FUNDAMENTAL PRINCIPLES

OF THE

Laws of Canada,

AS THEY EXISTED UNDER THE NATIVES, AS THEY WERE CHANGED UNDER THE FRENCH KINGS, AND AS THEY WERE MODIFIED AND ALTERED UNDER THE DOMINATION OF ENGLAND.

TOGETHER WITH

THE GENERAL PRINCIPLES OF THE CUSTOM OF PARIS, AS LAID DOWN BY THE MOST EMINENT AUTHORS, WITH THE TEXT, AND A LITERAL TRANSLATION OF THE TEXT.

THE IMPERIAL AND OTHER STATUTES, CHANGING THE JURISPRUDENCE IN EITHER OF THE PROVINCES OF CANADA, AT LARGE.

PREFACED

By an Historical Sketch of the Origin and Rise of Religious and Political Institutions amongst the principal nations of the world, from the remotest periods to the present time.

Of the Common, Canon, and Statute Laws of England, so far as they operate on the Jurisprudence of Canada.

Of the Origin, Rise, and Successive changes of the Laws of France.

Of the General Government, Religious, Military, Civil, and Criminal Laws of the Natives, particularly of the Huron and Iroquois Indians, at the time the interior of the country was discovered by Cartier: the whole supported by authorities.

COMPILED WITH A VIEW OF ASSISTING LAW STUDENTS IN THEIR STUDIES.

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XV.—Subsidies.

Whether the parliament had any voice in the levying of aids before the reign of King John it is not easy to ascertain. Many, judging from what has since been obtained, take it for granted that no taxes were ever levied in England without the assent of parliament; but this does not appear to have been the case, at least after the Conquest. Among the Saxons, the ordinary revenue of the crown was probably not more than sufficient for the supply of the king; and, as the country was perpetually exposed to hostile invasions and attacks, all the supplies necessary to meet the extraordinary expenses of defending the country were voted in their national councils. After the Conquest, the power of the crown, and also its resources, were greatly enlarged; so that few extraordinary supplies were wanted, and these few were levied at the discretion of the kings. Scutage, as all historians agree, was assessed, on its introduction by Henry II. in whose time the reliefs of barons were also estimated at the king's pleasure. It is also clear from the whole tenure of Magna Charta, that the object of the barons was only to define the feudal burdens to which they were subject by the common law; and that application to parliament was not required to be made only in case any extraordinary supply was wanted. Although the clause on this subject was omitted in the charters of Henry III., yet the necessities of this prince compelled him more than once to have recourse to parliament for supplies.(1)

XVI.—Questions of General Policy brought before Parliament.

But the deliberation of parliament were not confined to matters of Legislation or revenue. It was now begining to be the regular practice to consult parliament on matters of peace and war, treaties and other points of general policy.(2) Thus, in the 28th year of this king, the whole house was informed that there was à treaty of peace between the king and the French, and it was demanded of the Commons whether they would agree. Their answer to this was, that therein they wholly submitted themselves to the orders of the king and his nobles. From this circumstance, it is clear that the Commons were at present unused to take cognizance of such things.(3) At the same time as they were called together to consult for the good of the nation, or as the writs of summons stated *ad audiendum faciendum, et consentiendum*—(to hear, act, and consult);—this indefinite commission gave them a licence to offer whatever they thought proper in the shape of petitions, which they sometimes did without sufficient discretion.(4) The barons in the the reign of Henry III. wanted to regulate the kings household, and to appoint the great officers of the crown, as the chancellor, justiciary and treasurer; but this the king absolutely refused, at the same time sharply rebuking them for their unreasonableness. In the reign of this king the Commons made a similar effort, and at first with more success. They petitioned that the chancellor might be chosen in parliament; and the king, in his over compliance, was induced to

(1) Glanv. l. 9. c. 4.
(2) Hist. Parl. ii. 286.
(3) Co. 4 Inst. 14.
(4) Parl. Hist. i. 50.

grant their request; but, repenting of the concession that he had made, he, by his writ, repealed what had been passed by statute; so indefinite and unsettled was the prerogative of the crown and the jurisdiction of parliament at this period.(1) At the same time this king lent a willing ear to the petitions of the Commons, and in this form they offered him their advice on almost every subject of domestic policy.(2) Some of these petitions tended to restrict the kings prerogative in different ways, as in the following cases:

Commons.—That every man for debts due to the king's ancestors, may have therefore charters of pardon, of course out of the Chancery.

King.—The king granteth.

Commons.—That certain persons, by commission, may hear the accounts of those who have received wools, moneys, or other aids for the king, and that they may be enroled in the Chancery.

King.—It pleaseth the king, so as the treasurer and the lord chief baron may be joined in the commission.

Some petitions had respect to the administration of justice, as:

Commons.—That all men may have their writs out of the Chancery for only the fees of the seal, without any fine, according to the great charter, *nulli vendemus justitiam*—(we will sell justice to no man).

King.—Such as be of course, shall be so; and such as be of grace, the king will command the chancellor to be gracious.

Commons.—That the chancellor and other officers of state there named in the records may, upon their entrance into the said offices, be sworn to observe the laws of the land and Magna Charta.

King.—The king willeth the same.

Commons.—That the justices of the peace be of the best of every county, and that, upon the displacing any of them, others be put in at the nomination of the knights of the said county; that they sit at least four times every year; and that none be displaced, but by the king's special command, on the testimony of his fellows.

King.—This first petition is reasonable, and the king will see that it be done.

From this specimen of petitions and answers the reader may form a judgement of the character and office of the House of Commons at this period.

XVII.—House of Lords a Court of Judicature.

Until the reign of Edward I. petitions were commonly addressed *à notre seigneur le roi et à son conseil*—(to our lord the king and his council),—and appeals were said to be made *coram rege ipso in concilio*—(before the king himself in council),—but when petitions began to be received in parliament, then they were said to be *coram rege in parliamento*—(before the king in parliament).—Hence, by degrees, the House of Peers became a regular court of appeal; and by the stat. 14

(1) Hist. Parl. ii. 245.
(2) Hist. Parl. ii. 239.

Ed. III. st. 1. c. 5,(1) it was ordained that in every parliament there should be chosen a prelate, two earls, and two barons, who should have commission from the king to hear, by petition delivered to them, all complaints of delays, as well in the Chancery as in the King's Bench and Exchequer; and, after examinations into the causes of such delays, they were to proceed to take a good accord, and make a good judgment. And according to such accord, the tenor of the record, with the judgment accorded, were to be remanded before the justices where the plea depended, for them to give judgment according to the record. It was further ordained, that in case of doubt and difficulty, the matter was to be referred to the whole parliament, whereby the judicial character of the upper house was fully established; and, after a time, all causes might be removed from the court of King's Bench and the court of Exchequer Chamber to the House of Lords, as a tribunal of *dernier resort*.

XVIII.—Criminal Jurisdiction.

The criminal jurisdiction of parliament was put on the footing that it had been among the Saxons. The thanes heard and determined all matters, both civil and criminal, that concerned persons of their own condition. The introduction of the trial by duel, at the Conquest, interrupted this wholesome practice, which the laws of Henry II. brought again into favour, and the provision in the great charter finally re-established.

XIX.—Impeachment by the Commons.

The Commons now, likewise, took a part in judicial proceedings so far as to become public accusers for high crimes and misdemeanors, which was afterwards known by the name of impeachment.(2) The first person on record, who was impeached by the Commons, was Sir John Lee, at the latter end of this reign, for malpractices while steward of the household. This was followed by many impeachments which were in after times tried by the peers.

XX.—Liberty of Speech.

Another privilege was liberty of speech, which was particularly solicited of the king, by the speaker, at the opening of a new parliament; this was granted, under certain restrictions suited to the subordinate part which the lower house had at that time assigned to them.

XXI.—Law of Landed Property.

Among the matters of a private nature which engaged the attention of the legislature, that of tenures holds the first place. Tenants *in capite* were now permitted to alienate on the payment of a reasonable fine. By this enactment the king's

(1) Stat. 14 Ed. III. st. 1. c. 5.
(2) 42 Ed. III. Rot. Parl. 20.

tenants were relieved from the hardship of having their lands seized into the king's hands by way of forfeiture, according to the old law, in case they aliened without licence.(1)

XXII.—Commission of Nisi Prius.

The commission of Nisi Prius underwent some parliamentary alterations, which put it into the form in which it has ever since remained.(2) By a statute in the last reign, the commission of Nisi Prius was granted only in cases where the demandant prayed the same, but now it was enacted, that such inquests should also be taken at the suit of the tenant in a plea of land.(3) A Nisi Prius had heretofore been granted only before particular justices commissioned for that purpose; but it was now enacted that it should be granted before any justice of the King's Bench or Common Pleas, or the chief baron of the exchequer, if he were a man of the law, which it seems at this time he was not always. If any of them went into those parts, and if neither the justices nor the chief baron went, then it was to be granted before the justices assigned to take assizes in those parts, so that one of the justices assigned was a justice of the one bench or the other.(4) It is moreover enacted, that a tenor of the record should be made, since called a Nisi Prius record, containing an entry of the declarations, pleading, and issue or issues, upon which the judge returned the verdict, making what, from the initial word in the return, has since been called a *postea*.

XXIII.—Justices of the Peace.

Among the numerous provisions which were made in this reign for the preservation of the peace, the most important was that of appointing magistrates, at first called Keepers of the Peace, afterwards Justices of the Peace,(5) with power to restrain offenders, rioters, and other barrators, and to pursue, arrest and chastise them according to their trespass and offence, and to cause them to be imprisoned and duly punished according to their discretion.(6)

XXIV.—Quarter Sessions.

These justices were to consist of one lord and three or four more of the most worthy in the country, who were to hold their sessions four times a year, which were afterwards known by the name of the Court of General Quarter Sessions The jurisdiction given by the statute to these sessions extended to the trying and determining all felonies and trespasses whatsoever, with this restriction, that in cases of difficulty they were not to proceed to judgment but in the presence of one of the justices of either bench or of the assize.

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(1) Stat. 1 Ed. 3. c. 12.
(2) Stat. of York. 12. Ed. 2. Stat. 4. Ed. 3. c. 2.
(3) Stat. 14 Ed. 3. c. 16.
(4) Reeves' Hist. ii. 427.
(5) Stat. 34 Ed. 3.
(6) Stat. 36 Ed. 3.

XXV.—Pleadings in English.

Another regulation was also made in the same year of this king on the subject of pleading, requiring that all pleas should be in English rather than in French,(1) a language which, owing to the encouragement first given to it by the Conqueror, and afterwards to the close intercourse subsisting between the two countries, crept into use, and was even after this time necessarily retained on account of its fitness for the purpose. But the French was not at any time employed in all law proceedings. Some of the Conqueror's laws are in Norman French; but those which were made during his reign in England were in Latin, as were also all writs, charters, and public instruments.(2) The same remark applies to all public documents in succeeding reigns until the time of Edward I. Indeed so prevalent was the use of the Latin, owing to the active part the clergy took in judicial proceedings, that the treatises of Glanville and Bracton, as well as others in the reign of Henry II. and Henry III. were composed in that language. The *Statutum Scaccarii* was the first statute in French, after which Latin and French appear to have been used indiscriminately, as suited the convenience of the parties: but the use of the French became by degrees the most prevalent. The law treatises of Britton and others, in the reign of Edward I. were written in French, as also the Mirror, in that of Edward II. In the reign of Edward III. the petitions and proceedings in parliament were in French, which notwithstanding this statute, continued to prevail for some time.(3)

XXVI.—Limitations and Remainders.

The doctrine of limitations and remainders were, in consequence of the statute *De Donis*, very nicely discussed in this day, and many of the principles of law in regard to landed property were recognised which have since obtained.(4) A practice appears to have commenced in this reign, of limiting an estate to the life of a man, remainder over to his right heirs; the object of which, probably, was to get rid of the feudal burdens, wardships, marriage, and relief; but the decisions of the court defeated this object;(5) for where an estate was given to the father for life, remainder to the first son and his wife in tail, remainder to the right heirs of the father, the father died, and then the eldest son and his wife died without issue, then the lord was permitted to avow upon the younger son for the relief, as heir of his elder brother, to the remainder in fee, notwithstanding the younger son contended that he came in as a purchaser, under the words, "right heirs of his father," and that the tail and the fee could not be *simul et semel*—(at one and the same time)—in the elder brother.

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(1) Stat. 25 Ed. 3. st. 5. c. 15.
(2) Wilk. LL. Anglo-Sax.
(3) See Crab's His. Eng. Law, c. 15.
(4) Reeves' His. Engl. Law, iii. 7.
(5) 40 Ed. 3. 9.

XXVII.—Devises.

The liberty of devising lands by testament had been hitherto confined to particular boroughs and places according to certain customs; but we read of many cases in this reign upon wills of land, which appear to have been governed by the same rules as were afterwards established into law.(1) Thus it was held, as a settled rule in law, that a husband might give lands to his wife by will; but a wife was not allowed to devise lands to her husband, although she might, as in former times, with the consent of her husband, devise the moiety of his goods.(2) Sometimes lands were devised to executors, to make distribution for the good of the testator's soul, and, if the executors failed in so doing, the heir might enter, and have an assize.

A scrupulous regard was shown to the will of the testator, and more indulgence in the construction of testaments than in that of deeds.(3) When a remainder was limited *propinquioribus hæredibus de sanguine puerorum*—(to the prochein heirs of the blood of the children)—of the devisor, it was held that, upon the devisor dying, leaving two sons, who died without issue, and a daughter, who had issue Isabel, and then died; that Isabel should take, being sufficiently described by the will.(4)

XXVIII.—Warranty.

The force of warranty was shown in some cases now that had not before occurred. If the uncle or other ancestor, or cousin collateral, who was not privy to the entail, aliened with warranty and died without heirs, so that the next issue in tail was become his right heir, such issue would be barred by his ancestor's deed with warranty.(5) This was afterwards termed collateral warranty, to distinguish it from the usual sort of warranty called lineal: not that the terms lineal and collateral had respect to the heir, whether lineal or collateral, but to the title which he had.(6) If the heir whether lineal or collateral, might by any possibility claim the land from him that made the warranty, then it was termed lineal; but if the ancestor by whom the warranty was made had no right to the land, the warranty was collateral to the title by which the estate was claimed.

There was one sort of warranty, however, since called warranty, commencing by disseisin, which was considered as no bar; as, when a guardian or tenant at will, aliened the land of the heir or the lessor with warranty, such alienation being equivalent to a disseisin, the warranty was void as against the heir or lessor.(7)

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(1) Reeves' His. iii. 9.
(2) 44 Ed. 3. 33. Bro. Dose. 34.
(3) 38. Ass. 3. 39. Ass. 17. et passim.
(4) Reeves' His. iii. 10.
(5) Reeves' His. iii. 11.
(6) Co. 1 Inst. 370.
(7) 43 Ed. 3 7. Reeves 'His. iii. 13.

XXIX.—Action of Covenant.

As to the writ of covenant lay for the recovery of land, or any thing issuing out of land, as also of moveables, it might be, either a real action, personal action, or a mixed action, that is, an action for the recovery of the land, or for the recovery of damages only, or of both.(1) Fines were commonly levied on actions of covenant, wherefore, the declaration, in such cases, ran thus, "à tort ne lui tient son fait—(wrongfully, nor doth he keep his covenant—), &c.

XXX.—De Ejectione Firmæ.

A new remedy for termors was now coming into use, called a writ *de ejectione firmæ* or a writ of ejectment, as it was afterwards called. As this writ at first lay only for damages, it was not so much considered, as it was when it went to the recovery of the term. This was in the nature of action of trespass.(2)

XXXI.—Action of Trespass and on the Case.

The action of trespass was now resorted to, where it appears never to have been before used; and by varying the form of the writ, so as to suit it to every man's case, according to the stat. Westm. 2, which authorized the framing writs *in consimili casu;* the writ of trespass or action on the case, was now become a remedy for every injury done to the person or property. The first action of trespass *sur son cas*—(upon his case)—mentioned, is to be found in the 22d year of this king, when an action was brought against a man, for that he had undertaken to carry the plaintiff's horse in his boat over the Humber, but that he overloaded his boat with other horses, by which overloading the plaintiff's horse perished, *à tort et domages*—(wrongfully and to the damage of the plaintiff).—(3)

XXXII.—Replevin.

The law of ieplevin was now put on the footing on which it has, with very few alterations, remained ever since.(4) Replevin was so called from *replegiare*, or *re* and *plegiare*, to deliver back upon pledges, the principal word in the writ, issued in Glanville's time to the sheriff, directing him, *replegiare facias*, to make deliverance of the cattle which had been taken in distress. The unjust taking or detaining cattle against gage and pledges, was called, by Bracton, in the language of the old law, *vetitum namium*, that is, a forbidden, or unlawful taking, and is classed by him among the *placita coronæ*—(pleas of the crown).—When any one complained that his cattle had been unlawfully taken or detained, he migh either have the writ above mentioned, or, for the sake of expedition, he was allowed, by the statute of Marlebridge, to make a verbal complaint to the sheriff, and on giving him pledges *de prosequendo*—(of prosecution),—he or his officer would proceed to the

(1) Crabb's His. Eng. Law.
(2) Reeves' His. iii. 29.
(3) 22 Ass. 41.
(4) Crab's His. Eng. Law, p. 116.

place where the cattle were detained.(1) If obstructed in the execution of his duty, he was armed with authority to raise the *posse comilatus*—(power of the county),—and to put the offender into prison, which, in those days of lawless violence, was frequently necessary.(2) If he could not find the cattle and it appeared that they were, as it was termed, *elongata*, eloigned, or removed, there issued a process to take the distrainer's cattle to double the value, which was now called a *capias in withernam*, that is, a taking by way of reprisal; if this process failed there issued a *capias* against the person of the distrainer.(3)

XXXIII.—Trial per Pais, or by Jury.

As the trial *per pais*, or by jury, had thus gained ground on the old modes, all the circumstances and forms, belonging to this manner of determining questions, were now more minutely examined than ever, and alterations were made with the view of rendering it more efficient.

The circumstance of jurors being of the vicinity where the fact to be tried happened, was an indispensable qualification in the time of Bracton, it being presumed, ed, that the jurors decided from a personal knowledge of the parties and transactions.(4)

XXXIV.—Challenging.

The taking exceptions to jurors was now called challenging, in Latin, *calumnia*, in the improper sense of making a charge. To challenge, probably derived from *call*, signifies here as much as to call, or single out a person, by way of objection to him.(5)

XXXV.—Treason.

Among the *placita coronæ*, or pleas of the crown, the most important was that of treason, termed by the Saxons *Hlafordsiwic*, *prodtio domini*, or the betraying ones lord. Treason, the term since used, contracted from the French *trahaison*, is derived from the Latin *traho*, to draw in, or betray, signifying properly the betraying of one to whom one owes fidelity. Thus Britton defines treason generally to be every mischief which a man khowingly does or procures to be done to one, to whom he is in duty bound, to be a friend. Offences which immediately affected the king's person or dignity, were comprehended by Glanville and subsequent writers under the name of *crimen læsæ majestatis* or *lese* majesty, called by the Mirror simply *majestie*, and by Bracton, *grande* treason, or high treason, in distinction from *petit* treason, or such offence as affected private persons. Before the statute of the 25th of this reign, many things were considered treason which were not afterwards considered as such. *Lese* majesty, according to the abovementioned writers, comprehended killing the king, and even imagining his death;

(1) Stat. Marl. 52 Hen. 3. c. 21.
(2) Bract. 157. Flet, 1. 2. c. 37.
(3) 43 Ed. 3. 26. Bract. ubi. supra.
(4) Crab's His. Eng. Law, p. 158.
(5) See Crabb's His. Eng. Law, c. 19.

promoting a sedition in the army and the kingdom; *crimen falsi*, or falsifying the king's seal; the concealment of treasure-trove; and even the breaking of any of the laws and statutes of the realm, was reckoned by Bracton as a high presumption against the king's crown and dignity.(1)

XXXVI.—Petit Treason.

