fions to the officers and crew ; for which purpoſe he is furniſhed with a mate and proper assistants.

*Court of the Lord High Steward of Great Britain,* is a court inſtituted for the trial of peers indicted for trea­son or felony, or for miſpriſion of either. The office of this great magiſtrate is very ancient, and was formerly hereditary, or at leaſt held for life, or *dum bene se gesserit∙.* but now it is uſually, and hath been for many cen­turies paſt, granted *pro hue vice* only; and it hath been the constant practice (and therefore ſeems now to have become neceſſary) to grant it to a lord of parliament, elſe he is incapable to try ſuch delinquent peer. When ſuch an indictment is therefore found by a grand jury of freeholders in the King’s-bench, or at the aſſizes be­fore the justices of *oyer* and *terminer,* it is to be removed by a writ of *certiorari* into the court of the lord high- ſteward, which has the only power to determine it. A peer may plead a pardon before the court of King’s- bench, and the judges have power to allow it, in order to prevent the trouble of appointing an high-ſteward merely for the purpoſe of receiving ſuch plea : but he may not plead in that inferior court any other plea, as guilty or not guilty of the indictment, but only in this court ; becauſe, in conſequence of ſuch plea, it is poſ­ſible that judgment of death might be awarded againſt him. The king, therefore, in caſe a peer be indicted of treaſon, felony, or miſpriſion, creates a lord high-ſteward *pro hac vice* by commiſſion under the great ſeal ; @@which recites the indictment ſo found, and gives his Grace power to receive and try it s*ecundum legem et consuetudinem Angliæ.* Then when the indictment is regularly re­moved by writ of *certiorari,* commanding the inferior court to certify it up to him, the lord high-ſteward di­rects a precept to a sergeant at arms, to ſummon the lords to attend and try the indicted peer. This pre­cept was formerly iſſued to ſummon only 18 or 20 ſelected from the body of the peers ; then the number came to be indefinite; and the custom was for the lord- high-ſteward to ſummon as many as he thought proper (but of late years not leſs than 23) ; and that thoſe lords only ſhould sit upon the trial; which threw a monſtrous weight of power into the hands of the crown, and this its great officer, of ſelecting only ſuch peers as the then predominant party ſhould moſt approve of. And accordingly, when the earl of Clarendon fell into diſgrace with Charles II. there was a deſign formed to prorogue the parliament, in order to try him by a select number of peers ; it being doubted whether the whole houſe could be induced to fall in with the views of the court. But now’, by statute 7 W. III. c. 3. up­on all trials of peers for treaſon or miſpriſion, all the peers who have a right to sit and vote in parliament shall be ſummoned at leaſt 20 days before ſuch trial, to appear and vote therein ; and every lord appearing ſhall vote in the trial of ſuch peer, firſt taking the oaths of allegiance and ſupremacy, and ſubſcribing the declara­tion againſt popery.

During the ſeſſion of parliament, the trial of an in­dicted peer is not properly in the court of the lord high- ſteward, but before the court laſt mentioned of our lord the king in parliament. It is true, a lord high-ſteward is always appointed in that caſe to regulate and add weight to the proceedings : but he is rather in the na­ture of a ſpeaker *pro tempore,* or chairman of the court, than the judge of it; for the collective body of the peers are therein the judges both of law and fact, and the high-ſteward has a vote with the rest in right of his peerage. But in the court of the lord high-ſteward, which is held in the receſs of parliament, he is the ſole judge of matters of law, as the lords triors are in matters oſ fact ; and as they may not interfere with him in re­gulating the proceedings of the court, ſo he has no right to intermix with them in giving any vote upon the trial. Therefore, upon the conviction and attain­der of a peer for murder in full parliament, it hath been holden by the judges, that in caſe the day appointed in the judgment for execution ſhould lapſe before execu­tion done, a new time of execution may be appointed by either the high court of parliament during its fit­ting, though no high-ſteward be exiſting, or, in the re­ceſs of parliament, by the court of King’s bench, the record being removed into that court.

It has been a point of ſome controversy, whether the biſhops have now a right to sit in the court of the lord- high-ſteward to try indictments of treaſon and miſpri­ſion. Some incline to imagine them included under the general words of the statute of King William “ all peers who have a right to fit and vote in parliament ;” but the expreſſion had been much clearer, if it had been “ all lords,” and not “ all peers ;” for though biſhops, on account of the baronies annexed to their biſhoprics, are clearly lords of parliament, yet their blood not be­ing ennobled, they are not universally allowed to be peers with the temporal nobility : and perhaps this word might be inſerted purpoſely with a view to ex­clude them. However, there is no instance of their fit­ting on trials for capital offences, even upon impeach­ments or indictments in full parliament, much leſs in the court we are now treating of ; for indeed they uſually withdraw voluntarily, but enter a proteſt, declaring their right to ſtay. It is obſervable, that in the 11th chapter of the constitutions of Clarendon, made in par­liament 11th Hen. II. they are expreſsly excuſeſt, ra­ther than excluded, from sitting and voting in trials, when they come to concern life or limb : *epiſcopi, sicut cateri barones, debent interesse judiciis cum baronibus, quouſque perveniatur ad diminutionem membrorum vel ad mor­tem.* And Becket’s quarrel with the king hereupon was not on account of the exception (which was agree­able to the canon law), but of the general rule, that compelled the biſhops to attend at all. And the deter­mination of the houſe of lords in the earl of Danby’s caſe, which hath ever ſince been adhered to, is conſonant to theſe conſtitutions ; “ that the lords ſpiritual have a right to ſtay and sit in court in capital cafes, till the court proceeds to the vote of guilty or not guilty.” It muſt be noted, that this reſolution extends only to trials in full parliament ; for to the court of the lord high-ſteward (in which no vote can be given, but mere­ly that of guilty or not guilty), no biſhop, as ſuch, ever was or could be ſummoned : and though the ſtatute of King William regulates the proceedings in that court, as well as in the court of parliament, yet it never in­tended to new-model or alter its conſtitution; and conſequently does not give the lords ſpiritual any right, in cases of blood, which they had not before. And what makes their excluſion more reaſonable is, that they have no right to be tried themſelves in the court of the lord high-ſteward, and therefore ſurely ought not to be judges there. For the privilege of being thus tried

@@@[mu] Blackstone's Commentaries, vol. iv.