance of the Crowne, traytors. For saie they the acte of 35 Henry 8 dothe provyde that if any persons by wordes wrytinges prynting or any other exterior acte or dede willingly procure or do any thing to or for the interruption or adnihillation<sup>536</sup> of any thing in the said acte, or of any thing that shall be don by the kynges highnes in the lymitation or disposition of his majesties Crowne being limited by the said acte to inherite in suche forme as is afforesaid, or to the interruption or disinherison of any person to whom the Crowne is lymited by the said acte, or shall by the kinges majesties letteres under his highnes greate seale, or by his laste will in wryting signed with his moste gracious hande be lymited and disposed by auctoritie of the said acte as is aforesaid, wherby any suche yssues or heires of the kynges majestie or such other person or persons mighte be [destroyed]<sup>537</sup> disturbed or interrupted in body or tyle of inheritance of the Crowne as to them is lymited in the said acte

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<sup>534</sup> it] 'yet', D: 84r.

<sup>535</sup> disturbed] 'dissembled', R: 57r.

<sup>536</sup> adnihillation] 'adnullation', D: 84v.

<sup>537</sup> destroyed] Interpolated from D: 84v.

in forme afforsaid or as to them shall be lymited or assigned by the kynges highnes by virtue and authoritie of the said acte, that then every suche person their aydors, counsellors, maignteiners and abettors shall be adjudged highe traytors as in the acte appeareth. Which [37v] braunche of treason they graunte was repealed by the Statute made in the firste yere of quene Mary but they saie by the acte made in the firste yere of Quene Elizabeth intytled an acte of Recognition of the quenes highnes tyle to the imperiall Crowne of this Realme, wherby the Crowne is establyshed and recognized to the quene that nowe is, and to the heires of her body it is enacted as followeth in these wordes: that is to saie that as well their declaration [confession and recognition as also the lymitation & declaration]<sup>538</sup> of the succession of the imperiall Crowne of the realme mentioned and conteigned in the said acte made in the said 35th<sup>539</sup> yere of the raigne of the quenes highnes father shall stande remayne and be the lawe of this realme for ever. And that all sentences judgements and decrees made declared sett forthe publyshed and promulged and also as muche of everie clause artycle braunche matter or thing conteigned and expressed in anye acte or actes of parlaiment as be in any thing repugnante contrary or derogatory to the said confession declaration or recognition or any parte or parcell therof or contrary to the said lymytation of the succession of the imperiall Crowne established and made by the said acte in the said fyve and thertith yere by whatsoever power or auctoritie the same ben, or have ben had, or made shalbe utterly frustrate, voyde and of none effecte, and also shall and may be cancelled defaced and putt in perpetuall oblivion, at her highnes will and pleasure as if the same had never ben had made declared sett forth published or promulged. Upon whiche acte they saie althoughe the heires of the Lady Fraunces be not mentioned or conteigned within the expresse lettere of the acte of 35 Henry 8 yet by a meane they be conteigned in the said Acte: because the acte gave the kyng auctoritie to dispose it by his laste will, and he did by his laste will dispose it to the heires of the bodye of the said Lady Fraunces accordingly. And so that whiche is done by

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<sup>538</sup> confession and ... & declaration] Interpolated from D: 85r.

<sup>539</sup> 35th] '25', R: 57v.

authoritie of wordes conteigned in the acte is by a meane conteigned in the acte. And the statute of quene Mary whiche repealed the seconde braunche of the acte of 35 Henry 8 is revyved<sup>540</sup>, and so whosoever dothe any hurte or disturbance of the aforesaid lymitation is a traytor. Lo howe the inventor of this objection hath roved at the matter. And albeit he be as farr from the marke, as ever Archer was from the marke he shotte at, yet suche favorers hath he founde that this case upon the matter hath ben delyvered to the quenes highnes handes, and from her to all the Judges. And as I have hearde saie <(but you well knowe whether it be so)> it hath received such resolution at the Judges handes as he hath cause to receive smale rewarde for his invention and labour. And to answer it I nede fewe wordes, sithence before I have said that whiche remembred and applyed to this refelleth it utterly. Trewely it is that the acte in the firste yere of the quenes majesties raigne that nowe is doth establish the lymitation and declaration of the succession of the Crowne mentioned and conteigned in the acte of 35 Henry 8 and avoydeth all thinges conteigned in any acte of parliamente to be in any thing contrary to the lymitation of the succession of the [38r] imperiall Crowne established and made by the acte of 35 Henry 8 but what lymitation of the Succession is there made by that acte? Surely none at all but to the kyng himselffe and to his children he then had or shoulde have, and to the heires of their bodyes lawfully begotten, unles he made further lymitation by his letteres patentes or else with his laste will signed with his hande. And did he after make any lymitation by his letteres patentes? It is confessed of all that he made no lymitation by his letteres patentes. Then it resteth to be knowe whether he made any by his laste will signed with his hande, and he made none by his laste will signed with his hande, but by his laste will wanting signing with his hand he made further lymitation as is before confessed, whiche is not warranted by that as afforesaid: and so upon the matter he made no lymitation further then to him and his children, and then this acte