The concealment of treason was, by the old law, held to be treason; for he who knew another to be guilty of treason was to go instantly, says Bracton, or send, if he could not go to the king himself; or, if he could not, to one of the familiars of the king, and relate the whole matter. He was not to stay two nights or days in a place, nor attend to any business of his own, however urgent. After this statute, the bare concealment of treason was not treason, where there was no proof of approbation or consent. This was afterwards called misprision of treason, and was not comprehended under the crime of high treason.(2)

If what was designed was not brought about it would be no less treason, by a maxim of law then generally admitted, that *voluntas reputabitur pro facto*—(the will shall be taken for the deed);—so that, if a man had compassed or imagined the death of the king, and had declared his compassing by words or in writing, that was treason by the old law; but, by the statute of treasons it was necessary that the compassing should be declared by some overt act.(3)

Using the king's seal without warrant, was anciently reckoned among the higher kinds of treason; as also clipping or otherwise impairing the king's coin; but the statute restricts the offence of treason to the counterfeiting of the king's seal or money.(4)

XXXVII.—Homicide.

Homicide, *homicidium*, from *homo* and *cædes*, that is, the slaughter of a man, was the general name for killing a man, which was an offence that partly concerned the party injured and partly the king, whose peace was broken. It was distinguished by Bracton from the cause and manner of killing, into homicide *ex justitiâ*, *ex necessitate*, *ex casu*, and *ex voluntate*. Homicide, *ex justitiâ*, was what took place by the sentence of a court, and according to the forms of law; which, to be justifiable, required to be done in due order and course of law. Homicide *ex necessitate* or *se defendendo*, was justifiable if necessity was inevitable, as in defence of one's own person. Homicide *ex casu*, or *per infortunium*, that is, by misadventure, was, where a person threw a stone at an animal, and a person accidentally passing was struck by the stone and killed; or when a tree was falling, and it fell upon the passer-by, and killed him. It was here to be considered, not only whether the act was in itself lawful and proper; for, if the act was unlawful, then it was held to be murder, or voluntary homicide: as if A. meaning

(1) Bract. c. 8.; Glanv. l. 14. c. 1.; Bract. 118.; Flet. l. 1. c. 22.; Britt. uli. supra; Bract. 119. 120.
(2) Co. 3 Inst. (3) Ibid.
(4) Bract. Brit. and Flet. ubi supra.

to steal a dear, shot at it and killed B.(1) It was also to be considered, whether due caution had been used, or whether it was a place of great resort. So likewise, if an act was lawful and proper; as if a man corrected his scholar, without exceeding the usual bounds, homicide was not to be imputed to him.

XXXVIII.—Chance Medley.

This kind of homicide, which is now called manslaughter, was sometimes denominated chance medley, when the killing of a man was *se defendendo*, in self-defence, in a medley, that is, scuffle, affray, or sudden quarrel. Voluntary homicide was when any one of certain knowledge, and by a premeditated assault from anger, malice, or gain, killed another, *nequiter* and *in felonia*—(wickedly and feloniously)—against the king's peace. If this was done in an affray, it was equally felonious with a secret and deliberate killing; and all who were present were looked upon as *participes criminis*—(accomplices in the crime), according to old law.(2)

XXXIX.—Murdrum.

If the act was perpetrated in secret, it was termed *murdrum*, as in the time of Glanville, who divides homicide into simple homicide and *murdrum*. This distinction is doubtless derived from the time of Canute, when, to prevent the secret killing of his countrymen, the Danes, he made a law that if any one was killed, and the slayer escaped, the person killed should be taken for a Dane, unless proved to be English by his friends and relations, and on failure of such proof, that the *vill* should pay forty marks for the death of the Dane.(3) The Conqueror revived this law in favour of Frenchmen, and imposed a similar fine, called *murdrum*, upon the country, unless the killed was known or Englisherie was duly presented; that is, the party was proved to be an Englishman, and not a Frenchman. As the purpose of this law had long ceased, presentments of Englisherie were abolished by a statute in the fourteenth year of this king.(4)

XL.—Arson.

The *crimen incendii*, burning, or arson, as it was now called, comprehended not only the burning a city, town, house, mac, beast, or other chattel, feloniously, in time of peace, from hatred or revenge; but if any one put a man into the fire, whereby he was burnt or blemished, although not killed, he was to be dealt with as a burner. Arson, called by the Saxons *bernet*, was among the number of irredeemable offences.(5)

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(1) Bract. 120.
(2) Bract. ubi supra, 120. Brit. c. 7. Flet. 1. 1. c. 30.
(3) LL. Inæ. c. 33, Bract. 131. Brit. c. 7 Flet. c. 23. Mirr. c. 1. s. 11.
(4) Leg. Confes. c. 15. 16. LL. Gul. 1. c. 26. apud Wilk. Bract. 134.
(5) Brit. c. 19 Mir. c. 1. s. 8.

XLI.—Theft.

Theft, *furtum*, was the general name for the taking the property of another, provided it was done, *animo furandi*—(with intent to steal),—for otherwise no theft was committed.(1)

XLII.—Burglary.

Under burglary was comprehended, not only the breaking of a house, but the felonious assault upon persons in their houses, whether the assault was with design to kill, rob, or beat; also, the forcible entry into a person's house, doing violence there against the peace, by day as well as by night, whether the house was broken or not. Burglary is mentioned in the laws of the Saxons under the name of *ham-socne*, from *ham*, home, and *socne*, a privilege, signifying the violation of a person's home; and also under that of *husbrec*, housebreaking, *infractio domus*.(2) Burglars are called by Britton *burgessours*, and by Bracton *burglatores*, which, from *burg*, a burgh or town, and *lator* or *latro*, a robber or breaker into, signified properly a robber of towns or houses, as distinguished from one who robbed from the person. Burglars are described by Britton to be such as feloniously, and in time of peace, break churches or the mansion-house of others, or the walls or gates of cities. The writers in this day make no mention of the time of night as a characteristic of this crime.(3)

XLIII.—Larceny.

The last species of theft, called in Latin *latrocinium*, in French *larcine* or *larcyne;* in English, larceny; is described by the Mirror to be the treacherously taking from another a moveable or corporeal thing, against his will, by the evil-getting possession thereof.(4) Britton distinguishes larceny into grand and petty: when the thing stolen was above the value of 12*d.*, it was grand larceny, and a capital offence; but, if it was 12*d.* or under that sum, it was petty larceny, and, by stat. West. 1, a bailable offence. This distinction of theft, as to the value of the thing stolen, was first made in the laws of Athelstan.(5)

XLIV.—Rape.

The crime of *raptus virginum*, or rape, was not confined to virgins or unmarried women; but was, as the Mirror defined it, *chascun afforcement de feme, de quelle condition qu'elle soit*—(every ravishment of a woman, of whatever condition she may be),—so that even a prostitute was by law protected from such acts of violence; and such was the law in the time of Bracton; but the law required then, as it does now, that a woman who had suffered an injury of this kind should establish the charge by the most indubitable evidence, and, while the fact was recent,

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(1) Bract. 120.
(2) Bract. 144. Mir. c. 109. Brit. fol. 17. (3) LL. Can. c. 6.
(4) Mir. c. 1. s. 10. (5) Brit. c. 24. Flet. 1. 1. c. 36.

should go to the next village and show the injury that had been done to her. She was also to do the same to the chief officer of the hundred, the coroner, or the sheriff; and lastly, she was to make her complaint publicly at the next county court, which was to be described in the coroner's roll. Besides, it was necessary to prove the completion of the offence, which was done by four *legales fœminæ*—(lawful women).(1)—By the Norman law, this matter was tried by the inspection of seven matrons. A charge of rape could not be sustained if the woman were proved to have given her consent. It was also a good plea, in an appeal of rape, to say that before the time of the supposed ravishment, the woman had been the mistress of the ravisher; also, if a woman was pregnant by her ravisher, it was considered, according to Britton, to be a proof of consent.(2) In this respect the common law differed from that of the civil law, where the consent of the woman did not alter the nature of the offence; besides, the forcible abduction of a woman was, among the Romans, equally penal with that of deflowering her. Besides, by the common law, the man might, at the discretion of the judge, escape the penalty of his offence, if the woman consent to marry him.(3)

XLV.—Mayhem.

Another offence against the person, frequently mentioned in that day, was that of *mayhem*, in the Latin of the middle ages *mahemium*, from the French *mehaigner*. By *mayhem* was understood any corporeal hurt by which a man lost a member, so as to make him less fit for fighting, as the loss of a hand, an arm, or finger, foot, eye, front teeth, &c.; but the striking out the grinders, or cutting off an ear, was not a *mayhem*, because a man might defend himself equally well in battle without them.(4) Castration was, however, adjudged to be *mayhem*, although committed by a husband upon the adulterer with his wife. Among the laws of the Saxons, particular cognizance was taken of injuries done to the person; but the distinction between *mayhem* and ordinary wounds was, in all probability, derived from the Normans, in whose code we find it described in nearly the same terms.(5)

XLVI—Striking a Clerk.

Common assaults and batteries were, for the most part, treated as civil injuries, except in aggravated cases, where the sacredness of the person or place was violated. Since the Conquests, as well as before, the common law afforded a more than ordinary protection to the persons of the clergy; and, in conformity with this, we find it expressly enacted by the statute of *Articuli Cleri*, in the 9th year of Edward II. that if any person lay violent hands upon a clerk, he was to be indicted at the suit of the king for a breach of the peace; and also subjected to the censures of the church imposed upon him in the spiritual court; besides which, he might be sued in the temporal court for the special damage sustained by the party injured.

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(1) Mir. c. 1. s. 12. Bract. 166.
(2) Bract. 147. Brit. c. 1. Grand Cout. de Norm. c. 67.
(3) Cod. 9. tit. 13. (4) Glanv. 1, 14. c. 6. 148.
(5) Bract. 144. Brit. 48. Flet. 1. 1. c. 38. Mir. c. 4. Grand Cout. de Norm. c, 79. Co. 3 Inst. 118.

XLVII.—Striking in Courts.

For a similar reason, out of regard to the sacredness of a court of justice, where the king's majesty resided, striking in the king's courts was treated as a criminal offence of more than ordinary magnitude, as it had been in the time of the Saxons.

XLVIII.—Usury.

Usury was considered a heinous offence in those days; but it does not appear to have been prevalent among the Saxons, as we find no cognizance taken of it before the reign of Edward the Confessor, when the growing luxury of the age, and corruption of morals, had introduced extravagance and given encouragement to usurers.

XLIX.—Forestalling.

Forestalling was another offence at common law, which was looked upon in a heinous light. The word is derived from *fore* or *fare*, a way or passage, and *stall*, an impediment, signifying an interception of goods in their way to the market and comprehended under it every means, which was taken to enhance the common price of any merchandise, whether by spreading false rumours or buying things in a market before the accustomed hour, or by buying and selling again the same thing in the same market; or engrossing, that is, buying up all things in large quantities, to sell again wholesale.(1) To prevent this offence, a law of the Saxons forbade any thing above the value of twenty pence to be sold without any town, and that all bargains were to be made in the open market, and in the presence of the borough reeve, or some trustworthy person. A similar law is to be found in the code of the Conqueror.(2) Among the ancient statutes, is one ascribed to Edward I., against *forestellarii*, who, for the first offence, were to be grievously amerced; for the second offence, to be condemned to the pillory; for the third offence, to be imprisoned; and for the fourth, to abjure the *vill*. By a statute in this king's reign, all victuallers were obliged to sell their commodities at a reasonable price.(3)

L.—Felony.

Every capital crime, not excepting treason, was, before the reign of this king, included under the name felony; but it was resolved that, in the king's charters of pardon the word felony should extend only to common felonies, and not comprehend treason under that name.(4) Felony, in the Latin of the middle ages *felonia*, is supposed, by Spelman, to be of feudal origin, and derived from the German words *fee* and *lohn*, a reward and value, signifiing any act which was as much as

(1) 43 Ass. 83. 3 Inst. 195.
(2) LL. Ethel. c. 12.
(3) LL. Will. Conq. c. 60.
(4) Co. 3 Inst. 15. Spelm. Gloss. in Voc.

a man's fee was worth; because, for every felony a man forfeited his fee; but Lord Coke derives it from the Latin *fel*, gall, or malignity, signifying what was done, *felleo animo*—(out of a malignant spirit.)(1)

LI.—Standing Mute.

Standing mute, or refusing to plead, on a criminal charge is first mentioned in the reign of Edward I., when the punishment for this offence, called *peine forte et dure*, or the penance, is treated of by Fleta and Britton, and is expressly ordained by the stat. Westm. I, which directed that those who could not put themselves on inquests of felonies, should be put *en la prison forte et dure*, by which, as it is explained by those writers, it was understood that they were to lie barefooted, ungirded, and bareheaded, in their coat only, in prison, upon the bare ground, continually night and day, that they should eat only bread made of barley and bran, and drink only water, that they should not drink on the day they ate, nor eat on the day they drank, and that they should be fastened down with irons, until they prayed that they might put themselves on their trial.(2)

In the reign of this king, persons standing mute appear to have been hanged or put to their penance, according to the circumstances, at the discretion of the court.(3)

LII.—Perjury.

Before the Conquest there appears to have been no distinction betweeen perjury n witnesses, and that in jurors, probably because all were looked upon as witnesses. As the character of a witness and a juror gradually became more distinct, the punishment of perjury in the one was not so severe as in the other. Witnesses, when convicted of perjury, were punished, sometimes with the forfeiture of all their goods, sometimes with banishment, and sometimes only with a fine; but when, as before observed, perjury affected the life of a man, it subjected the perjurer to the pains of homicide. It is also worthy of observation, that the subornation of perjury was itself perjury.(4) The punishment of perjury in jurors was very severe, for the judgment against them was twofold, namely, at the suit of the party, wherein the plaintiff recovered damages and the defendant was imprisoned, and at the suit of the king, if the parties were convicted. The judgment, which was called a villainous judgment, was, that they should lose their *liberam legem*; so that they could not be put on any assize or jury, nor their testimony as witnesses be taken; if they had any thing to do in a court they were to make their attorney; they were to forfeit all their lands and goods to the king; that their lands were to be wasted, their houses razed, their trees rooted up, and their bodies committed to prison, which judgment was called villainous, because it brought the party into a state of villainy and shame.(5)

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(1) Co. 3 Inst. 56.
(2) Brit. c. 4. Flet. 1. 1. c. 24.
(3) 21 Ed. 3. 18.
(4) Mirr. c. 4. s. 8.
(5) Brit. 14.

Spreaders of false reports were not punished so severely now as in the time of the Saxons. By the stat. Westm. 1. they were to be imprisoned until they discovered the authors of the tales.(1)

LIII.—Accessories.

As to the law respecting principal and accessory, it has already been stated, that in high treason, all who gave their aid, counsel, and consent, were, by the common law, considered as equally guilty; whence it became a maxim in law, that in high treason there were no accessories, but all were principals. According to Bracton, the aider and abettor in other crimes, as homicide, or robbery, &c., whether present or absent, when the fact was committed, was only an accessory, and the same opinion was held by some judges in this reign; but the better opinion, which afterwards prevailed, was, that all who were in company in any place or assembly, should each be held as principal, although he actually did no ill. This was agreeable to the Saxon laws, by which all who were present at the death of a man, were considered as *participes criminis*—(accomplices in the crime).—The lending of arms to a man to commit homicide made a man an accessory, according to another law of the Saxons.(2)

If any one received, aided, or favoured, *receptavit et comfortavit*, a felon, knowing him to have committed felony, he was held to be an accessory, or, as Bracton terms him, *receptator malorum*—(an entertainer of evil persons).—But if he aided him *per bon parol*—(by advice or information),—or suit, or sent letters for his deliverance, this did not make him an accessory, this being considered a great misprision only. There appears to have been no such distinction among the Saxons; the least favour shown to a thief, subjected a man to be dealt with as a thief.(3) But if a wife received her husband, knowing him to be a felon, this did not make her an accessory, on account of the duty and love she was supposed to bear towards him.(4) This is a piece of the old Saxon law which was still retained.(5)

LIV.—Indictments.

The prosecution by appeal was now beginning to go out of use. Appeals *de pace, plagis et imprisonamento* were now nearly superseded by actions of trespass. Capital appeals, where the duel was resorted to, were subjected to various restrictions, imposed by statute or by the common law, and in proportion as wager of battle was discouraged, they shared its fate. By the same rule as the trial by jury was encouraged, indictments came more and more into use.(6)

Indictment, in French *enditement*, and the Latin of the middle ages *indictamentum*, from *indico*, to show, was an accusation at the suit of the king. It is first mentioned by that name by Bracton, and is described by him as a proceeding

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(1) Stat. Westm. 1. 1. Ed. 1. c. 34.
(2) Bract. 120. 25 Ed. 3. 44. Stanf. P. C. 40. LL. Alf. c. 38. Wilk. LL. Anglo. Sax. 44.
(3) Bract. 138. 26 Ans. 47. Co. 3 Inst. 139.
(4) Co. 3 Inst. 108. (5) LL. Inæ. 50. (6) Hawk. P. C. 1. 2. c. 23.

per famam patriæ—(neighbourhood rumour or suspicion).—This was probably the same as the *fama publica*—(popular rumour or suspicion)—of Glanville, which was a suspicion entertained by grave and good men, deserving of credit, that raised a presumption against the party, and led to the inquest by the grand jury, in the form and manner before stated.(1)

The inquisitions were likewise to be in writing and to be framed with all possible deliberation, and in due form. The presentment of offences was, as before observed, peculiar to the office of the *grande inqueste*, as the grand jury was now called.(2)

LV.—Hue and Cry.

When an offender absented himself immediately after the fact, it was usual, according to the old law, to raise *hutesium et clamorem*, hue and cry; and a suit called fresh suit, was made after him, from town to town, until he was taken; and in default of so doing, the township was in *misericordia*—(in mercy, i. e. liable to amercement or fine).—According to the law, as it subsisted in the time of the Saxons, and sometime after the Conquest, the fugitive, if he did not immediately surrender himself, was declared an outlaw without any further trouble; but in the time of Bracton, it had become usual to proclaim him five several times in the county court, and, in case of his non-appearance on the fifth proclamation, sentence of outlawry was pronounced against him (3)

When a person was outlawed, whoever fed or harboured him was subject to the same penalty as the outlaw himself, who, on this account, was called a friendless man, because, by law, he could have no friend. In the Saxon he was called *wulfesheofod* - (wolf's head),—because any one might kill him with impunity.(4) But this was not the law in Bracton's time, or at least not generally so; for it appears, from this writer, that an outlaw might not be killed, unless he made resistance or refused to surrender. An outlaw, at that period, likewise forfeited every thing, whether in right or in possession; but the law was rather relaxed in its rigor towards such persons in this reign, for debts on simple contract were not forfeited.(5)

LVI.—Pleas of autrefois Acquit, and autrefois Attaint.

