of St Martin by the laſt act for abbreviating Michael­mas term), and then and there propoſe three perſons to the king, who afterwards appoints one of them to be ſheriff. This cuſtom of the twelve judges proposing three perſons ſeems borrowed from the Gothic conſtitution before-mentioned : with this difference, that among the Goths the 12 nominors were firſt elected by the people themselves. And this usage of ours, at its firſt introduction, there is reaſon to believe, waa founded upon ſome ſtatute, though not now to be found among our printed laws ; firſt, becauſe it is materially different from the direction of all the ſtatutes before- mentioned ; which it is hard to conceive that the judges would have countenanced by their concurrence, or that Forteſcue would have inſerted in his book, unleſs by the authority of ſome ſtatute ; and also, becauſe a ſtatute is expreſsly referred to in the record, which Sir Ed­ward Coke tells us he tranſcribed from the council-book of 3d March, 34 Hen. VI. and which is in ſubſtance as follows. The king had of his own authority ap­pointed a man ſheriff of Lincolnſhire, which office he refuſed to take upon him ; whereupon the opinions of the judges were taken, what ſhould be done in this be­half. And the two chief juſtices, Sir John Forteſcue and Sir John Priſot, delivered the unanimous opinion of them all ; “ that the king did an error when he made a perſon ſheriff that was not choſen and preſented to him according to the ſtatute ; that the perſon refuſing was liable to no fine for diſobedience, as if he had been one of the three perſons choſen according to the te­nor of the ſtatute ; that they would adviſe the king to have recourſe to the three perſons that were choſen accord­ing to the ſtatute, or that ſome other thrifty man be in­treated to occupy the office for this year ; and that, the next year, to eſchew ſuch inconveniences, the order of the statute in this behalf made be obſerved.” But, notwithſtanding this unanimous reſolution of all the judges of England, thus entered in the council-book,and the ſtatute 34 and 35 Hen. VIII. c. 26. \* 61. which expreſsly recognizes this to be the law of the land, ſome of our writers have affirmed, that the king, by his prerogative, may name whom he pleaſes to be ſheriff, whether cho­ſen by the judges or not. This is grounded on a very particular caſe in the fifth year of queen Elizabeth, when, by reaſon of the plague, there was no Michaelmas term kept at Weſtminſter ; ſo that the judges could not meet there in crastino animarum to nominate the ſheriffs : whereupon the queen named them herſelf, with­out ſuch previous aſſembly, appointing for the most part one of two remaining in the laſt year’s lift. And this caſe, thus circumſtanced, is the only authority in our books for the making theſe extraordinary ſheriffs. It is true, the reporter adds, that it was held that the queen by her prerogative might make a ſheriff without the election of the judges, non obstante aliquo statuto in contrarium ; but the doctrine of non obstante, which lets the prerogative above the laws, was effectually demoliſhed by the bill of rights at the revolution, and abdicated Weſtminſter-hall when king James abdicated the king­dom. However, it muſt be acknowledged, that the practice of occaſionally naming what are called pocket-sheriffs, by the ſole authority of the crown, hath uni­formly continued to the reign of his preſent majeſty ; in which, it is believed, few (if any) inſtances have oc­curred.

Sheriffs, by virtue of ſeveral old ſtatutes, are to con­

tinue in their office no longer than one year ; and yet it hath been said that a ſheriff may be appointed durante bene placito, or during the king's pleasure; and ſo is the form of the royal writ. Therefore, till a new ſheriff be named, his office cannot be determined, unleſs by his own death, or the demiſe of the king ; in which laſt caſe it was uſual for the ſucceſſor to send a new writ to the old ſheriff; but now, by ſtatute I Anne st. 1. c. 8. all officers appointed by the preceding king may hold their offices for six months after the king’s demiſe, unleſs sooner diſplaced by the ſucceſſor. We may farther obſerve, that by ſtatute 1 Ric. 11. c. 11. no man that has ſerved the office of ſheriff for one year can he compelled to ſerve the same again within three years after.

We ſhall find it is of the utmoſt importance to have the ſheriff appointed according to law, when we conſider his power and duty. Theſe are either as a judge, as the keeper of the king’s peace, as a miniſterial officer of the ſuperior courts of juſtice, or as the king's bailiff

In his judicial capacity he is to hear and determine all cauſes of 40 shillings value and under, in his court : and he has also a judicial power in divers other civil cases. He is likewiſe to decide the elections of knights of the ſhire, (ſubject to the controul of the Houſe of Commons), of coroners, and of verderors;to judge of the qualification of voters, and to return ſuch as he ſhall determine to be duly elected.

As the keepers of the king’s peace, both by com­mon law and ſpecial commission, he is the firſt man in the county, and ſuperior in rank to any nobleman therein, during his office. He may apprehend, and commit to priſon, all perſons who break the peace, or attempt to break it ; and may bind,any one in a recog­nizance to keep the king’s peace. He may, and is bound, ex officio, to pursue and take all traitors, mur­derers, felons, and other miſdoers, and commit them to gaol for safe custody. He is also to defend his coun­ty againſt any of the king’s enemies when they come into the land ; and for this purpoſe, as well as for keeping the peace and purſuing felons, he may com­mand all the people of his county to attend him ; which is called the poſſe comitatus, or power of the county ;which ſummons, every perſon above 15 years old, and under the degree of a peer, is bound to attend upon warning, under pain of fine and imprisonment. But though the ſheriff is thus the principal conſervator of the peace in his county, yet, by the expreſs directions of the great charter, he, together with the conſtable, coroner, and certain other officers of the king, are for­bidden to hold any pleas of the crown, or, in other words, to try any criminal offence. For it would be highly unbecoming, that the executioners of juſtice ſhould be alſo the judges ; ſhould impoſe, as well as levy, fines and amercements ; ſhould one day condemn a man to death, and personally execute him the next. Neither may he act as an ordinary juſtice of the peace during the time of his office ; for this would be equally inconsiſtent, he being in many respects the servant of the juſtices.

In his miniſterial capacity, the ſheriff is bound to ex­ecute all proceſs iſſuing from the king’s courts of justice, In the commencement of civil cauſes, he is to ſerve the writ, to arrest, and to take bail ; when the cauſe comes to trial, he muſt ſummon and return the jury ; when it is determined, he muſt ſee the judgment