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<sup>540</sup> And the ... is revyved] ‘And the Statute of Queene Mary which repealed the seconde braunche of the acte of 35 is repealed by the force of this worde in the said acte of Queene Elizabeth (derogatorie). And so the second braunche of the acte of 35 is revived’, D: 85v.

of recognition was to establishe that whiche was don before, and not to make any newe succession. And so this mans opinyon is quyte overthrowne for the further lymitation, and the treason knytt to that disturbance therof also, and so (as is said) the Judges did resolve with whiche I truste he will be satisfyed. And so hoping I have sufficiently maignteyned my foundation layde and confuted the said objections made to the overthrow of the same I ende this matter, praying as I did in my former treaty that god may sende to our quene Elizabeth long lyffe and many children whiche may continue by lyniall discent from her the succession of this Crowne for ever, and so make nedelesse all our disceptation. If not then god sende the Crowne to be placed after her deceasse where it oughte to be. <Amen.>

## Appendix 2: Edited Prefatory Material from D

An edited (or semi-diplomatic) transcription of various prefatory materials, preceding chapter one of Edmund Plowden's *Treatise of Succession*, in Bodleian MS Don c 43 (D). The material transcribed includes: a title page; Francis Plowden's address to King James VI and I; and 'Recension 2' of Plowden's preface to his tract.

The following conventions are employed:

- i. Lination has been retained.
- ii. Foliation is indicated in emboldened text within square brackets: [**1r**].
- iii. Raised letters have been silently lowered, and contractions and abbreviations have been silently expanded. Spelling has not otherwise been altered.
- iv. Punctuation has not been altered.
- v. Text in an engrossing hand has been emboldened.
- vi. Text in an italic hand has been italicised.
- vii. Marginal notes are interpolated close to the text to which they refer and are placed within angle brackets with a superscript 'm': <sup>m</sup><...><sup>m</sup>.
- viii. Interlineated words or passages are interpolated as close as possible to the text where they are written and are placed within angle brackets with a superscript 'i': <sup>i</sup><...><sup>i</sup>.

**[f. 1r] A Treatise**

**of succession, written in the**

life tyme of the moste vertuous and renowned Ladye

*Mary* late Queene of Scotts.

**Wherein**

is sufficiently proved, that neither her forreyn birth

nor the last will and testament of kinge henry the

eight, nor any other pretext could debarre her from her

true and lawfull title to the Crowne of Englande.

**Written**

by *Edmonde Plowden* of the Middle Temple

an Apprentice in the lawe.

[2r] **To the** kinges

moste excellent maiestie.

**Moste highe and**

mightie Prince, my gracious Lorde, after that our late soueraigne Queene Elizabeth had raigned almoste eight yeres vnmaryed, and great doubts were conceyved that she woulde soe contynue, motion was made for declaration of the heire apparaunt in the parliament holden in the eight yere of her raigne. Crownes neuer want competitors: vncertentie of succession, the cause of deVISION the cause of Ruyne. Adoption hath often supplied the want of knowen and worthy successors for the Common good as the Romane storyes testefye even of their Pagan princes. In this parliament were raysed many doubts, most of euill affection, the moste daungerous founded vpon forced grounds of the lawe: wherevpon it pleased the Duke of Norffolke a prince of singuler pyetie and love to his Countrey, to require the opynion of my late father Edmonde Plowden (a Counsellor at lawe) in this ymportaunt matter. Ymportaunt (I saye) vnto euery one in all he might esteeme of value in this worlde, and soe was the care of this great Peere herein proportionable to his place and dignitie in this Realme. The Dukes desire was satisfied by waye of discourse in speache deliuered vnto him plainly manifestinge the right and iust title of your moste vertuous, gracious, and princely mother, from whome your maiestie is discended. But when *Hales* and others had spredd sundry sedicious pamphletts endeavouringe

to impugne your maiesties title for the aduancement of some other, he  
thought it necessarye to expresse his zeale vnto his Countrey  
[f. 2v] and your maiesties <sup>i</sup><undoubted><sup>i</sup> title in writinge this treatise. And beinge  
<sup>m</sup><13<sup>o</sup> Eliz. cap. 1><sup>m</sup> ready for the printe, the statute was made in the xiiijth yeare  
of our late Queene Elizabethes raigne, inhibitinge vnder  
most severe ponishment (duringe her life) all speache of  
any successor to this ymperiall Crowne. That whiche soe  
strayte a lawe kepte longe in silence, in all humblenes I  
nowe present vnto your highnes, beseachinge the same benignely  
to accepte the endeavour of your faithfull and obedient subiect, who  
prostrate at your feete is ready to serve, honour, and obey you  
in all dutie, faith, and loyaltye.