It was now become a maxim in criminal proceedings, that a man should not be tried twice for the same offence, wherefore, *autrefois acquit*—(formerly acquitted)—of the same felony was held to be a good plea to prevent going to trial, provided the defendant could produce the record of the acquittal. Sometimes the plea was *autrefois attaint* or *autrefois convict*—(formerly attained or convicted)—for there was not as yet any distinction between them,—which, after a time, was held to be a good plea to an indictment or an appeal.(6)

(1) Bract. 143. Reeve's Hist. ii. 51. (2) Stat. Westm. 2. 13 Ed. 1. c. 13.
(3) Bract. 125. (4) Lib. Constit. Ethelred.
(5) Apud. Wilk. 110. 116. Co. 3 Inst. 128. Bract. 127. Reeve's Hist. ii. 20.
(6) 26 Ass. 15. 44 Ed. 3. 44.

LVII.—Privileges of Married Women.

A married woman was, according to the old law, considered as *in potestate viri*—(under the control of her husband),—and so privileged in cases of felony. A woman might also plead her pregnancy to respite her execution, but this was not allowed a second time.(1)

The sources of legal information in this reign are the statutes, parliament-rolls, year-books, and some law-tracts.

The statutes of this reign are called *nova statuta*—(new statutes)—to distinguish them from the *statuta vetera*—(old statutes).—The parliament-rolls contain an ample and satisfactory account of the judicial proceedings of the Peers, and of the petitions of the Commons, many of which gave rise to the statutes, either at this or a subsequent period, as also of the ordinances which were thus distingnished from the statutes. Of these parliament-rolls, MS. copies are said to be extant in many libraries, besides which they have since been printed by authority of parliament.(2)

SECTION VII.—STATUTE LAW UNDER RICHARD II., A.D. 1377, 1399. HENRY IV., A. D. 1399, 1413.

I. Navy. II. Impressing Seamen. III. Shipping and Commerce. IV. Exporting Gold and Silver from England. V. Going Abroad. VI. Statute against Appropriations. VII. Against Mortmains. VIII. Treason. IX. Fresh Arraignments for the same Offence. X. Standing Mute. XI. Peine Forte et Dure.

I.—Navy.

The regulation of the navy was one of the first subjects which engaged the attention of Richard II. From a statute passed in the second year of his reign, we find that the principle of impressing men by the king's commission was recognised as the law of the land.(3)

II.—Impressing Seamen.

If those who were arrested and retained for the king's service fled, they were, besides forfeiting double what they had taken for wages, to be imprisoned for a year.

III.—Shipping and Commerce.

For the encouragement of English Shipping and increase of the navy, which, as the preamble to another statute complains, was then greatly diminished, it was

(1) Reeve's Hist. iii. 126.
(2) Ibid, 147.
(3) Stat. 2 Ric. ii. c. 4.

ordained that the king's subjects should ship no merchandise out of or into the realm, but only in ships of the king's liegeance, on pain of forfeiture. This was confirmed and enlarged by several additional regulations in two subsequent statutes.(1)

IV.—Exporting Gold and Silver.

Carrying gold and silver out of the kingdom was forbidden, under the penalty of forfeiting all that the offenders could forfeit. This was a measure of general policy, grounded on the king's prerogative, and confirmatory of previous statutes; but it was particularly levelled against the clergy, to prevent sending money out of the kingdom.(2)

V.—Going Abroad.

All persons were likewise restrained by the same act from going beyond sea without the king's licence, and then it was to be only at certain ports.

VI.—Statute against Appropriations.

The practice of appropriation on the part of the patrons of churches, that is, of taking the profits of livings into their own hands, and deputing a person upon a scanty salary to perform the duties of the church, was now grown to such a height as to be highly injurious to the interests of religion; for the miserable subsistance of persons so appointed, who were known under the different names of curate, vicar, and capellan, brought both the person and office of the clergy into contempt: wherefore it was enacted that, in every licence to be made in Chancery for the appropriation of a church, it should be expressly contained therein, that the diocesan of the place, upon the appropriation of such church, should, among other things, require that the vicar should be well and sufficiently endowed.(3)

VII.—Against Mortmains.

As the ecclesiastics were anxious to evade the mortmain act, and had hit upon the device of consecrating land for burying ground, and under that pretence of purchasing considerable property in mortmain, it was enacted by a statute in the 15th of this king, that such advice was to be brought within the words of the act, *arte et ingenio*—(by art and subtlety),—as also the purchase of lands to the use of those religious houses.(4)

VIII.—Treason.

The statute of treason in the preceding reign being complained of, as incurring divers pains, insomuch that no one knew how he ought to behave himself, to do, speak, or say, for doubt of such pains; it was the first act of this king's reign,(5) to repeal the abovementioned statute, and revive the statute of Ed. III.; but, as

(1) Stat. 5 Ric. 2. st. 1. c. 3; Stat. 6 Ric. 2 st. 1. c. 8. 14 Ric. 2. c. 6.
(2) Stat. 5 Ric. 2. st. 1. c. 2.
(3) 15 Ric. 2. c. 6.
(4) Stat. 15 Ric. 2. c. 5.
(5) Stat. 1 Hen. 4. c. 1.

the principle object of that statute of Richard II. was the suppression of riots, it was found necessary to provide a remedy for these evils; wherefore it was enacted, that when any riot, assembly, or rout of people, against law, was made, the justices of the peace, or two of them, with the sheriff and undersheriff, were to come with the power of the county, the *posse comitatus*, and to arrest them, and then record what they found done in their presence against the law, by which record the parties were to stand convicted, as in the manner provided by the statute of forcible entries.(1)

IX.—Fresh arraignments for the same Offence.

A person once acquitted, was not to be arraigned again for the same offence, unless the first arraignment was either without an original or with a bad one, when he might be arraigned afresh at the suit of the king. But if the original was good, he could not be arraigned again though the mesne process was bad.(2)

X.—Standing Mute.

If a person, charged with felony, stood mute, it had now become the regular practice to empannel a jury, *ex officio*, to try whether he stood mute of malice, or from infirmity. This precaution was become the more needful, as the punishment inflicted on the offence of standing mute had increased in severity.(3)

XI.—Peine Forte et Dure.

The punishment was now called *peine* instead of *prisone*. The parties on whom it was inflicted were to lie in a dungeon, nearly naked, with heavy weights on their breast until they were dead, which appear to have been all additional circumstances of severity since the reign of Edward I.(4)

SECTION VIII.—STATUTE LAW UNDER HENRY V., A. D. 1413–1422. HENRY VI., A.D. 1422–1452. EDWARD IV. A.D. 1461–1483.

HENRY V.—*I. Coinage. II. Flying Process.*

HENRY VI.—*I. Parliament and Elections. II. Qualifications of Electors. III. Qualifications of the Knights of the Shire. IV. Embezzling Records. V. Criminal Processes—False Indictments.*

EDWARD IV.—*I. Tenures, Knights' Service, and Soccage. II. Burgage Tenure. III. Rents. IV. Fee Simple. V. Estates of Freehold. VI. Conditional Estates. VII. Mortgage. VIII. Parceners. IX. Partitions. X. Joint Tenants. XI. Tenants in Common. XII. Modes of Conveyance, Gift, Feoffment, Grant. XIII. Livery and Seisin. XIV. Lease.. XV. Release. XVI. Lease and Release. XVII. Exchange. XVIII. Different kinds of Possession. XIX. Personal Property. XX. Criminal Law—Treason. XXI. Volontas Reputabitur profacto. XXII. Year Books.*

(1) Stat. 13 Hen. 4. c. 7.
(2) 9 Hen. 4. 2.
(3) 8 Hen. 4. 1.
(4) See Crabb's His. Eng. Law, c. 22.

HENRY V.—*I.—Coinage.*

On the subject of the coinage, the statutes of former reigns against the introduction of foreign money were enforced and enlarged. Galley halfpence, and the money called Suskines and Doitkines, and all manner of Scottish silver, were to to be put out and not to be current in future, for any payment in the realm of England.(1)

As some doubt had been entertained, whether clipping, filing, and washing the money of the land, ought to be judged treason or not, as no mention is made of it in the statute of Treason 25 Ed. III., this doubt was now removed by bringing it under the crime of treason.(2)

II.—Flying Process.

In cases of murder, manslaughter, insurrection, and the assembling of people in great numbers, if the offender fled, and any one complained thereof to the chancellor, a writ of *capias*, and afterwards of proclamation, was to be issued, and the party in default to be attainted.(3)

HENRY VI.—*I.—Parliament and Elections.*

The most important act of this reign was that which defined the qualifications of those to be elected as members of parliament, and those who were to elect, the provisions of which remain for the most part in force to the present day. Endeavors had hitherto been made to secure freedom of election, and to enable all to give their votes who had a right so to do, the consequence of which was, that numbers had come together for that purpose who had no right whatever. The preamble to the statute complains, that "elections of knights of shires have now of late been made by very great outrageous and excessive numbers of people, dwelling within the same counties of which the most part was people of small substance and of no value, whereof every of them pretended a voice equivalent, as to such elections to be made, with the most worthy knights and esquires dwelling within the same counties, whereby manslaughter, riots, batteries, and divisions among the gentlemen and other people shall very likely arise, unless due remedy was provided."(4)

II.—Qualifications of Electors.

The statute therefore directs, that the knights of the shire should be chosen by the people dwelling and resident in the county, having free land or tenement to the value of 40*s*. by the year, at least, above all charges. The sheriff had authority

(1) Stat. 3 Hen. 5. st. 1. c. 1.
(2) Stat. 2 Hen. 5 st. 1 c. 6.
(3) Stat. 9 Hen. 5. c. 9.
(4) Stat. 8 Hen. 6. c. 7.

given him to examine, upon the Evangelists, every such chooser, how much he expended by the year; and if he returned any one contrary to this act, and was attainted thereof, he was to forfeit £100,and to be imprisoned for a year without bail or mainprise; moreover the knights were to lose their wages. The freehold was, by subsequent statute, required to be in the county where the elector resided.(1)

III.—Qualifications of the Knights of the Shire.

The persons chosen were, in affirmance of preceding statutes, to be dwelling and resident in the county; and, in a subsequent statute, it is added, that the knights of shires should be notable knights of the county for which they were chosen, or otherwise such notable esquires or gentlemen of the same county, *gentils hommes del nativité*—(gentlemen by birth),—as were able to become kn ights and no man of the degree of *vaillets*, that is, yeomen, or under.(2)

IV.—Embezzling Records.

Embezzling Records, which was before punishable only with imprisonment, was now made felony. Also, those who aided in this offence were made felons.

V.—Criminal Proeess—False Indictments.

Several provisions were made in this reign for the purpose of regulating criminal prosecutions, so as to prevent all oppressions.(3) From the preamble of an act in the 6th year of this king, we find that it was common for persons to be indicted by suspect jurors, hired and procured to the same by confederacy and covin, upon which a *capias* used to be awarded to the sheriff of the county where the bench was, returnable within two or four days; when, if the party came not, an exigent would be awarded, and so the goods become forfeit. For the remedy of this evil, it was now enacted, that before any exigent was awarded, in such case a writ of *capias* should be directed to the sheriff of the county where they were so indicted; as also to the sheriff of the county whereof they were named in the indictment; this *capias* having six weeks, at least, before the return of the same. To prevent indictments and appeals from being preferred in foreign counties, by which defendants were taken by surprise, it was enacted, that a second *capias* should issue presently after the first. So likewise, when indictments taken before justices of the peace were, for the sake of evading this statute, removed by *certiorari* into the King's Bench, it was enacted that a second *capias* should be awarded with a similar process.(4)

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(1) Stat. 10 Hen. 6. c. 2.
(2) Stat. 23 Hen. 6. c. 15.
(3) Stat. 6 Hen. 6. c. 1.
(4) Stat. 8 Hen. 6. c. 10. 10 Hen. 6.

EDWARD IV.—*I.—Tenures, Knights' Service, and Soccage.*

As the Common Law, particularly in regard to real property, was now fast approaching to the mould and form in which it exists at present, a general view of its state at this period will enable the reader to compare it with what it was before, and what it has been since.

Hitherto the doctrine of tenures had almost exclusively occupied the attention of the lawyer, but in proportion as the interest in landed property got transferred into a multitude of hands, and became diversified and modified, either by legal enactments or the changes of the times, new questions of law naturally came into discussion, and the decisions of courts varied accordingly.

The two principal tenures, knights' service and soccage, were now distinguished by the circumstance of whether the services were uncertain or certain. When the services to be rendered were uncertain, then the tenure was known to be knights' service, and was burdened with ward, marriage, relief, and the other incidents of that tenure; but when the services were certain, then it was evident that the lands were held by soccage tenure.(1)

II.—Burgage Tenure.

Tenure in burgage is incidentally mentioned by different writers, from the time of Glanville to the present period. We now find it described to be, where lands or tenements within a borough were held of the king or some other lord of the borough by certain rent. It was called burgage from burg, which Lord Coke supposes to come from the Sax. *borrhoe*, more properly *borh*, a pledge; a borough signifying the same as a company of ten families which were one another's pledge; but the more probable derivation is from the Ger. *burg*, Sax. *byrig*, a walled or fortified town connected with the Gr. *purgos*, a tower, because, originally, all important places were fortified and walled in. According to the feudal system, such towns were supposed to be held either mediately or immediately of the king, from whom they received many privileges, among others that of sending burgesses to parliament.(2)

III.—Rents.

There is another subject worthy of notice, namely, that of rents, which at this time was become a matter of some consideration. Reet, in Lat. *redditus*, a return, from *reddo*, to return, signified a return made by the tenant or lessee out of the profits of the land. We read of rent of different kinds in the ancient books, as *redditus assisus*, or *redditus assisæ*, rents of assize, so called because they were the rents of the freeholders and ancient copyholders, which were fixed by the assize and could not be varied. Those of the freeholders were called *redditus capitales*, chief rents, and both were named *quietis redditus*, quit rents, because tenants thereby went quit or free from all other services. These rents were like-

(1) Litt. sec. 118. 120. (2) Litt. s. 162, 163, 164. Co. Inst. 109. Litt. s. 164.
(3) Co. 2 Inst. 19. Brit. fol. 164. Hargrav. Co. Litt. 145. 1. n. 5. Co. 2 Inst. 44.

wise distinguished by the names of *redditus albi*, white rents, or blanche farms, when they were paid in silver, and *redditus negri*, black mail, when the rent was paid in work, grain, or base metal. Another kind of rents were termed fee-farm rents, not on account of the mode of payment, but because of the perpetuity of the rent, which, according to Britton, was the true value of the land more or less, and was, for the most part, one-fourth of the value, although it is supposed that not the quantum of the rent, but the perpetuity, was essential to create a fee farm. This was a species of soccage tenure, and was originally called *firma blanca*, or blanche farme.(1)

IV.—Fee Simple.

A fee was divided into a fee simple and fee tail. A fee simple was equivalent in signification to an absolute inheritance, or an estate of inheritance in the most extended sense of the word. A fee tail was only a limited inheritance, or an inheritance which was limited to certain heirs, from the word *talliare*, to cut, as before observed.(2)

V.—Estates of Freehold.

Other estates were not estates of inheritance, but of freehold only, as that of tenant in tail after possibility of issue extinct, tenant by curtesy, tenant by dower, and tenant for term of life.

VI.—Conditional Estates.

There was another kind of estates described under the name of estates upon condition, to which conditions were annexed; arising from some pecuniary consideration.(3)

VII.—Mortgages.

One of the principal estates of this kind, which has continued to the present period, is that of the *mortuum vadium*, in Fr. *mort-gage*, *i.e.* dead pledge, which was so called because it was doubtful whether the feoffor or mortgagor would pay the sum at the time limited, and if he did not, then the land which was put in pledge was dead to him, and if he did pay, then it was dead to the feoffee or the mortgagee. In the time of Glanville, this species of security was not much favoured in law, but it appears to have been more so in the time of Richard II., for Sir Matthew Hale observes, that in the 14th year of this king the parliament would not admit of redemption. As this would, however, contrary to the spirit of the times, have encouraged alienation by means of mortgages, it appears that courts of equity soon after admitted, that although a mortgage was forfeited, by the non-fulfilment of the condition, yet if the estate were of greater value than the sum lent thereon, the mortgagor might at any reasonable time, redeem his estate by

(4) Litt. s. 1. Litt. s. 13. (5) Litt. s. 325.

paying the mortgage, principal, interest, and expenses; which proceeding was afterwards denominated Equity of Redemption (1)

Besides the above estates, which were considered sole, there were also others that might be enjoyed by more than one person, the law of which is fully defined at this time. The owners of joint estates were either parceners, joint-tenants, or tenants in common.

VIII.—Parceners.

Parceners were either parceners by the common law, or parceners by the custom. When daughters took an estate in fee or in tail, they were parceners by the common law, and were considered as one heir in conformity with the principle laid down by Bracton, "Jus descendit quasi uni heredi proter juris unitatem"—The right descendeth as to a single heir, because of the unity of the right.(2)

Where lands, as by the custom of gavelkynd, descended to all the sons equally and in parcenary, they were called parceners by custom; for in this case the sons were parceners in respect of the custom of the fee or inheritance, and not in respect of their persons as the daughters.(3)

IX.—Partitions.

When a partition was desired by any of the parties, it was either made by agreement, or where that could not be effected, then they might have a writ called a *breve de partione faciendâ*—(a writ of partition),—which is mentioned by Bracton, whereby the unwilling parties might be compelled to make partition.(4)

There was another sort of partition which arose from gifts in frank-marriage, as if a man was seised in fee and had two daughters, and on the marriage of the eldest he gave lands in frank-marriage, and afterwards died seised of other lands of greater value, it was a rule in that case, that neither the husband nor the wife should have any property in such remnant of the estate, unless they would put the lands held in frank-marriage into what was now termed hotch-pot, from hodge-podge a pudding, *farrago* or mixture, which is alluded to by Bracton and subsequent writers.(5)

Where of three parceners one wished to make partition, and two to hold in parcenary, then one part might be allotted in severalty to the one who wished it; but this could only be where the partition was by agreement, for if made by force of a writ, each was to have her part in severalty.(6)

X.—Joint-Tenants.

Where lands were granted or leased to two persons to hold to them and their heirs, or for term of another man's life, by force of which feoffment or lease they were seised, they were joint tenants. They were so called because lands or tene-

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(1) Lit. s. 322; Butler's Co. Lit. 20 a. n. 8.
(2) Lit. s. 241; Bract. fol. 66; Britt. c. 71; Flet. l. 5. c. 9.
(3) Lit. s. 265. (4) Bract. fol. 71; Lit. s. 243. et seq.
(5) Ibid, 266, et seq. Bract. fol. 77; Brit. c. 72; Flet. l. 6. c. 47.
(6) Ibid, 276.

ments were conveyed to them jointly. They were *conjunctim feoffati*—(jointly enfeoffed),—or *qui conjunctim tenuerunt*—(who held jointly),—and were formerly called *participes et non hæredes*—(partakers, not heirs).—Joint heirs were distinguished from parceners in many points, particularly in this, that they came in by purchase, that is, by the act of the parties, and that the surviving tenant in joint-tenancy, was to have the entire estate to himself, whatever it was.(1)

XI.—Tenants in Common.

Tenants in common were such as held lands or tenements in common, so as to take the profits in common. The principal difference between joint-tenants and tenants in common was, that joint-tenants had the land by one joint title and in one right, and tenants in common by several titles: thus, if one joint-tenant, or one parcener, aliened in fee to another man, the alience held in common with the other joint-tenant or parcener, because they came in by different titles or feoffments. Neither joint-tenants nor tenants in common were at this time compellable to make partition, but the common law on this point was afterwards altered by statute.(2)

XII.—Modes of Conveyance, Gift, Feoffment, Grant.

A gift, *donatio*, was, as before observed, the original term for the principal conveyance, but we find from Bracton that the term *feoffamentum*, feoffment, had come into use in his time, and was applied to a gift of corporeal hereditaments, as lands and tenements, which distinction is expressly confirmed by Britton, a subsequent writer, who says, "done est nosme generall plus que n'est feoffment care done est generall a touts choses moebles et nient moebles, feoffment est rien, forsque del soyle"—(Gift is a word of more extensive meaning than feoffment; for a gift may be of any thing whether moveable or immoveable (i.e. personal or real,) whereas a feoffment is of lands only).—From Littleton we learn that the terms gift, feoffment, and grant were in common use in this time. A gift was not confined to a gift in tail; a feoffment, originally employed to signify *donatio fœdi*—(the gift of a fee)—was now used to signify the gift in fee of corporeal hereditaments, and grant *concessio*, a term of later introduction served to denote a similar gift of incorporeal hereditaments, as advowsons, commons, and the like. He who made a gift was called the donor; he to whom the gift was made, the donee; he who made a feoffment was the feoffor, and he to whom it was made the feoffee; and, by the same rule, the grantor was distinguished from the grantee.(3)

XIII.—Livery of Seisin.

Between the gift, feoffment and grant, there was a further distinction as to the mode of performing the conveyance. The two former required the solemnity now

(1) Ibid, 277. Co. Inst. 180; Bract. fol. 28. 428; Brit. c. 35; Flet. 1. 3. c. 4; Lit. s. 280; Bract. fol. 430.
(2) Lit. s. 292; Ibid, 309; Ibid, 290, 318.
(3) Bract. fol. 53; Brit. c. 34; Lit. s. 57; Lit. s. 1; Lit. s. 57.

called livery of seisin, which by Bracton is particularly described under the name of *traditio sesinæ*. Livery of seisin was now, as in his time and also before, performed by some solemn act, as by delivery of the ring of a door or of a turf and the like, which Lord Coke calls livery in deed, when the feoffor and feoffee or their attornies, both holding the deed of feoffment, and the ring of the door, &c. the feoffor says, "Here I deliver you seisin and possession of this house in the name of all the lands and tenements contained in this deed, according to the form and effect of this deed." Livery might also be performed by words without any ceremony or act, as if the feoffor being at the house-door said, "Here I deliver you seisin and possession, &c. There was likewise what Lord Coke calls livery in law, when the feoffor said to the feoffee, being within view of the house or land, "I give you yonder land, &c. to you and your heirs." This appears to have been the same in Bracton's time, for he speaks of "seisina per effectum et per aspectum"—(constructive seisin by view).(1)

It is necessary to observe, that in all cases where a freehold should pass, whether by deed or without deed, it was needful to have livery of seisin, as in a lease for a term of life; but in a lease for a term of years it was not necessary, because in this latter case no freehold should pass.(2)

Besides, it was necessary in all feoffments and grants to have these words, "to have and to hold to him and his heirs," for these words "his heirs," made an estate of inheritance. For if a man purchased lands by these words "to have and to hold to him for ever," or by these words "to have and to hold to him and his assigns forever," in such case he would have only an estate for life.(3)

XIV.—Lease.

A lease, from the French *laisser*, and the German *lassen*, to let, or give leave, was a conveyance by which an estate for life, for years, or at will, was created, These estates were originally granted to husbandmen, who every year rendered some equivalent in provision or money, in the shape of rent, to their lessors or lords, and were for some time but little considered in law, as they amounted to little more than a leave or permission to hold the land at the will of the owner; and those who held them being for the most part in the condition of villeins, were regarded in no other light than servants or bailiffs of the lord, to whom they were expected to account for the profits at a stipulated rate. But, as it was soon felt that the cultivation of the land required the occupier to have a more permanent interest in the soil, these husbandmen gradually acquired a larger estate, and the length of leases was considerably increased.(4)

XV.—Release.

A release was an old mode of conveyance, as before mentioned; which, by Fleta, is termed *charta de quieta elamantia*—(a deed of quit-claim).—Releases were of two kinds, namely, a release of all the rights which a man has in lands

(1) Bract. fol. 41; Co. Inst. 48; Brit. c. 33; Flet. 1. 3. c. 35; Co. Inst. 48; Bract. 1, 2. c. 18.

(2) Litt. s. 59. (3) Litt. s. 1. (4) Bract. fol. 26.

and tenements, and releases in actions. A release, in the first sense, might enure or take effect in four different ways, viz., 1. By way of *mitter l'estate*, that is, of passing an estate, as when one of two coparceners released all his right to the other; this was to enure to make an estate. 2. By way of *mitter le droit*, that is of passing a right, as when a man released to a disseisor all his right, whereby the disseisor acquired a right, and his estate, which was before wrongful, was made lawful. 3. By way of extinguishment, as when a lord released to his tenant all the right he had in the seigniory; this went to the extinguishment of the rent. 4. By way of enlargement, as where there was tenant for term of years or life, remainder to another in fee, and he in the remainder released all his right to the particular tenant and his heirs; this gave him an estate in fee simple. To make releases operate in this manner, it was necessary that the releasee should be in actual possession, so that there might be a privity of estate between the lessor and lessee, and that there should be words of inheritance in the deed.(1)

XVI.—Lease and Release.

From this last property of releases, these might be occasionally, and were at this period used as a means of transferring the freehold. When any one wished to enlarge the estate of another, a deed of lease for three or four years was made to the party intending to purchase, and soon after he had entered on possession, a release of the inheritance was given him by which he became seised of the fee simple the same as by feoffment with livery of seisin. This afterwards became an established mode of conveyance under the name of lease and release.(2)

XVII.—Exchange.

An exchange, like the preceding, was, as before shown, a very frequent mode of conveying estates, the properties of which are defined at this time. An exchange of tenements, without deed or without livery of seisin, was good, provided the estates which both parties had in the lands so exchanged were equal; that is, that if the one had a fee simple in the one land, the other should have a like estate in the other; but of things that lay in grant, it was necessary that it should be made by deed. The word *excambium*—(exchange)—was requisite, as it could not be supplied by any circumlocution. Besides, it was necessary that there should be an execution by entry or claim in the life of the parties.(3)

XVIII.—Different kinds of Possession.

Having taken a general view of the state of the law respecting the creation and conveyance of estates, we have next to consider the various manners in which possession to estates might be lost. For illustrating this point, recurrence may be had to the early writers, when cases of wrongful possession were most frequent, and the law respecting them was more thoroughly discussed. Bracton, in defining

(1) Litt. s. 445; Ibid, 305; Ibid, s. 304; Ibid, 479; Ibid, 465; Ibid, 459.
(2) 32 Hen. 6. 8; Reeve's His. iii. 365.
(3) Litt. s. 65; Co. Inst. 51.

the title to lands and tenements, discriminates nicely between the different degrees of *possessio, jus* and *proprietas*—(possession, right, and property).—According to him, there was a *nuda pedum positio*—(naked occupancy)—as in case of intrusion, where there was *minimum possessionis* and *nihil juris*—(but the *least* of possession, and nothing of right).—Another sort of possession was clandestine and precarious, inasmuch as it was gained by violence ; this had *parum possessionis* and *nihil juris*—(*little* possession, and no right).—A third had *aliquid possessionis* and *nihil juris*—(*something* of possession, but no right)—such as that which belonged to a term of years, where only the usufruct was enjoyed. Sometimes there was *multum possessionis* and *nihil juris*—(*strong* possession, but no right)—as in an estate for life, by dower and the like. When a person had the freehold and the fee, he had *plus possessionis* and *multum juris*—(*more* possession, and *much* right).—When a person had the freehold, the fee, and the property, then he was said to have *plurimum possessionis* and *plurimum juris*—(*complete* possession and *full* right),—or the *droit droit*—(perfect right)—as it was otherwise called.(1)

When any one gained the possession without the *jus*, or title, this wrongful possession had acquired, even in the reign of Edward III., the name of ouster of freehold, or ousting a person of his freehold, of which there were different kinds, as disseisin, intrusion, abatement, and deforcement.(2)

XIX.—Personal Property.

The law respecting personal property began now to be more thought of, and more clearly defined. Bracton, like his predecessor Glanville, had adopted the doctrine and language of the civil law, which he calls the law of nations, that is, the universal law of nature and reason. These principles were in several points adopted and moulded into the scheme of English jurisprudence. In regard to game, the decisions of courts favoured the principles of the civil law more than that of the forest law ; holding that animals *ferœ naturæ*—(wild animals)—such as birds, beasts, fishes, belonged to no one except by the right of occupation. Even the keeping of deer in a park or warren did not give the owner a complete property in them, unless they could be distinguished by some mark as the colour and the like. Although the owner *ratione soli*—(by reason of property in the soil)—acquired such a property in deer or hares, that he might sustain an action of trespass for any injury done to them, yet still, as Mr. Reeves observes, he was not at liberty to call them *lepores suos*, or *damas suas*—(his hares or his deer),—but in general *mille lepores*, or *damas vigenti*—(one thousand hares, twenty deer, &c.)—Nay more, a gift could not be made of a deer unless it was a white or tame deer in which a man could have a clear property.(3)

XX.—Criminal Law—Treason.

Owing to the manner in which this king came to the throne, during the life of Henry VI., a distinction was made between a king *de jure* and a king *de facto*—

(1) Bract. 159, 160.
(2) Mayn. 341 ; Year Books Ed. 3 and Hen. 6. passim.
(3) 8 Ed. 1. 14 ; Reeve's His. iii. 370 ; 3 Hen. 9. 55 ; 7 Hen. 6. 38, et seq.

(a king of right and a king in fact)—as affecting the law of treason and other matters. It was now laid down as a principle, that a treason against Henry VI., while he was king, in compassing his death, was punishable after Edward IV. came to the throne. It was also settled, that all judicial acts, done by Henry VI. while he was king, and also all pardons of felony and charters granted by him, were valid, and that a pardon given by Edward IV. before he was actually king, was void.(1)

XXI.—Voluntas reputabitur pro facto.

The old maxim of the criminal law that *voluntas reputabitur pro facto*—(the will shall be taken for the deed)—was now beginning to yield to a contrary opinion. Even as late as the reign of Henry IV. it was laid down as a rule, that if a man was indicted that *il gesoit depræedando*—(he lay in wait in order to rob),—it was felony; but in the 9th of this king we find a contrary doctrine maintained. A man lay in wait in the road with his sword drawn, to set upon a person, and actually demanded the money of one whom he met, yet being interrupted at the moment, and not having taken the money, this was adjudged not to be felony. This principle was afterwards established and became a rule in law.(2)

XXII.—Year Books.

One of the principal sources of legal information at this period were the year-books, which being more copious than those of the preceding reigns, furnish an account of all the points of law which were then discussed in the courts. They contain an account of many particulars, which form a part of the English jurisprudence.(3)

SECTION IX.—STATUTE LAW UNDER RICHARD III., A.D. 1483-1485, AND HENRY VII., A.D. 1485-1509.

RICHARD III.—*I. Statutes of Richard III. II. Statute of Uses. III. Fines and Nonclaim. IV. Bailing of Offenders.*
HENRY VII.—*I. Ejectment.*

I.—Statutes of Richard III.

The short reign of the unfortunate Edward V. afforded no opportunity for calling a parliament, although the business of the courts went on without interruption, in the midst of the revolutions which succeeded each other so rapidly. The reign of Richard III., though short, was not altogether barren of materials for the legal historian. Richard called a parliament in the first year of his reign, in which several acts were passed.

(1) Reeve's His. iii. 409; 19 Ed. 3. 1.
(2) 13 Hen. 4. 8.; 9 Ed. 4. 28.
(3) See Crabb's His. Eng. Law, ch. 27.

The principal subjects of these statutes were uses, fines, and bailing offenders, on which some wise provisions were made by this king, who seemed to wish to atone for his atrocious usurpation by the wisdom of his government.(1)

II.—Statute of Uses.

His first act was passed with the view of obviating some of the numerous inconveniences which were then found to attend the conveying of land to a use. By the common law, *cestui que use* had no power to aliene the land, or to do any act to charge the freehold without the concurrence of the feoffee, which often created much embarrassment and confusion in the conveying of lands, wherefore power was given by the statute to the *cestui que use* to dispose of the estate in the same manner as the feoffee to the use might do at common law.(2)

III.—Fines and Nonclaim.

The evils which the statute of Nonclaim in the reign of Ed. III. had occasioned, by diminishing the validity of fines, had doubtless long been felt; but it was left to the usurper Richard III. to remedy these evils by restoring the old law. Every fine, after engrossing, was to be openly and solemnly read and proclaimed in court, the same term and three next terms, during which ceremony all pleas should cease. A trsnscript was then to be sent from the justices of the assize where the lands lay, who were, in like manner, to cause it to be proclaimed in every one of their sessions; and the justices of the peace the same in their sessions; which proclamations were to be certified the second return of the following term. After this, a fine was to exclude all parties, as well privies as strangers, except *femmes covert*—(married women)—not consenting hereto, persons within age, in prison, out of the realm, or not of whole memory, all others having a title at the time the fine was levied were to put in their claim within five years after the proclamation and certificate.(3)

IV.—Bailing Offenders.

Notwithstanding the provisions in Magna Charta and stat. West. 1, for securing the personal liberty of the subject, and preventing unlawful imprisonments, persons were nevertheless subject to be daily arrested and imprisoned for felony, either on no ground at all or on very slight suspicions, and were kept without bail and mainprise; wherefore, the power of bailing offenders was given to the justices of the peace, who were to inquire at their sessions of the escapes of all persons arrested and imprisoned. Sheriffs, and other officers, were likewise prohibited from seizihg the goods of those who were arrested or imprisoned for felonies, before conviction or attainder, upon pain of forfeiting to the person aggrieved double the value of the things so taken.

HENRY VII.—*I.—Ejectment.*

The decisions of the courts in this reign in regard to the effect of the writ of *ejectione firmæ*, or the action of ejectment, lead to an important change in real

(1) See Crabb's Hist. Eng. Law, ch. 28. (2) 1 Ric. 3. (3) Stat. 1. Ric. 3. 7.

remedies. In the reign of Edward III., it was held that an *ejectione firmæ* was an action of trespass, in which the plaintiff could only recover damages for the trespass; and that, for the recovery of his term, he must bring a writ of covenant. In the reign of Edward IV., it appears that the courts inclined to the opinion, that in *ejectione firmæ* the plaintiff might recover what remained unexpired of his term, and also damages for the time it was held from him. This opinion was now confirmed by the solemn decision of the court, in the 14th year of this king, when the recovery of the term, as well as damages, was adjudged to the plaintiff in an action of ejectment. This decision gave to the writ of *ejectione firmæ* new power, by which it might be employed as means of trying titles to land, and paved the way for its being made the substitute of real actions, as writs of assize, of novel desseisin, writs of entry and writs of right, which gradually went out of use.(1)

(1) 7 Ed. 4. 6; 14 Hen. 7. 344. See Crabb's His. Eng. Law, c. 28.

CHAPTER XXII.

STATUTE LAW FROM THE REIGN OF HENRY VIII. TO THE 14TH YEAR OF GEORGE III., A.D. 1774,

WHEN THE POWER OF MAKING LAWS WAS GRANTED TO CANADA.

SECTION I.—STATUTE LAW UNDER HENRY VIII., A.D. 1509–1547.

I. Religion. II Ecclesiastical Polity. III. Election of Bishops. IV. Style assumed by the King. V. Dissolution of Monasteries. VI. Lawful Marriage Defined. VII. Statute of Uses. VIII. Jointures. IX. Devises. X. Leases. XI. Partition. XII. Descent tolling entry. XIII. Gifts to superstitious uses. XIV. Admiralty. XV. Limitations of Actions. XVI. Restitution of Goods in Indictments. XVII. Penal Laws. XVIII. Malicious Mischief. XIX. Statute of Uses. XX. Lease and Release. XXI. Personal Actions Assumpsit. XXII. Statutes. XXIII. Reports.

I. Religion.

The changes which the law underwent in this reign were numerous and remarkable, particularly those which concerned the national religion.(1)

II. Ecclesiastical Polity.

The laws regarding ecclesiastical polity were all directed towards reducing the power of the clergy and severing their connexion with the see of Rome, which had been in vain endeavoured by this king's predecessors, but was now fully effected by a series of parliamentary provisions. The first acts in order of time were passed in the 21st year of this king against the unreasonable exaction of fees for the probate of wills, for the regulation of indulgences, and the restriction of pluralities.

III.—Election of Bishops.

The election of bishops was put upon such a footing that all pretence for an application to the see of Rome for its concurrence was done away. All bishops were to be presented to an archbishop, and an archbishop to the other archbishop, or to any four bishops whom the king should name. When any see was vacant, the king was to grant a license or *congé d'elire* to the dean and chapter, and there-

(1) Crabb's Hist. Eng. Law, ch. 29.

with to send a letter missive, containing the name of the person whom they were to elect, and if they delayed the election for twelve days, then the king was to nominate by letters patent. We have seen that in the reign of Henry I. the right of investiture was given up, and in consequence a freedom of election was granted to all prelates, both bishops and abbots. This was confirmed by King John, and afterwards by statute in the reign of Edward III. By the abovementioned statute of this king the bishops were prohibited from applying to the see of Rome for its concurrence on pain of a *præmunire*.(1)

IV.—Style assumed by the King.

In order to convince the see of Rome and all the world that the king was in earnest in throwing off the allegiance to the pope in ecclesiastical matters, he assumed the title of supreme head of the church, and had it confirmed by act of parliament, by which his style and title were settled in the following words: "Henry VIII. by the grace of God, king of England, France, and Ireland, Defender of the Faith and of the Church of England and also of Ireland, in earth the supreme head." It was also declared high treason to deprive him of it.(2)

This last measure is the more entitled to notice as it was altogether a novelty for the kings to submit the question of their style and title to parliament, which being heretofore looked upon as personal matter, had been assumed by themselves at their own discretion.

V.—Dissolution of Monasteries.

The most material change in the ecclesiastical polity, and the most violent inroad on the property of the church, was made in the 27th and 31st year of this king, when all the monasteries in England were dissolved, and the king became possessed of all the revenues of these houses. These he parcelled out, mostly among his courtiers and favourites, and thus, contrary to the intentions of the original donors, and to the statute of Richard II., increased the number of lay appropriations.