Your Maitesies most humble  
and devoted subiecte.

*Frauncis Plowden*

[3r]

### **A Treatise**

provinge that yf our soueraigne Ladie Queene Elizabeth  
(whome god blesse with longe life & many children)  
should dye without yssue, that the Queene of  
Scottes is not disabled by the lawe of Englande  
to receyve the Crowne of England by discent.

### **The prologue**

conteyninge the Causes of the  
Writinge of this Treatise.

### **Theare came vnto my**

handes a Printed booke conteyninge (amongest other  
thinges) certen allegations and reasons supposed to be  
the Comon lawe made in disabilitie of the Queene of  
Scottes to receave the Crowne of Englande, yf  
it should Chaunce our soueraigne Lady the Queene  
(to whom god graunt longe life and manye  
Children) to dye without yssue, by reason  
that the same Queene of Scottes is a straunger  
borne out of the allegiaunce of the Crowne of  
Englande, as that book purporteth. There came  
alsoe vnto my handes (and that very latelie) the  
Book of Mr Hales, in whiche book (amongest other  
his discourses) he treateth of the same matter, and  
concludeth of the disabilitie of the Scottishe  
[3v] Queene, by reason of her forrein birth, even as the

other doth, And it seameth vnto me, that Mr Hales booke was the first made, and the other is his follower muche relyinge vpon his reasons. Whiche bookes when I had read I could not but marvell at the presumption of their aucthors who seamed vnto me to be very insufficient in learninge of the lawes of this Realme, to treat of that matter, and yet very bold to take it in hand. Soe as I knewe not whether was greater their audacitie or ignoraunce. And albeit to the learned their ignoraunce is well perceyved, yet to the vnlearned (to whose handes alsoe the said bookes come) it is not soe, And therefore in this case as in many others many be lead into ignoraunce by the ignoraunt, Therefore I thought it a worke fitt for any man of vnderstandinge in the lawes of the Realme with learninge to Confound that opynion. And as I was thinkinge of this matter there came vnto my handes a written treatise made in Confutation of the printed booke, vpon the Readinge whereof I Conceyved that the man that made it, was furnished with muche good learninge in other sciences: howbeit he seamed vnto me to lack sufficient knowledge in our temporall lawe. And therefore I thought it needfull (yf the said Bookes should be throughlie confuted) that it

were taken in hande by some temporall lawyer,  
sithence the matter is a pointe of the lawe of  
the Realme, And beinge in this thought, an  
[4r] earnest Request from my most honourable  
good Lorde the duke of Norffolke was made  
vnto me, that I would advisedlie deliberat  
vpon the Cases and reasons of the lawe in that  
point. The Request beinge soe earnest, and  
his favour to me soe great (but mucche more my  
dutie and zeale to the Cause) made me to take  
deliberation therevpon. And fynallie I resolved  
soe to doe, and the rather because I haue interest  
in the matter myself. For the Prince of this  
Realme and the subiects make one Corporation,  
The Prince is the head, and the subiects the  
members, and sithence I am a subiect and soe  
a member, I haue therefore to doe with the head,  
for yf the head doth not well the bodye doth  
not well, for the disease of the one is a grief  
to the other. Therefore the members ought to  
haue care for the direction of the head, and  
therevpon aswell for the satisfaction of his grace  
as of all others well affected I haue serched  
the Reasons and groundes of the lawe in the point,  
and the rather bycause a parliament not longe  
sithence ended hath left this point vndiscussed

albeit that occasion was mynistered therein to haue  
decyded it. These Reasons and groundes by me  
here sett forth shall easelie be percyyved to ouerthrowe  
the allegations of Mr Hales and the printed book  
both in that point of disabilitie of the Scottishe  
[4v] Queene by her forrein birth and likewise in  
the rest accordinge to the lawes of this Realme,  
and the matter I haue devyded into twoe  
bookes, Whereof the first consisteth of twoe  
partes, The first is, that the next of  
bloud to the Crowne is not disabled to receyve  
the Crowne by discent by his Birth although  
he were borne in Fraunce, Spayne, or any  
other place whatsoever out of the allegiaunce  
of the Crowne of England. The seconde  
part is, that yf the lawe should be touching  
the discent of the Crowne doubtfull or  
cleare against him that is borne in Fraunce,  
Spayne, or other forrein Country, that yet  
it is not soe in case of the Scottishe  
Queene who was borne in Scotland.  
The second book conteyneth onlie a decla-  
-ration of the invaliditie of the last will and  
testament of kinge henry the eight to alter or  
direct the true course of succession of the  
ymperiall Crowne of this Realme in case his

Children should dye without yssue, And in these  
pointes I haue vsed the forme of locution  
called gradation goinge from stepp to stepp vntill  
I come to my conclusions. Nowe to the  
Matter.

***END OF VOLUME 2***