The primitive institution of suffragan bishops was provided for, and regulated by, a statute in the 26th year of this king, which empowered every bishop to appoint two honest and discreet spiritual persons within his diocese, of whom the king would appoint one to be a suffragan. The towns to which suffragans were appointed, together with their duties and privileges, were specified in this act. In his 33d year he erected, out of the ruins of the dissolved monasteries, several new bishoprics, that is to say, Gloucester, Bristol, Peterborough, and Oxford, which were annexed to the province of Canterbury, and that of Chester, and Sodor and Man, were annexed to the archbishopric of York.

As Henry had gone thus far in throwing off all political connexion with the see of Rome, it is not surprising to find that notwithstanding his professions of attach-

(1) Stat. 25 Ed. 3.

(2) Stat. 35 Hen. 8, c. 3; Crabb's Hist. Eng. Law, c. 29.

ment to the doctrines and discipline of the Roman church, he should feel disposed to introduce some changes in the forms of the national religion. Accordingly, we find, that an act was passed in the 34th year of his reign, empowering the king to appoint a commission of bishops and clergy to agree in a form of religion. But having set his subjects an example of thinking for themselves, and holding lightly what had been established, he endeavoured in vain, by several penal statutes in the 31st, 34th, and 35th years of his reign against diversities of opinion, to fix them at the point he pleased.

VI.—Lawful Marriages defined.

Several statutes were made on the subject of marriage, in order to suit the convenience of this capricious king; but the only one entitled to notice was that passed in his 32d year, by which all marriages contracted by lawful persons, that is, persons not prohibited by God's law to marry, and duly solemnized, were to be held valid. The preamble to this statute states, as a reason for the act, that "what sparks remained of the papal legislation might kindle hereafter a great flame; and, at least, while they remained, might show that the pope's power was not entirely extinct."

VII.—Statute of Uses.

The statute of uses, in the preceding reigns, not having obviated the inconveniences which were complained of, as attending this secret mode of conveyance, a fresh attempt was made in this reign to remedy this evil. To this end, the famous statute of uses was passed in the 27th year of this king, which, after enumerating the evils resulting from such subtle-practised feoffments, fines, recoveries, abuses, and errors, proceeds to enact, that when persons shall stand seised of lands or other hereditaments, to the use, confidence, or trust, of any other person, or body politic, the person or corporation entitled to the use in fee simple, fee tail, for life or years, or otherwise; shall from thenceforth stand and be seised, and be deemed in lawful seisin of the land, &c. in such like estate as they had in the use or trust; and the estate, title, right, and possession, shall henceforth be adjudged in them. Thus the statute executed the use as it has since been called, that is, transferred the use into possession; by which means the *cestui que use* become completely posessed of the land in law as he was before in equity. This is the substance of that statute, which in pleadings and deeds has since been distinguished by the name of the statute for transferring uses into possession, or the statute for conveying the possession to the use.(1)

It was very soon felt that one consequence of this statute would be, to facilitate the conveyance to uses, particularly by means of bargain and sale, which had already become frequent. In order to give this sort of transfer the notoriety which was so much desired, another act was passed in the same year, which directed that no bargain and sale should enure to pass a freehold, unless it was made by

(1) Stat. of Uses, 27 Hen. 8, c. 10; Reeve's Hist. iv. 244.

indenture, and enrolled, within six months, in one of the courts at Westminster, or with the *custos rotulorum*—(keeper of the records)—of the county.(1)

It was, doubtless, thought, by thus destroying the intermediate estate of the feoffee, lands would no longer pass by limitation of use, but by formal livery of seisin; but, in order to guard against these secret transactions, which it was the object of the statute to put a stop to, it was thus ordained, that when they concerned any freehold interest, they should be by deed indented and enrolled.

VIII.—Jointures.

Another provision of the statute had regard to jointures, which, as before observed, sprung out of the practice of conveying to uses. When, in consequence of the statute of uses, *cestui que use* became absolutely seised of the land, and the wife would have become dowable, it was found necessary, in order to prevent the double claim of dower and jointure, to provide that in making such an estate in jointure, the wife would be for ever barred of her dower.

IX.—Devises.

An important consequence of the statute of uses was, that *cestui que use* had no longer the power to devise the land as at common law; no lands or tenements were devisible, except by the particular custom of some boroughs. This king, however, being more favourable than his predecessors to the removal of those restrictions which impeded the transfer of landed property, a statute was passed in the 32d year, which was revised and amended in his 34th and 35th years, enabling persons who held lands and tenements in soccage to devise the whole, with a saving of the king's primer seisin.(2)

X.—Leases.

It appears that the remedy which the statute of Gloucester gave the lessee for years to recover against the lessor, when he suffered himself to be impleaded in a real action by collusion, did not extend to several cases in which the interests of termors were affected; for, if the lease were without writing, or a recovery was suffered by default, the termor could not recover his term. It was also supposed that tenants by statute merchant, statute staple, or *elegit*, could not have their remedy by this statute. In order to meet all these cases, a statute, in the 21st year of this king, directed, that all lessees should maintain their leases against the recoverors, and that no statute merchant, statute staple, nor execution by *elegit*, should be made void by any feigned recovery.(3) By another statute, in the 32d year of this king, a further provision was made to protect lessees against tenants in tail, so that, if any person seised in fee or in tail, in his own right, or in the right of his church, or his wife, or jointly with his wife, made a lease by indenture for years or life, it was ordained that it should be good and lawful, the same as if the lessor was seised in fee simple, provided it were not made to any lessee having an old lease unexpired, or not surrendered, and also not made in reversion. This

(1) Stat. 27 Hen 8. c. 16.
(2) Stat, 32. 34; 35 Hen. 8.
(3) Stat. Gloue. Co. 2 Inst. 321.

was afterwards called the enabling statute, to distinguish it from the restraining statutes in Queen Elizabeth's time.(1)

XI.—Partition.

As inconveniences frequently arose in cases of joint-tenancy, where the parties were not willing to make partition, it was thought advisable, in the 21st year of this king, to compel joint-tenants, and tenants in common, to make partition, by the writ *de partitione faciendâ*, in the same manner as coparceners were compellable at common law. This act, which was confined to estates of inheritance, was afterwards extended, in the 32d year of this king, to estates for life or years.(2)

XII.—Descent tolling entry.

The statute of mortmain was now, agreeably to the temper of the times, extended against gifts to superstitious uses.

XIII.—Gifts to superstitious uses.

A statute, in the 23d year of this king, made void all dispositions to the use of churches, chapels, &c., to the intent to have obits perpetual, or service of a priest for ever.(3)

XIV.—Admiralty.

A material alteration was made in the criminal judicature of the court of Admiralty, by two statutes, in the 27th and 28th years of this king. By the first, all offences of piracy and robbery, &c. done on the sea, were to be tried in such places of the realm as shall be limited to the king's commissions, directed to the lord admiral, or his deputies. By the second it was enacted, that all offences committed upon the high sea, should be tried by commission of oyer and terminer, under the king's great seal, consisting of the admiral, or his deputy, and three or four more, among whom two common-law judges were to be of the number. Their proceedings were not to be according to the course of the civil law, by means of witnesses only; but according to the common law, by means of a jury.(4)

XV.—Limitations of Actions.

Some provisions were made by statute for limiting actions both in civil and criminal proceedings. A writ of right was now limited to the period of sixty years, within which it was necessary for it to be brought. Other writs, or actions possessory, were limited to fifty years. Actions upon penal statutes were to be brought by the king within three years, and by any common person within one. It is here worthy of observation, that in the time of Glanville and Bracton, when the administration of justice was more immediately in the hands of the kings, the

(1) Stat. 21 Hen. 8. c. 15.
(2) Stat. 21 and 32 Hen. 8.
(3) Stat. 23 Hen. 8. c. 10.
(4) Stat. 27, 28 Hen. 8; Co. 4 Inst.

limitations of actions were determined by circumstances, which necessarily made them indefinite and variable. By the stat. Westm. 1, the reign of Richard I. was made the time of limitation in a writ of right.(1)

XVI.—Restitution of Goods in Indictments.

By the common law, restitution of goods could be had only upon an appeal, but not upon indictment, because this was at the suit of the king. Wherefore a statute, in the 21st year of this king, gave the same advantage in indictment as in appeal, which was growing more and more out of favour. Accordingly, if a person was convicted of larceny, by the evidence of any one, the owner of the goods might recover his property, or the value of it, out of the offender's goods, by a writ of restitution, in the same manner as in cases of appeal.(2)

XVII.—Penal Laws.

The penal statutes of this reign were numerous and severe beyond all precedent; but, as they were for the most part repealed in the next reign, it will not be needful to enlarge upon any here but what were permanent.

XVIII.—Malicious Mischief.

It was likewise made felony to burn or destroy timber that was prepared for building; also the cutting the heads of ponds, and other species of malicious mischief.(3)

XIX.—Statute of Uses.

The statute of uses did not set every question on this subject at rest. The principal matter in dispute was the condition of the feoffees, as to what interest and power remained in them when, at the instant of their appointment, the statute transferred the possession from them to the *cestui que use;* the courts seeming still to adhere to the notions respecting feoffees, which prevailed after the statute of Richard III. If, as is supposed, it was the intention of that statute to revive the old mode of conveyance of feoffment and livery of seisin, the end was so far from being answered, that the contrary effect was produced; uses became a common mode of conveyance, and almost entirely superseded feoffments. Covenants to stand seised to uses, although discountenanced in former reigns, became frequent, and the decisions of the courts were in their favour.(4)

XX.—Lease and Release.

Another mode of conveyance, which acquired its force and operation from the statute of uses, was a lease and release. This method of conveyance was doubtless derived from the practice alluded to in the reign of Edward IV., of first granting a lease, and then a release, by way of enlarging the estate. It is said to have

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(1) Stat. 32 Hen. c. 2; Stat. 7 Hen, 8, c. 3.
(2) Stat. 21 Hen. 8. (3) Stat. 37 Hen. 8. c. 6.
(4) Reeves' Hist. iv. 323; 34 Hen. 8; Bro. Feoff. al Use, 16.

been regularly introduced by Serjeant Moore for the convenience of Lord Norris. The course of proceeding in this matter was as follows: A bargain and sale was made for a term, which, as it did not come within the statute of uses, did not require to be enrolled; and when the bargainee was in possession of the term, he was in a capacity to receive a release of the inheritance, the deed of release containing the whole settlement of the estate so conveyed.(1)

XXI.—Personal Actions—Assumpsit.

Personal actions were now more clearly understood, and more fully explained than formerly. We have seen, that in the reign of Edward III., actions on the case were grounded upon malfeasance. In the reign of Henry IV., an attempt was made to apply it to cases of nonperformance of a promise; but the courts were slow in allowing the name of trespass to be given to a thing that had never been done, and several actions of this kind were brought before they obtained a judicial decision in favour of the principle. In action against a carpenter, *quare cum assumpsisset*—(for that whereas he promised, &c.)—to build a house within a certain time, it was objected that this was in covenant, and, as no writing was shown, that the action must fail.(2)

XXII.—Statutes.

The statutes of this reign assumed the form which they have since retained, and are remarkable for their immoderate length. The statute of wills, in the 21st year of this king, is the first example of this kind which seems to have served as a model for drawing up statutes for the future. As parliament was now acquiring so great a share in legislation, the framers of these acts were proportionably anxious to include under the statutes every provision, so as to diminish the discretionary power of the executive government as much as possible.(3)

The same wordy style, and the same attempt at precision, was copied by the lawyers in their deeds of conveyance and other instruments, so that the language of the law became remarkable for the tediousness of its phraseology and the multiplicity of its repetitions.

XXIII.—Reports.

The practice of appointing stated reporters is supposed to have ceased in this reign, which may account for the scantiness of the year-book compared with that of former reigns.(4)

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(1) Reeves' Hist. iv. 356.
(2) 2 Hen. 4. 3; Reeves' Hist. iii. 245.
(3) Reeves' Hist. iv, 412.
(4) Crabb's Hist. Eng. Law, ch. 29.

SECTION II.—STATUTE LAW UNDER EDWARD VI., A.D. 1547–1553.

I. Reformation. II. Sacrament. III. Abolition of Chantries. IV. Acts of Uniformity. V. Book of Common Prayer. VI. Nonconformists. VII. Marriage of the Clergy. VIII. Brawling in a Church or Church Yard. IX. Poor Laws. X. Tithes. XI. Loss of Dower for Treason and Felony.

I.—Reformation.

The reign of this prince, though short, is rendered memorable by the completion of the Reformation, for which the proceedings in the former reign had fully prepared the way.

To change the forms of religion, to which the people had been endeared by long habit, was not unattended with risk and inconvenience. When the minds of men became unhinged, they naturally did not know where to stop; and when taught to disregard the externals of religion, they would be apt to despise religion itself, or to form very fallacious notions on the subject. To try to obviate these inconveniences was one of the first acts of the legislature in this reign.

II.—Sacrament.

In the preamble to the first statute of Edward VI., concerning the sacrament, it is stated, that it is called in scripture a supper, the table of the Lord, the communion and partaking of the body and blood of Christ, but that many persons had condemned in their hearts the whole thing, on account of certain abuses heretofore committed in the misapplication of it. For this reason all persons were prohibited from depraving the sacrament by contemptuous words or otherwise, on pain of imprisonment and being fined at the king's pleasure. Likewise, by this statute, the communion of the sacrament in both kinds was to be ministered to the people within the church of England and Ireland, and the minister was not permitted to deny the same to any person.(1)

III.—Abolition of Chantries.

In order to complete the work of humbling the clergy, all charities, colleges, and free chapels, as also all lands given for the finding of a priest for ever, or for the maintenance of any anniversary, &c. were, by another act, given to the king.(2)

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(1) Stat. 1 Ed. 6. c. 1.
(2) Stat. 1 Ed. 6. c. 14; Stat. 2 and 3, 3 and 4, 5 and 6, Ed. 6.

IV.—Acts of Uniformity.

In the next and following years, the legislature was engaged in introducing a uniformity of service, and a due administration of the sacraments.

V.—Book of Common Prayer.

As divers common prayers had of late crept into use, the Archbishop of Canterbury was now appointed to draw up, with the assistance of some other bishops, one convenient and meet order of prayer and administration of the sacraments, which, when performed, was entitled, "The Book of the Common Prayer and Administration of the Sacraments, and other Rights and Ceremonies of the Church, after the Use of the Church of England," which was directed to be used in all cathedrals and parish churches. In the 5th and 6th years of this king, this Book of Common Prayer underwent a revisal, to remove the doubts which had arisen about the service, "rather," as the act states, "by the curiosity of the ministers and mistakers, than for any other worthy cause."

VI.—Nonconformists.

In order to enforce the reformation, by putting a stop to the Roman forms of worship, several provisions were made, prohibiting what was called vain, untrue and superstitious services, such as antiphoners, missals, processionals, and the like. All persons and bodies corporate were likewise enjoined to take out the images in churches, and deliver them to the bishop; and not to omit so doing on pain of forfeiting 20s. for every prohibited book or picture, for the first offence; £4 for the second; and for the third, imprisonment at the king's will. All persons were likewise commanded to attend their parish-church or chapel regularly, upon pain of censures of the church.(1)

VII.—Marriage of the Clergy.

The celibacy of the clergy had served as a powerful means of keeping that body true to the Roman church; wherefore it was thought necessary, at an early period, to abrogate all laws, canons, constitutions, and ordinances, which forbade marriage to ecclesiastical persons.(2)

VIII.—Brawling in a Church or Church Yard.

As the reverence for sacred places which had heretofore been protected by the common law, was now very much diminished by this revolution in religion, it was found necessary to enact, that quarrelling, chiding, or brawling, in a church or church-yard, should subject the offender, on conviction, if a layman, to suspension *ab ingressu ecclesiæ*—(from entering the church);—and, if a clerk, to be suspended from his ministerial functions, at the discretion of the ordinary. If any one smote, or laid violent hands on another, he was to be *ipso facto* excommunicated. For drawing a weapon, the offender was, on conviction, by verdict of

(1) Crabb's Hist. Eng. Law, ch. 30.
(2) Stat. 2 and 3 Ed. 6. c. 21.

twelve men, or by confession, or by two lawful witnesses, before the justices of assize, to lose his ears; and, if he had no ears, to be branded with the letter F in the cheek, to denote him a fray maker, or fighter; and moreover to be deemed excommunicate.(1)

IX.—Poor Laws.

One inconvenience attending the suppression of monasteries was, that the sources of charity being now for a time materially diminished, the number of vagrants was exceedingly increased, insomuch that the statute passed on this subject declares them to be more in number than in other regions. Wherefore, to remedy this evil, as it was hoped, by a measure of more than ordinary severity, it was now enacted, for the punishment of vagabonds and sturdy beggars, that any one, being apprehended, and convicted before two justices, upon proof of two witnesses, was to be branded with the letter V, and adjudged a slave to the person who brought and presented him.(2)

X.—Tithes.

The statutes in the former reign respecting the regular payment of tithes, were now confirmed and enlarged by several provisions, for the purpose of securing to the clergy their dues, and affording them a remedy in the spiritual courts against all acts of injustice in that matter.(3)

XI.—Loss of Dower for Treason or Felony.

By the common law, a woman lost her dower by the attainder of her husband for treason or felony; but by a statute in the first year of this king, this point of law was changed in favour of the woman; it was, however, repealed, so far as regarded the crime of treason, by a subsequent statute, and the common law restored, so as to take away the wife's dower, in case of treason by the husband.(4)

SECTION III.—STATUTE LAW UNDER PHILIP AND MARY, A.D. 1552–1558.

I. Re-establishment of Popery. II. Poor Laws. III. Benefit of Clergy. IV. Witnesses for the Prisoner.

I.—Re-establishment of Popery.

The reign of Queen Mary was commenced with the repeal of all the laws concerning the Reformation that had been passed in the preceding reign. Likewise, with a view of restoring the national religion to its old form, a provision was

(1) Stat. 5 and 6 Dd. 6. c. 4; Co. 3 Inst. 17.
(2) Stat. 1 Ed. 6. c. 3.
(3) Stat. 27 and 32 Hen. 8; Stat. 2 and 3 Ed. 6. c. 13.
(4) Stat. 5 and 6 Ed. 6. c. 11.

made against such as disturbed a priest or preacher in the exercise of his ministerial functions, or committed any act derogatory to the national worship, inflicting three months imprisonment on the offender, and additional penalties if he did not repent. The former statutes against heretics were revived in the first and second year of Philip and Mary, and the papal authority was put on the same footing as it was before the 20th of Henry VIII., by a repeal of the law against licenses and dispensations, &c. But, lest this sweeping repeal of so many statutes, affecting church property, should bring the possessions of many into hazard, and introduce much contention, the parliament supplicated their majesties to intercede with Cardinal Pole, who was come over into England as legate *â latere* to reinstate the papal power, that all persons, and bodies corporate, as well as the crown, should enjoy all the possessions they were entitled to. Thus was the Roman religion once more re-established by law, precisely as it was before the 20th of Henry VIII.(1)

II.—Poor Laws.

The other acts of this reign were mostly in confirmation of former statutes. To the acts for the relief of the poor, a statute in the 2d and 3d of Philip and Mary added the provision, that if a parish was too small to support its own poor, licenses might be granted under seal to such of the poor as the justices of the county thought proper, to beg abroad; but as this was only a temporary measure, the management of the poor remained on the old footing until the next reign.(2)

III.—Benefit of Clergy.

Benefit of clergy was taken away from accessories before the fact in petty treason, robbing in a house or on the highway, and wilful burning of houses. This was in affirmance of a statute in the preceding reign, which took away benefit of clergy from the principals in the same offences.(3)

IV.—Witnesses for the Prisoner.

As to witnesses in favour of the party accused, we have no mention of any thing of the kind before this reign; for by the civil law, which was probably followed in this particular, neither counsel nor witnesses were allowed on behalf of any one accused of a capital crime. It has been cited to the honour of this queen, that when she appointed Sir Richard Morgan chief justice of the Common Pleas, she enjoined upon him, "That, notwithstanding the old error, which did not admit any witness to speak, or any other matter to be heard, in favour of the adversary, her majesty being party, her highness' pleasure was, that whatsoever could be brought in favour of the subject should be admitted to be heard; and, moreover, that the justices should not persuade themselves to sit in judgment otherwise for her highness than for her subject."(4)

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(1) Stat. 1 Mar. st. 2. c. 3; Stat. 1 Mar. st. 2. c. 2; Stat. 1 and 2 Phil. and Mar. c. 6.
(2) Stat. 2 and 3 Phil. and Mar. c. 5. (3) Stat. 4 and 5 Phil. and Mar. c. 4.
(4) 4 Comm. 359; Hollingsh. 1112; Stat. Trials, i. 55. See Crabb's His. Eng. Law, ch. 30.

SECTION IV.—STATUTE LAW UNDER ELIZABETH, A.D. 1568–1602.

I. Reformation. II. Common Prayer. III. Heresy defined. IV. The Thirty-nine Articles. V. Papal Power abolished. VI. Court of High Commission. VII. Congé d'Elire. VIII. Gifts to Charitable Uses. IX. Enrolment of Fines. X. Informers and compounding information. XI. Criminal Law. XII. Canonical Purgation abolished.

I.—Reformation.

This reign was commenced, like the two preceding, with enacting laws on the subject of religion, whereby the Reformation was re-established on the same footing as in the time of Edward VI.

II.—Common Prayer.

The statutes in the 2d and 3d of Edward VI. respecting the common prayer, which had been repealed in the 1st year of Mary, were now revived by Elizabeth, with additional provisions against ministers who omitted this form of prayer, and against all other persons who, in plays, songs, or other open words, spoke in derogation of it. Also the statute of Edward VI. against reviling the sacrament was revived, and further protection given to the ordinances then established. Those who absented themselves from their parish church or chapel on Sunday were subjected to a penalty of twenty pounds for every month.(1)

III.—Heresy defined.

As the prevailing notions with regard to heresy were now altered in consequence of the Reformation, it became necessary to determine by an express enactment, what should be comprehended under this offence. Accordingly we find, that all statutes against heretics, from the time of Richard II. to that of Philip and Mary, were repealed in the first year of this queen; and heresy was now defined to be that which had been so declared by the words of the canonical scriptures, and the interpretations of the first four general councils, or what might hereafter be so declared by parliament, with the assent of the clergy in convocation. Likewise, by this statute, the jurisdiction of heresy was left as it stood at common law, namely, to the infliction of censures in the ecclesiastical courts; and in case of burning a heretic, to the provincial senate only, unless, as Sir Matthew Hale supposes, that this power resided in the diocesan. In all cases it appears that the writ *de hæretico comburendo*—(for burning a heretic)—was not demandable at common right, but only grantable at the discretion of the king.(2)

(1) Stat. 1 El. c. 2.

(2) Stat. 1 El. c. 1; Hale, P. C. 405.

IV.—The Thirty-nine Articles.

As a further means of producing uniformity of doctrine as well as worship, thirty-nine articles, embracing the most important points of religion, were agreed upon at a convocation of the church of England in 1562, and ratified by the queen, to which all persons before ordination were obliged to subscribe, and if any minister impugned these articles, he was, on conviction before the bishop, to be deprived of his living.(1)

V.—Papal Power abolished.

Other statutes were expressly levelled against the see of Rome. One statute inflicted penalties on any one who maintained the papal authority; another was passed against purchasing papal bulls. Several statutes were passed against recusancy, saying mass, perverting protestants, and the like. In the last of these statutes, obstinate popish recusants, for so the Roman Catholics were now called, that is, those who within three months after conviction, refused to conform themselves to the obedience of the laws in coming to church, were to abjure the realm, and if any refused to abjure, they were adjudged to be felons without benefit of clergy.(2)

VI.—Court of High Commission.

The first act of this queen having revived the statutes 26 and 35 Henry VIII., which declared the king supreme head of the church, a clause was added to that statute for the purpose of restoring to the queen the jurisdiction in ecclesiastical matters which had heretofore belonged to the crown. By virtue of this act a court was erected, entitled "The Court of High Commission in Ecclesiastical Causes," which had authority to correct all errors, heresies, abuses, and enormities, and it was presumed, that this court had also authority to fine and imprison; but its jurisdiction was questioned in two points of view; first, as to what causes belonged to the high commissioners by force of the statute, and secondly, in what causes they might impose fine and imprisonment and what not.(3)

VII.—Congé d'Elire.

The stat. 25 Hen. VIII. respecting the election of bishops, which was repealed in the reign of Edward VI., was revived by a statute in this reign.(4)

VIII.—Gifts to Charitable Uses.

Another statute in behalf of the poor gave any private person the power of founding hospitals, alms-houses, and other charitable institutions, which heretofore could only be done by the king, or by his special license. By this statute all

(1) Stat. 13 El. c. 12.
(2) Stat. 5 El. c. 1; Stat. 13 El. c. 2; Stat. 23. 29. 31. 35 El.
(3) Co. 4 Inst. 324. See Crabb's Hist. Eng. Law, ch. 31.
(4) Stat. 1 El. c. 1.

persons seized of estates in fee were enabled, by deed enrolled in the Court of Chancery, to erect hospitals and the like, which should be incorporated by such name as the founders or their heirs appointed, and should have capacity to take lands, not exceeding in value £200 per annum, without license or writ of *ad quod damnum*, and notwithstanding any statute of Mortmain; but such corporations were disabled from making leases for longer than twenty-one years, and reserving the accustomable yearly rent, which was payable for the greater part of twenty years before.(1)

IX.—Enrolment of Fines.

The stat. 23 Eliz. enacted in affirmance of the stat. 5 Hen. IV., that writs of covenant and other writs on which a fine should be levied, together with the return thereof, the *dedimus potestatem*, and every other circumstance connected with the levying a fine, should be enrolled.(2)

X.—Informers and compounding information.

Owing to the number of penal statutes which now existed, and the encouragement which they held out to needy persons to bring informations for the sake of the forfeitures, two statutes were made in this reign, namely, in the 18th and 31st years of this queen, for the purpose of regulating this troublesome description of people, and in some instances inflicting corporal punishment on such persons, if convicted of malicious or oppressive proceedings. Among other things, compounding informations on penal actions, that is, taking any money or promise from the defendant, without leave of the court, by way of making a composition with him not to prosecute, subjected the offender to a penalty of £10, two hours standing in the pillory, and to be for ever disabled from suing such popular action. On the subject of these informations, it is worthy of remark, that no prosecution could be brought by any common informer after the expiration of a year from the commission of the offence.(3)

XI.—Criminal Law.

Among the additions to the criminal code, may be reckoned several new felonies; as wandering about under the garb of soldiers or mariners; carrying away heiresses, in confirmation of the statutes in the reigns of Henry VII. and Philip & Mary were made felony without benefit of clergy; also embezzling the king's stores; against moss-troopers, that is, those who carried away persons and imprisoned them, for the sake of getting a ransom, which was a frequent practice in the northern counties. Also the maliciously setting fire to stacks, privately stealing from a man's person, and even associating with gypsies, was felony, without benefit of clergy. Circulating false prophecies, for the sake of exciting sedition, subjected the offender, for the first offence, to imprisonment for a year, and forfeiture of goods; for the second offence, to imprisonment for life.(4)

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(1) Stat. 39 El. c. 5. (2) Stat. 23 El. c. 3.
(3) Stat. 18 El. c. 5; Stat. 31 El. c. 5.
(4) Stat. 39 El. c. 17; Stat. 39 El. c. 9; Stat. 31 El. c. 4; Stat. 43 El. c. 13; Stat. 8 El. c. 4; Stat. 5 El. c. 20; Ibid, c. 15.

XII.—Canonical Purgation abolished.

One change was made in the old law, by the abolition of canonical purgation. By a statute, in the 18th year of this queen, it was enacted, that instead of delivering persons entitled to the benefit of clergy to the ordinary, as had been accustomed, they should either be discharged or detained in prison, as the justices should think fit.(1)

Benefit of clergy was also taken away from cutpurses, and from those stealing out of a dwelling-house any thing above the value of 5s.(2)

SECTION IV.—STATUTE LAW UNDER JAMES I., A.D. 1602–1625.

I. Leases by Ecclesiastical Persons. II. Privilege of Parliament. III. Abolition of Sanctuary and Abjuration. IV. Larceny in Women.

I.—Leases by Ecclesiastical Persons.

In the statute of the last reign, limiting the leases granted by archbishops and bishops to 21 years, or three lives, an exception was made in favour of the crown; but this exception was done away by a statute in the first year of this king.(3)

II. Privileges of Parliament.

Doubts having existed, whether, if a person were taken in execution, and set at liberty by privilege of either house of parliament, a new writ of execution might issue against the party, a statute was passed, in the 2d year of this king, empowering the plaintiff to sue forth and execute a new writ after such time as the privilege of parliament had ceased.(4)

III.—Abolition of Sanctuary and Abjuration.

The old law of sanctuary and abjuration, after having been restricted by several statutes, was at length found to be fraught with so many inconveniences as to render its abolition expedient, which was accordingly effected by a statute in the 21st year of this king.

IV.—Larceny in Women.

By a statute in the 21st year of this king, it was enacted, that women, in cases of larceny, where men would have the benefit of clergy, should be branded with the letter T with a burning-hot iron upon the brawn of the thumb.(5)

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(1) Stat. 18 El. c. 7. (2) Stat. 8 and 39 El.
(3) Stat. 1. Jac. 1. c. 3. Crabb's Hist. Eng. Law, ch. 31.
(4) Stat. 2 Jac. 2. c. 13.
(5) Stat. 21 Jac. 1. c. 16.

SECTION V.—STATUTE LAW UNDER CHARLES I., A.D. 1625–1649, AND CHARLES II., A.D. 1649–1685.

I. Convention of Parliament. II. Independence of the King. III. The King declared to be the Generalissimo of the Military and Naval Forces of the Country. IV. Parliament. V. Oath of Allegiance. VI. Abolition of Military Tenures. VII. Excise. VIII. Post Office. IX. Corporation and Test Acts. X. Habeas Corpus. XI. Writ de Hæretico Comburendo. XII. Navigation. XIII. Statute of Frauds. XIV. Parol Conveyances. XV. Nuncupative Wills. XVI. Statute of Distributions. XVII. Manner of voting supplies in this reign. XVIII. Right of imprisoning. XIX. Tenures. XX. Copy Holds. XXI. Title by purchase. XXII. Common Assurances. XXIII. Courts Martial. XXIV. New Trials.

I.—Convention of Parliament.

As the two houses of parliament met, before the Restoration, by an act of their own, which was justified by the necessity of the case, it was thought expedient in order to prevent this from being drawn into a precedent, to confirm all the proceedings of that parliament by an express act of the legislature.

II.—Independence of the King.

By another act, the independence of the king, and the inviolability of his person, was recognised.(1)

III.—The King declared to be the Generalissimo of the Military and Naval Forces of the Country.

By another, the king was declared generalissimo within the kingdom, and the ancient power of the crown, in regulating the military and naval forces of the country, was confirmed; and several provisions were made on the subject of the army by subsequent statutes. Among other things, the exportation of arms and ammunition out of the kingdom was prohibited under severe penalties; also, the billeting of soldiers in private houses, without the consent of the owners, was prohibited; and the quartering of soldiers was assigned to inn-keepers, stable-keepers, victuallers, and the like.(2)

IV.—Parliament.

It was now declared, that parliament consisted of king, lords, and commons, and subjected any person to a *præmunire* that published the doctrine, that both houses of parliament, or either house of parliament, had a legislative power with-

(1) Stat. 12 Car. 2. c. 20.
(2) Stat. 13 Car. 2. st. 1. c. 6; Stat. 14, 15, 31 Car. 2.

out the king. At the same time, in order to ensure a more regular meeting of parliament, another statute provided, that there should not be an intermission of more than three years after any sitting of parliament.(1)

V.—Oaths of Allegiance, &c.

To prevent the admission of improper persons into parliament, it was enacted, in affirmance of the stat. 7 Jac. 1, that all members, before they were permitted to sit and vote in the House of Commons, should take the oaths of allegiance, supremacy, and abjuration; besides subscribing and repeating the declaration against transubstantiation and the invocation of saints.(2)

VI.—Abolition of Military Tenures.

The abolition of military tenures, which was effected by statute, was one of the most acceptable measures that could have been adopted, as thereby many intolerable grievances and causes of discontent were removed.(3)

VII.—Excise.

The excise was a novel mode of taxing commodities, either immediately on their consumption, or more frequently on their retail sale. It is said to have been first devised in the reign of Charles I., and was given to the crown by act of parliament, as an equivalent for the profits of the feudal tenures, and although a very unpopular tax, it has been imposed on fresh commodities in every subsequent reign.(4)

VIII.—Post Office.

The post-office was another branch of revenue, which was now established by statute. It was first erected by King James I., and after having undergone successive improvements, and being very much extended in its plan, it was now put on a footing to increase the revenue, and to serve the public convenience.(5)

IX.—Corporation and Test Acts.

To prevent the recurrence of those political and religious dissensions which had lately convulsed the country, some acts were passed in this reign, in affirmance of some parliamentary enactments in former reigns. The most important of these were the statutes in the 13th and 25th years of this king, known by the name of the Corporation and Test Acts, which required every person, elected to an office in a corporation, as also all officers civil and military, to take the oaths of supremacy and allegiance, and also to receive the Lord's supper, according to the rites of the church of England.(6)

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(1) Stat. 16 Car. 2. c. 1.
(2) Stat. 30 Car. 2 st. 2.
(3) Stat. 12 Car. 2. c. 24.
(4) 1 Comm. 318; Stat. 12 Car. 2. c. 23.
(5) Stat. 12 Car. 2. c. 35.
(6) Stat. 13 and 25 Car. 2.

X.—Habeas Corpus.

The *habeas corpus* act was in fact but a confirmation and extension of the common-law writ of *habeas corpus* to all cases of imprisonment on every charge except that of treason or felony; but it was drawn up in such a definite manner as to remove all the doubts that had existed in the former reign.(1)

XI.—Writ de Hæretico Comburendo.

The statute, abolishing the writ *de hæretico comburendo*, at the same time abolished all the processes and proceedings thereon, and all punishment by death in pursuance of ecclesiastical censures, with the saving claim, that the jurisdiction of the ecclesiastical courts, in cases of atheism, blasphemy, &c. was not to be otherwise abridged thereby.(2)

XII.—Navigation.

The most important act, for the support and advancement of the British navy, was passed in the reign of Richard II., Henry VII., and Henry VIII. This has acquired by distinction the name of the Navigation Act, from the number and importance of its provisions. Among other things it was enacted, that no goods should be imported into, or exported out of, any plantations or territories belonging to the king in Asia, Africa, or America, except in ships belonging to the people of England and Ireland, &c., whereof the master and three-fourths at least of the crew must be English. A statute in the subsequent year contains certain rules, articles, and orders, well calculated for maintaining order and discipline in the navy.(3)

XIII.—Statute of Frauds.

Among the statutes affecting private rights, that which was passed for the prevention of frauds has acquired the name of the Statute of Frauds, because its provisions have been held to be most efficacious in preventing fraudulent conveyances or contracts.(4)

XV.—Parol Conveyances.

By this it was enacted, that all parol conveyances, or those made by word of mouth only, without writing, should be void, as also all leases, assignments, grants, or surrenders of any interest in any freehold hereditaments, unless put in writing and signed by the party. For the same reason it was enacted, by another clause, that no parol or verbal promise should be sufficient to ground an action upon in case of an executor, &c. This provision was particularly directed against the various fraudulent devices which had at different times been referred to in this sketch.

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(1) Stat. 31 Car. 2. c. 2.
(2) Stat. 29 Car. 2. c. 2.
(3) 12 Car. 2. st. 1.
(4) 29 Car. 2. c. 3.

XV.—Nuncupative Wills.

Nuncupative wills, which, before the introduction of writing, had been very general, were now likewise prohibited, with an exception in favour of mariners at sea, or soldiers in actual service.

XVI.—Statute of Distributions.

The old law *de rationabile parte bonorum* was now confirmed, in regard to the goods of intestates, by a statute called the Statute of Distributions, which directed that, after the payment of all just debts of the intestate, the surplusage was to be distributed in the following manner. To the widow one-third, and to the children or their representatives an equal share; and if there were no children, then one-half to the wife, and the other half equally to the next of kin of the intestate; and if there were neither wife nor children, then the whole in equal shares to the next of kin.(1)

XVII.—Manner of voting Supplies in this Reign.

In the reign of Edward III., and long after, each house voted its own supplies, the votes of the Commons being always subject to the approbation of the Lords; but as their proceedings grew more regular, and the two houses acted more in concert, it became the practice for the Commons, probably because, from their habits of life, they were more familiar with pecuniary calculations, to determine the question of supplies first, and then submit their vote to the approbation of the Lords. In the reign of Elizabeth they began to set up the claim, that all money-bills should originate with them; and in the reign of Charles I. they resented it as a great indignity, when the Lords ventured to recommend them to vote a supply for the king, and (as we are informed by the historians of those times) the house, with one unanimous consent, declared this so high a breach of privilege, that they could not proceed upon any other matter, until they had first received satisfaction and reparation.(2)

XVIII.—Right of Imprisoning.

We have seen that, in the reign of Edward III., the king asserted it as his prerogative to punish offences done in parliament, in his own courts, and that as respects the peers, the point was then left undecided. The Commons were, however, for a long time, indisputably subject to this control. As late as the reign of Queen Mary, we read of a number of the Commons, who, having thought proper to withdraw from parliament, were indicted, by order of the queen, for a contempt. Six of them submitted themselves to the queen's mercy and were fined. The rest, among whom was the famous lawyer Plowden, traversed, but the death of the queen prevented any judgment. It appears, however, that previous to, and during this reign, the Commons were in the practice, either by force of the statute in the reign of Henry VIII., or by the particular command of the king, of fining

(1) Stat. 22 23 and 29 Car. 2.
(2) Petyne's pref. to Cott. Abrid.; Clar. Hist. bk. ii.; Crabb's Hist. Eng. Law, ch. 33.

their own members. In the subsequent reign, they were in full possession of the power of taking cognizance of all offences committed by their own members in parliament, which gradually led to the extension of their privileges; so that, in this reign, both houses of parliament had acquired even a greater freedom in the exercise of this power than the crown itself.(1)

XIX.—Tenures.

In the statute of this king, which abolished military tenures, tenures in free or common soccage, and in frankalmoigne, copyholds, and the honorary services of grand serjeanty, without the slavish part, as the statute observes, are expressly excepted. Soccage tenure consisted altogether of a certain service; this, of course, was now rendered in the shape of rent.

XX.—Copyholds.

Copyhold, the name by which the ancient tenure in villenage was now distinguished, had become divested of all its slavish incidents.

XXI.—Title by Purchase.

The distinction drawn by Littleton, between title by descent, and title by purchase, was now confirmed by Lord Coke, and subsequent writers. Purchase, *perquisitio*, was defined to be the "possession of lands and tenements which a man hath by his own act and agreement;" which, in fact, comprehended every acquisition of land, except by right of blood; "so that if," says Lord Coke, "I give land freely to another, he is, in the eye of the law, a purchaser."(2)

XXII.—Common Assurances.

As, by force of the statute in this reign, lands could no longer be transferred by a verbal contract only, deeds of conveyance were now become matters of still greater consideration, and acquired the name of assurances, or common assurances, because they served to assure a man's estate to him. The two principal kinds of assurances were those which were made, by matter of deed, in *pais*, or in the country, that is, with all the notoriety formerly usual, such as feoffments, gifts, grants, leases, bargain and sale, &c., and those by matter of record, as fines, recoveries, and the like. To the account of deeds and conveyances already given, something may now be added.(3)

XXIII.—Courts Martial.

The administration of military justice was, as before observed, committed to the constable and marshal, who presided as judges, assisted by some civilians, who tried and punished all offences, according to the laws and ordinances then in force. Sometimes military offences of great magnitude, or committed by persons of great

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(1) Prynne's Pref. to Cott. Abrid.; Co. 4 Inst. 17; Strype's Memor. iii. 165; Parl. Hist. iii. 334; Commons' Journal, Feb. 30, 1549. 21.
(2) Litt. s. 12; Inst. 19.
(3) Shepp. Prac. Couns. 1; Bridgm. Prac. of Convey. 7.

rank, were tried and determined in parliament, of which there are examples in the reign of Henry II. and his successors. When the court of the constable and marshal declined, commissions were granted to the commanders, who were entitled lieutenant-generals, and if peers, lord-lieutenants, which contained a clause, authorizing them to enact ordinances for the government of the army under their command, and to sit in judgment themselves, or appoint deputies for that purpose, who constituted what was then called a council of war, wherein officers, not below the rank of a count or colonel, had a right to sit as assessors. The presiding officer was styled President of High Court of War.(1)

Towards the latter end of King James' reign, and the beginning of that of his successor, Charles I., commissions of this kind were very frequent, wherein it was directed that all controversies between soldiers and their captains, and all others, were to be tried in a council of war.(2)

At what precise period courts martial, according to their present form, were introduced, is not easy to ascertain. They are mentioned in the ordinances of war of King James II. A.D. 1686, with the distinction of general and special courts martial. After the revolution, the form and powers of courts martial were defined by an act of parliament, called the Mutiny Act, which, though temporary, has been renewed every year.(3)

XXIV.—New Trials.

When juries were first employed in criminal matters, it was not an unusual thing to award a *venire de novo*, when the jury had eaten or drunk, or committed any gross irregularity in giving their verdict; but afterwards it became a maxim in law, that a man should not be compelled to answer twice for the same offence. As the same objection did not operate in civil suits, the practice of granting new trials, though at this period fluctuating and irregular, became, in process of time, established, and is still existing.

In former reigns, we read of frequent instances of severity practised upon jurors for giving verdicts contrary to the opinion of the judges; but it was held in this reign, in the case of Bushel, a juryman, who was imprisoned for giving a verdict of acquittal on the trial of Penn and Meade, that jurymen were not punishable for the verdict which they gave.(4)

SECTION VI.—STATUTE LAW UNDER JAMES II., A.D. 1685–1688.

I.—Succession to the Throne determined by Parliament.

The reign of James II. would not have been entitled to a place in this sketch, if it had not been for the manner of its termination as connected with the privileges of parliament. It has already been shown, that the succession to the throne

(1) Speed. 502; Hollingsh. and Stowe's Ann; 2 Hen. 2; Grosse. 60.
(2) Grose, 61; Rym. Foed. 1626. (3) Grose.
(4) Ld. Herbert; Hist. Hen. 8. 6; Smith de Rep. l. 3. c. 2; Vaugh. Rep. 152, et seq.

was in particular cases referred to the decision of parliament. Consistently, therefore, with this admitted principle, the two houses of parliament assuming, on the departure of King James out of England, that the throne was vacant, appointed a successor in the person of William and Mary, by which they fully established their right to regulate the succession to the throne in extraordinary emergencies.(1)

SECTION VII.—STATUTE LAW UNDER WILLIAM AND MARY, A.D. 1689–1694.

I. Statutes of William and Mary. II. Bill of Rights. III. Mutiny Act. IV. Exclusion of Catholics from the Throne. V. Counsel allowed Prisoner on an indictment of Treason. VI. Appointment of the Judges.

I.—Statutes of William and Mary.

The circumstances under which William and Mary came to the throne being favourable to political liberty, several statutes were passed in the first year of their reign tending still farther to abridge the prerogative of the crown. The coronation oath was altered so as to make it more suitable to the existing state of things. The old coronation oath, which was probably derived from the Saxons, and is referred to by ancient writers, was, as the statute alleges, framed in doubtful terms with relation to ancient laws and constitutions.

II.—Bill of Rights.

The statutes referred to, known by the name of the Bill of Rights, contained many provisions in favour of the subject, which were for the most part in affirmance of the common law or of previous statutes.(2)

III.—Mutiny Act.

By a clause of this act the crown was restrained from keeping a standing army, or levying any sort of tax on the subject without consent of parliament; but that the king might be armed with power to preserve discipline in the army, a mutiny act was expressly passed in the second year of this king, which has ever since been annually renewed.

IV.—Exclusion of Catholics from the Throne.

The exclusion of Catholics from the throne had been unsuccessfully attempted during the reign of Charles II., when a bill passed the House of Commons to that effect, with the express view of setting aside the Duke of York, the pre-

(1) See Crabb's Hist. Eng. Law, ch. 34.
(2) See the contents of the Bill of Rights, supra, pages 143 & 144.

sumptive heir, on the score of his being a papist. This was thrown out at that time in the House of Lords, but carried with facility in this reign, when it was enacted, that every person holding communion with the see of Rome should be forever incapable to inherit or enjoy the crown of England.(1)

V.—Counsel allowed to Prisoner on an indictment of Treason.

As, by the common law, prisoners were not allowed counsel on an indictment of treason, unless some point of law arose proper to be debated, and by this restriction they were subjected to many hardships, a statute in the 7th year of this king empowered the justices in such cases to assign counsel not exceeding two. This privilege was extended by a statute in the subsequent reign to cases of parliamentary impeachments.(2)

VI.—Appointment of the Judges.

The common law recognised the king as the fountain of justice and general conservator of the peace of the kingdom, whose prerogative it was to appoint and remove all officers and ministers of justice at his pleasure; this was now restricted by a statute in regard to the judges whose commissions were to be made, not as formerly, *durante bene placito*—(during the king's pleasure),—but *quamdiu se bene gesserint*—(during good behaviour).—They might, however, be removed by an address of both houses of parliament. By another statute it was declared, that their patents of commission, which heretofore became vacant at the demise of the king, should continue in force for six months after the death of the king or queen.(3)

SECTION VIII.—STATUTE LAW UNDER WILLIAM III., A.D. 1694–1701.

I.—Arbitration.

Arbitration was a mode of deciding disputes, of which we read in the year-book of Edward II.; and the judgment, called in that case an award, was held to be as valid as the judgment of a court; this course of proceeding had not, however, heretofore been employed in complicated questions of real property: wherefore, to render it as extensively available as possible, a statute of this reign established the use of arbitration in all cases where the parties were willing to end any controversy, suit, or quarrel, in this manner. The award was, in this case, made conclusive in the courts against all the parties, whose agreement to abide by it was proved, unless the award was set aside for corruption or misbehaviour in the arbitrators.(4)

(1) Stat. 12 W. (2) 3 Inst. 29; Finch. L. 386; Stat. 20 Geo. 2. c. 30.
(3) 2 Hawk. P. C. c. 1; Stat. 13 W. 3. c. 2; Stat. 7 and 8 W. 3. c. 27; 2 Hawk. P. C. 3.
(4) 3 Comm. 153; Stat. 9 & 10 W, 3. c. 15.

SECTION IX.—STATUTE LAW UNDER ANNE, A.D. 1701–1714.

I. Copyright. II. Pressing Seamen. III. Union of England and Scotland.

I.—Copyright.

The question, as to the rights of authors in their productions, appears to have been so far considered in this reign, that a statute declared that the author and his assigns should have the sole liberty of printing and reprinting his works for the term of fourteen years, and no longer, unless the author were living; in which case he was to enjoy the right for another term of fourteen years, but this was amended by subsequent statutes, particularly by that in the 54th year of William III., which changed the conditional term of fourteen years, to twenty-eight absolutely, and to the end of the author's life. The same privilege was granted by other statutes to the inventors of prints and engravings. How far the rights of authors were protected by the common law, has been since a much litigated question. In the Court of King's Bench, it was held that an exclusive and permanent copyright subsisted in authors by the common law; but this judgment was, in a subsequent case, reversed by the House of Lords.(1)

II.—Pressing Seamen.

An attempt was made, in the preceding reign, to do away with the practice of impressing seamen, by substituting a register of seamen in its place; but, being found ineffectual, and at the same time oppressive in its operation, the ancient practice was revived by a statute in this reign. As this practice was so repugnant to the spirit of the constitution, many were disposed to call in question its legality; but it scarcely admitted of a doubt in any court of justice, as has been ably shown by Sir Michael Foster.(2)

III.—Union of England and Scotland.

The union of England and Scotland, which, in the reign of King James, was projected and very much desired, was now happily effected in the 6th year of this queen, by an act of the legislature, from which time all acts of a general nature extended to England and Scotland, were comprehended under the name of Great Britain.(3)

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(1) Stat. 8 Anne, c. 19; Stat. 4. 15 and 54 Geo. 3; Stat. 8 Geo. 2; 7 and 17 Geo. 23; Com. 407.
(2) Stat. 7 and 8 W. 3. c. 11; Stat. 9 Anne, c. 21; Foster, 154.
(3) Stat. 5 Anne. The leading articles of the union are found *ubi supar*, page 16 & 17.

SECTION X.—STATUTE LAW UNDER GEORGE II., A.D. 1727–1760. GEORGE III., A.D. 1760–1820.

I. Marriage Act. II. English Language.

I.—Marriage Act.

For the prevention of clandestine marriages, some parliamentary provisions were made in the two preceding reigns ; but the most important regulations were made by an act of this reign, which has, by distinction, been entitled the Marriage Act, by which all the modes of solemnizing marriage by banns, license, and special license, are minutely defined.(1)

II.—English Language.

An alteration was made in the proceedings of courts in this reign, which thoroughly re-established the use of the English language, that had, from a variety of causes, been banished from the courts of law since the Conquest. To this end, it was enacted, that matters of record, indictments, pleas, verdicts, and judgments, which had heretofore been in Latin, should for the future be in English ; but it was found necessary to explain, by a subsequent statute, that the statute was not to extend to such phrases as *quare impedit*, *nisi prius*, and others. It is worthy of observation, that the French continued in use among lawyers, in taking their notes, even as low down as the reign of Charles II.(2)

During the reign of George III. nineteen thick quarto volumes were added to the statute book ; but out of this immense collection there are but few points of law that fall within the scope of this work ; as in the 14th year of this king, an act of the parliament of Great Britain gave authority to the provincial legislature of the province of Quebec to make laws for the internal regulation of the country.(3) From that period, the laws passed in the mother country have no force in the province, unless Canada is especially named or included under general words.(4) The most important measures of this king are the prohibition of the slave trade—the union of the kingdoms of Great Britain and Ireland(5)—the abolition of the trial by battle. This last measure would probably not have passed even at this late period, had not an attempt been made to revive it in an atrocious case of murder.(6) During the reign of his successor, George IV., under the auspices of Sir Robert Peel the criminal law was materially improved. The following Appendix contains a notice of these improvements.

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(1) Stats. 6 and 7 ; 7 and 8 W. ; 10 Anue.
(2) Stat. 12. Geo. 2. c. 26.
(3) 14th Geo. 3, ch. 33.
(4) See the beginning of this work, page 17.
(5) Stat. 6, Geo. 1, c. 5.
(6) Stat. 59, Geo. 3, c. 46.

APPENDIX TO THE FIRST VOLUME

OF THE

FUNDAMENTAL PRINCIPLES

OF THE

LAWS OF CANADA:

BEING A

SCHEDULE OF THE STATUTES

WHOLLY OR IN PART REPEALED BY THE IMPERIAL PARLIAMENT.

By these new acts are meant the five acts generally denominated Mr. Peel's Acts,—namely, the 7 and 8 Geo. IV. c. 27, 28, 29, 30, and 31, which at once struck out from the statute book no less than one hundred and forty-eight acts, 7 Geo. IV. c. 64, which passed in the session preceding Mr. Peel's acts, and the act 9 Geo. IV. c. 69, relating to night poaching.

1st. "An Act for improving the Administration of Criminal Justice in England," passed 26th May, 1826. 7 Geo. IV. c. 64.

2d. "An Act for repealing various Statutes in England relative to the Benefit of Clergy, and to Larceny and other offences connected therewith, and to Malicious Injuries to Property, and to Remedies against the Hundred," passed 21st June, 1827, 7 and 8 Geo. IV. c. 64.

3d. "An Act for consolidating and amending the Statutes in England relative to Offenses against the Person," passed the 27th June, 1828, 9 Geo. IV. c. 31.

4th. "An Act for the more effectual Prevention of Persons going armed by night for the Destruction of Game," passed 19th July 1828, 9 Geo. IV. c. 69.

These repealing acts have had as yet no effect on the criminal jurisprudence of Canada; but a schedule of the statutes wholly or in part repealed, showing the subject of the acts repealed and the clauses relating thereto in the new acts, may be of some use, as a similar improvement of the criminal jurisprudence of Canada may be expected.

SECTION I.—SUBJECTS OF THE STATUTES WHOLLY REPEALED, AND NOTICE OF THE CLAUSES IN THE NEW ACTS THERETO RELATIVE.

Statutes wholly Repealed.	*Subjects of Acts Repealed.*	*Clauses relating thereto in the new Acts.*
21 Ed. 1, st. 2, . . .	Malefactoribus Parcis, .	Coursing, hunting, and carrying away deer from any forest, chace, &c. see 7 & 8 G. 4, c. 29, s. 26 to 29.
7 H. 5, c. 9, . . .	Lollards and heretics, .	
1 R. 3, c. 3, . . .	Bailing, ...	7 G. 4, c. 64, s. 1, 2, 3.
1 H. 7, c. 7, . . .	Unlawful hunting, . .	7 & 8 G. 4, c. 29, s. 26, et seq.
3 H. 7, c. 2, . . .	Abduction of women, .	See 9 G. 4, c. 31, s. 19, 20.
c. 14, . . .	Offences in king's household	Bl. Com. vol. iv. p. 124, 5.
4 H. 7, c. 13, . . .	Taking Clergy from certain persons, ...	7 & 8 G. 4, c. 28, s. 6, 7.
12 H. 7, c. 7, . . .	Petit Treason, . . .	Punishable as murder by 9 G. 4, c. 31, s. 2.
21 H. 8, c. 7, . . .	Thefts by servants, . .	7 & 8 G. 4, c. 29, passim.
23 H. 8, c. 1, . . .	Clergy denied in petty treason, felony, or murder, except sub-deacons, .	Plea of Clergy abolished by 7 & 8 G. 4, c. 28, s. 6, but see s. 7.
c. 11, . . .	Clerks breaking prison, .	Obsolete.
24 H. 8, c. 5, . . .	Killing a Thief, . .	Justifiable Homicide if he resists, but not specially mentioned in these late acts.
25 H. 8, c. 3, . . .	Standing mute and challenging, ...	7 & 8 G. 4, c. 28, s. 2, 3.
c. 6, . . .	Vice of buggery, . .	9 G. 4, c. 31, s. 15 & 18.
31 H. 8, c. 2, . . .	Fishing in ponds, . .	7 & 8 G. 4, c. 29, s. 34, 35.
33 H. 8, c. 1, . . .	Counterfeit letters and tokens, ...	7 & 8 G. 4, c. 29, s. 53, as to false pretences.
c. 23, . . .	Trials for Treason, . .	This act appears to have become useless.
34 & 35 H. 8, c. 14, . .	Certiffcates of Convicts in K. B.	7 & 8 G. 4, c. 29, s. 71.
35 H. 8, c. 17, . . .	Preservation of woods, .	7 & 8 G. 4, c. 29, s. 40, 41; c. 13, s. 19, 20.
37 H. 8. c. 6, . . .	Burning frames, . . .	7 & 8 G. 4, c. 61.
c. 8, s. 2, . .	As relates to horse stealing,	7 G. 4, c. 64, s. 20; 7 & 8 G. 4, c. 29, s. 25.
2 & 3 Ed. 6, c. 24, . .	For the trials of murders, &c.	See 7 G. 4, c. 64, s. 4, and 9 G. 4, c. 31, s. 4 to 8.
c. 33, . .	Horse-stealing denied clergy, ...	7 & 8 G. 4, c. 29, s. 25.
c. 9, . .	Robbing house, booth, &c. denied clergy, . .	7 & 8 G. 4, c. 29, s. 11 to 14.
c. 10, . .	Robbing in one shire, and	7 G. 4, c. 64, s. 12; 7 & 8
1 & 2 P. & M. c. 13, . .	flying into another denied clergy, ...	G. 4, c. 29, s. 76.
	Bailing by Justices, . .	
2 & 3 P. & M. c. 10, . .	Taking examination of persons suspected of manslaughter and felony, .	7 G. 4, c. 64, s. 1 to 3.
4 & 5 P. & M. c. 4, . .	Accessaries in Murder, .	7 G. 4, c. 31, s. 3.
5 Eliz. c. 10, . . .	Reviving 21 H. 8, c. 7, relating to thefts by servants.	7 & 8 G. 4, c. 29, s. 46.

Statutes wholly Repealed.	*Subjects of Acts Repealed.*	*Clauses relating thereto in the new Acts.*
5 Eliz. c. 17, . . .	Sodomy, . . .	See 7 & 8 G. 4, c. 29, s. 9, and 9 G. 4, c. 31, s. 15, but not on eo nomine.
c. 21, . . .	Taking fish, deer, &c. .	7 & 8 G. 4, c. 29, ss. 26 to 29—ss. 31, 34, 35.
8 Eliz. c. 4, . . .	Clergy taken from certain felons, ...	7 & 8 G. 4, c. 28, s. 6.
18 Eliz. c. 7, . . .	Clergy taken from rape and burglary, . . .	Burglary, c. 29, s. 11, 12—Rape, 9 G. 4, c. 31, s. 16 and 18.
27 Eliz. c. 13, . . .	Hue and Cry, . . .	See 7 G. 4, c. 64, s. 28, and 7 & 8 G. 4, c. 31.
31 Eliz. c. 4, . . .	Embezzling armour, &c. .	Obsolete.
39 Eliz. c. 9, . . .	Abduction of women, . .	9 G. 4, c. 31, s. 19, 20.
c. 15, . . .	Robbing empty houses in daytime denied clergy, .	7 & 8 G. 4, c. 29, s. 12.
43 Eliz. c. 7, . . .	Respecting misdemeanors, .	Vide c. 29, passim.
c. 13, . . .	Local, as to four Northern counties, . . .	Obsolete.
1 Jac. 1. c. 8, (vulg. 2 Jac. 1), ...	Manslaughter, . . .	9 G. 4. c. 31, s. 7, 8, 9.
c. 11, . . .	Bigmy, ...	s. 22.
3 Jac. 1, c. 13,* . .	Deer and conies, . .	
7 Jac. 1, c. 13, . . .	Explaining ditto, . .	
13 Car. 2, st. 2, c. 1, . .	Regulating Corporations, .	9 G. 4, c. 17.
15 Car. 2, c. 2, . . .	Destroying trees and woods,	9 G. 4, c. 30, s. 19, 20. (If intending to steal them), c. 29, s. 38.
22 Car. 2, c. 5, . . .	Stealing cloth from racks, .	7 & 8 G. 4, c. 29, s. 16.
23 & 23 Car. 2, c. 1, . .	Malicious wounding, . .	9 G. 4, c. 31, s. 12.
c. 7, . .	Malicious burning & maiming, . . .	7 & 8 G. 4, c. 30, as to burning.
c. 25, (except s. 1 to 3), . .	Preserving game and fish, .	7 & 8 G. 4, c. 30, s. 15.
25 Car. 2, c. 2, . . .	Popish recusants, . .	9 G. 4, c. 17.
3 W. & M. c. 9, . .	Clergy taken from certain felonies, . . .	Plea abolished by c. 28, s. 6, but see s. 7.
4 W. & M. c. 8, . .	Apprehending highwaymen,	7 G. 4, c. 64, s. 28 to 30.
1 Ann. st. 2, c. 9, (except s. 3), ...	Accessaries and receivers, .	7 G. 4, c. 64, s. 9 to 11, and 7 & 8 G. 4, c. 29, s. 54.
5 Ann. c. 31, . . .	Apprehending housebreakers, ...	7 G. 4, c. 64, s. 29.
6 Ann. c. 9, (vulg. 5, c. 6),	To repeal a clause in 10 W. 3, ...	7 & 8 G. 4, c. 29, s. 74, &c.
9 Ann. c. 10, . . .	Attempting life of privy councillor, . . .	Attempts to kill are by s. 11, of 9 G. 4, made capital—distinctions as to rank or station of the party attacked is not continued, except of course as to the king and the branches of his family named in the 25th of Edward the 3d.
12 Ann. 4, st. 1, c. 7, . .	Robberies in houses, . .	7 & 8 G. 4, c. 29, s. 11 to 14.
1 G. 1, c. 48, . . .	Planting and preserving timber, and to prevent burning, ...	c. 30, s. 10.

* Recognized as existing in 2 Geo. 3. c. 29.

Statutes wholly Repealed	*Subjects of Acts Repealed.*	*Clauses relating thereto in the new Act.*
5 G. 1, c. 28, . . .	Killing deer, &c. . .	7 & 8 G. 4, c. 29, s. 26 to 29.
6 G. 1, c. 16, . . .	To explain 1 G. 1. c. 48, .	Repealed as above.
c. 23, . . .	To prevent robbery, burglary, &c., . . .	7 & 8 G. 4, c. 29, passim.
9 G. 1, c. 22, . . .	Going armed and disguised, and doing injuries to persons.	Black act. The offences named in this act are provided for in 7 & 8 G. 4, c. 29 and 31, and 9 G. 4, c. 30.
2 G. 2, c. 21, . . .	Trial of Murder, . .	9 G. 4, c. 31, s. 8.
4 G. 2, c. 32, . . .	Stealing lead and iron fixed, &c., ...	s. 44.
6 G. 2, c. 37, . . .	Cutting sea banks, hopbinds, regulating manufactures of cloth, &c. &c., . .	c. 30, s. 12, 18.
8 G. 2, c. 16, . . .	Amending statutes of Hue and Cry, . . .	The law of Hue and Cry does not appear to be continued.
c. 20, . . .	Destroying turnpikes and public works, . .	7 & 8 G. 4, c. 30, s. 13, 14.
10 G. 2. c. 32. (except s. 10.)	Continuing two Acts, .	
13 G. 2, c. 21, . . .	Destroying coal works, .	7 & 8 G. 4, c. 30, s. 5.
14 G. 2, c. 6, . . .	Ditto, sheep and cattle, .	s. 16.
15 G. 2, c. 34, . . .	To explain ditto, . .	
16 G. 2, c. 30, . . .	Offices and employments, .	9 G. 4, c. 17.
22 G. 2, c. 24, . . .	Statue of Hue and Cry amended, . . .	The law respecting Hue and Cry appears to be done away, as also the liability of the hundred in case of robbery.
24 G. 2, c. 45, . . .	Robberies on rivers, &c. .	7 & 8 G. 4, c. 29, s. 17.
25 G. 2, c. 10, . . .	Securing mines of black lead, ...	c. 30, s. 5 to 7.
29 G. 2, c. 30, . . .	Stealing lead and other metals, ...	c. 29, s. 37.
31 G. 2, c. 35, . . .	Destroying madder, . .	See 7 & 8 G. 4, c. 30, s. 21, 22, as to roots.
2 G. 3, c. 29, . . .	To amend the 1 Jac. 1, for preserving game. It relates to pidgeons, . .	7 & 8 G. 4, c. 29, s. 33.
4 G. 3, c. 12, . . .	Destroying Banks, floodgates, &c., ...	c. 30, s. 12.
c. 31, . . .	Inter alia pl. destroying trees, ...	c. 29, s. 38, to 41.
5 G. 3, c. 14, . . .	Fish and conies, and Lincolnshire sea bank, .	s. 34, 35.
6 G. 3, c. 36, . . .	Preservation of trees, roots, &c, ...	c. 30, s. 19, as to destroying trees.
c. 48, . . .	Preservation of timber and woods, ...	c. 29, s. 38, to 41, damaging and stealing.
9 G. 3, c. 29, . . .	Destroying mills, works of mines, &c., . . .	c. 30, s. 2, 5, 6, 7.
c. 41, . . .	Inter alia, preserving hollies, &c., . . .	c. 29, s. 38, 39. —c. 30, s. 19, 20.
10 G. 3, c. 18, . . .	Stealing dogs, . . .	c. 29, s. 31, 32.
c. 48, . . .	Receivers, . . .	s. 54, to 57.

Statutes wholly Repealed.	*Subjects of Acts Repealed.*	*Clauses relating thereto in the new Act.*
13 G. 3, c. 31, s. 4, 5, .	Punishing larceny and receivers, . . .	passim.
c. 32, . . .	Stealing turnips, cabbages, &c., ...	s. 43.
c. 33, . . .	Preserving poplars, alders, &c., . . .	s. 38 to 41.—c. 30, s. 19.
16 G. 3, c. 30 . . .	Deer, ...	c. 29, s. 26 to 29.
21 G. 3, c. 68, . . .	To explain 4 G. 2, c. 32. lead, &c., . . .	c. 29.
21 G. 3, c. 69, . . .	Lead, &c., . . .	
22 G. 3, c. 58, . . .	Receivers, . . .	7 & 8 G. 4, c. 29, s. 54 to 57.
31 G. 3, c. 35, . . .	That persons convicted of petty larceny may be witnesses, . . .	The distinction between petty and grand larceny abolished by 7 & 8 G. 4, c. 29, s. 2.
c. 51, . . .	Oyster fisheries, . .	7 & 8 G. 4, c. 29, s. 36.
35 G. 3, c. 67, . . .	Bigamy, ...	9 G. 4, c. 31, s. 22.
36 G. 3, c. 9, (s. 3 to the end.)	Liability of hundreds— . Assaults to obstruct the passage of grain, &c. &c., .	7 & 8 G. 4, c. 31, passim. 9 G. 4, c. 31, s. 26, . .
39 G. 3, c. 85, . . .	Embezzlements of clerks and servants, . . .	7 & 8 G. 4, c. 29, s. 48 to 51.
41 G. 3, c. 24, (U. K.) .	Idemnity to persons whose wills, &c. destroyed, .	c. 31.
c. 67, . . .	Extending 93 G. 3. c. 32. .	Stealing, &c. vegetables 7 & 8 G. 4, c. 29, s. 43; Destroying, &c. c. 30, s. 21, 22.
c. 107 . . .	Deer, ...	7 & 8 G. 4, c. 20. s. 26 to 29.
43 G. 3, c. 58, (part of sec. 1.)	Malicious shooting at, wounding, stabbing, &c., using means to procure the miscarriage of woman, and setting fire to buildings.	7 & 8 G. 4, c. 29, s. 26 to 29.—c. 30, s. 2 &c.; 9 G. 4, c. 31, s. 11, 12, 13.
c. 113, (except sec. 6,) . .	Casting away and destroying ships, regulating trials of accessaries to murders, and felonies and man slaughters, . . .	7 G. 4, c. 64, s. 9, 10, 11; 7 & 8 G. 4, c, 29, s. 61; c. 30; 9 G. 4, c. 31, s. 3, and 31.
45 G. 3, c. 66. . . .	Amending 6 G. 3, c. 36. and 9 G. 3. c. 41, . .	This relates to stealing bark of trees in the king's forests, &c. Quære, if specifically provided for in the new acts.
48 G. 3, c. 129, . .	To repeal 8 Eliz. c. 4, as to taking clergy from the offence of privately stealing, ...	7 & 8 G. 4, c. 29, s. 6.
c. 144, . .	Preserving the oyster fisheries, ...	s. 36.
51 G. 3, c. 41. . . .	To repeal 18 G. 2. as far as the same takes clergy from persons in stealing cloth, &c. in printing grounds,	s. 16.
c. 129, . . .	Deer, ...	s. 26 to 29.

Statutes wholly Repealed.	*Subjects of Acts Repealed.*	*Clauses relating thereto in the new Acts.*
52 G. 3, c. 63, . . .	Embazzling securities by Bankers, &c, . . .	s. 48 to 51.
c. 64, . . .	Extending 30 G. 2. c. 24. as to obtaining money by false pretences, bonds, &c., ...	7 & 8 G. 4, c. 29, s. 53.
52 G. 3, c. 130, . .	Destroying property and recovering the damages, .	7 & 8 G. 4, c. 30, passim.
54 G. 3, c. 101. . .	Child stealing, . . .	9 G. 4, c. 31, s. 21.
56 G. 3, c. 73, . . .	Stealing from mines, . .	7 & 8 G. 4, c. 29, s. 37.
c. 125, . .	Destroying buildings and machinery, and enabling the owners to recover damages, . . .	c. 30, 31, but c. 31, gives redress in cases of riots only.
57 G. 3, c. 90, . . .	Going armed at night to destroy game, . . .	9 G. 4, c. 69 Night poaching.
59 G. 3, c. 27, . . .	As to trials of felonies on rivers, canals, &c. . .	7 & 8 G. 4, c. 29, s. 17.
c. 96, . . .	To facilitate trials for robbing coaches, &c. and on boundaries of countries, .	7 G. 4, c. 64, s. 9 to 12; 7 & 8 G. 4, c. 29, s. 76.
1 G. 4, c. 56, . . .	Summary punishment for damaging wilfully, .	c. 30.
c. 102, . .	Stealing from mines, .	7 & 8 G. 4, c. 29, s. 37.
c. 115, . .	Repealing the 39 Eliz. making abduction capital; the 4 G. 1, which made returning from transportation capital; and the 5 G. 2, c. 30, making concealing effects by bankrupts capital, . . .	As to abduction, see 9 G. 4, c. 31, s. 19, 20; Returning from transportation, 5 G. 4, c. 84; Concealing effects by bankrupts, 6 G. 4, c. 16.
1 G. 4, c. 117, . . .	In effect restoring benefit of clergy in cases of stealing in shops, &c., and to 5s. value, ...	As to benefit of clergy, see 7 & 8 G. 4, c. 28, s. 6 and 7.
3 G. 4 c. 24, . . .	Receivers, . . .	7 & 8 G. 4, c. 29, s. 54 to 57.
c. 33, . . .	Damages from rioters or malicious, ...	c. 30, 31, passim.
c. 38, . . .	Manslaughter, servants robbing their masters and accessaries before the fact in larcenies and felonies, .	As to manslaughter, see 9 G. 4, c. 31, s. 9; Accessaries, 7 G. 4, c. 64; Larcenies generally, 7 & 8 G. 4, c. 29.
6 G. 4, c. 19, . . .	Sending threatening letters,	7 & 8 G. 4, c. 29, s. 8, 9.
c. 56, . . .	Stealing property in mines and from corporations,	s. 37.
7 G. 4, c. 69, . . .	Stealing from gardens and hot-houses, . . .	s. 42.

SECTION II.—SUBJECTS OF THE STATUTES REPEALED IN PART ONLY, WITH A SIMILAR NOTICE

Statutes Repealed in part.	*Subjects of Acts Reperled in part.*	*Clauses relating thereto in the new Act.*
9 H. 3, st. 2, c. 10, . .	Taking the King's Venison,	Deer stealing, &c. 7 & 8 G. 4, c. 29, s. 26 to 29.
c. 26, . } 52 H. 3, c. 25, . . }	Inquisitions of Life or Member, ...	Murder, 9 G. 4, c. 31, s. 3 to 8.
3 Ed. 1, c. 2 & 20, . .	Clerks guilty of Felony, trespassers in parks, &c. .	Obsolete Act.
c. 11 & 13, . .	Murder, rape, and abduction,	Rape, 9 G. 4, c. 31, s. 16 & 18. Abduction, s. 19, 20. Murder, supra.
c. 15, . . .	Bailing, ...	7 G. 4, c. 64, s. 1, 2, 3.
4 Ed. 1, st. 3, c. 5, . .	Bigamy, ...	Bigamy, 9 G. 4, c. 31, s. 22.
6 Ed. 1. c. 9, . . .	Killing without Felony, .	Homicide, casual and justifiable, 9 G. 4, c. 31, s. 10.
13 Ed. 1, st. 1, c. 29, 34, .	Rape and writ of odio, &c.	Rape, vide supra.
c. 46, . .	Levying for damages, .	7 & 8 G. 4, c. 31.
st. 2, . .	Felons, hue and cry, shutting gates, highways, &c.	Felons and Felonious acts, see 7 G. 4, c. 64, and 7 & 8 G. 4, c. 29, 30, and 31.
9 Ed. 2, st. 1, c. 3, . .	Assaulting a Clergyman, .	Arresting a Clergyman on civil process whilst performing duty is made misdemeanor by the 9 G. 4, c. 31, s. 23. Any other assuult is puishable by indictment.
1 Ed. 3, st. 1, c. 8, . .	Trespassing in King's forests, ...	7 & 8 G. 4, c. 29, s. 26 to 29.
18 Ed. 3, st. 3, c. 2, . .	Bigamy, ...	See 9 G. 4, c. 31, s. 22.
25 Ed. 3, st. 5, . . .	Petit Treason, . . .	By 9 G. 4, c. 31, to be punisbed as Murder.
st. 6 c. 4, 5, . vulg. st. 3, .	Clerks convicted of Treasons, &c. . . .	Obsolete.
28 Ed. 3, c. 11, . . .	Liability of Hundreds, .	7 & 8 G. 4, c. 31.
34 Ed. 3, c. 22, . } 37 Ed. 3, c. 19, . } 50 Ed. 3, c. 5, . . } 1 R. 2, c. 15, . . }	Hawks, ...	c. 20, s. 31.
	Arresting Clergymen, .	See 9 G. 4, c. 31, s. 23.
6 R. 2, st. 1 c. 6, . .	Ravishing, . . .	See sections 16 and 18 of 9 G. 4, c. 31.
5 H. 4, c. 5, . . .	Cutting tongues, &c. . .	Ditto, s. 11, 12.
c. 6, . . .	Assaults, ...	As to assaults with felonious intention, s. 26. Assaults on Seamen, s. 26. Common Assaults, s. 27, 29.
2 H. 5, st. 1, c. 9, . .	Fleeing for Murders, &c. .	Obsolete.
9 H. 5, c. 1, . . .	Misnomers in indictments, .	7 G. 4, c. 64, s. 19, 20.
8 H. 6, c. 12, s. 12, . .	Stealing records, . .	7 & 8 G. 4, c. 29, s. 21.
11 H. 6, c. 11, . . .	Assaults, &c. . . .	Vide supra.
18 H. 6. c. 12, . . .	As perpetuates 9 H. 5, .	
23 H. 6. c. 9, . . .	Sheriffs, &c., bailing persons, ...	7 G. 4. c. 64, s. 1, 2, 3.
33 H. 6, c. 1, . . .	Servants stealing their deceased master's goods. .	7 & 8 G. 4, c. 29, and all other acts respecting larceny, &c.

Statutes Repealed in part.	*Subjects of Acts Repealed in part.*	*Clauses relating thereto in the new Acts.*
3 H. 7, c. 3, . . .	Bail and mainprize, . .	7 G. 4, c. 64, s. 1. to 3.
21 H. 8, c. 11, . . .	Restitution to persons robbed, ...	See 7 & 8 G. 4, c. 29, s. 57.
32 H. 8, c. 3, . . .	Perpetuating, 25 H. 8, c. 3,	Repealed as above.
33 H. 8, c. 12, . . .	Murder, &c. . . .	9 G. 4, c. 31, s. 3 to 8.
1 Ed. 6, c. 12, s. 10, 14, .	As to house-breaking, robbing, horse-stealing, sacrilege, and clergy for ditto,	7 & 8 G. 4, c. 28, s. 6, 7, & c. 29, ss. 6, 10, 11, 12, 13, 14, 15, 25.
	Petty treason, murder and bigamy, . . .	Vide supra, referring to 9 G. 4.
5 & 6 Ed. 6, c. 4, . .	Striking with a weapon, .	Vide sect. 12 of 9 G. 4, c. 31.
4 & 5, P. & M. c. 4. . .	Accessaries to robbery and burning, . . .	7 G. 4, c. 64, s. 9 to 11. 7 & 8 G. 4, c. 29, s. 54.
c. 8, . .	Abduction of girls under sixteen, ...	9 G. 4, c. 31, s. 20.
5 Eliz. c. 4, . . .	Affrays, &c. by workmen, &c.	s. 25.
13 Eliz. c. 25, s. 3, 18, 19.	As alters 35 H. 8, c. 17, Woods, . . .	7 & 8 G. 4, c. 29, s. 38, 39.
31 Eliz. c. 12, s. 5, . .	Accessaries in horse-stealing denied clergy, . .	7 G. 4, c. 64, s. 9, &c., and 7 & 8 G. 4, c. 29, s. 54.
2 Jac. 1, c. 27*, . .	Doves, pigeons, and deers, .	7 & 8 G. 4, c. 29, s. 7, 8, and also s. 26 and 31.
22 & 23 Car. 2, c. 11, .	Destroying ships, . .	7 & 8 G. 4, c. 30, s. 9.
	Mutiny of mariners, . .	9 G. 4, c. 31, s. 26.
4 W. & M. c. 23, . .	Destroying pigeons, and fishing unlawfully, and burning heath, &c. .	7 & 8 G. 4, c. 29, s. 33 and 34—c. 30, s. 15.
c. 24, s. 13, .	Explaining an Act of 3 W. & M.	An Act expired.
10 W. 3, c. 12, (vulg. 10 & 11), c. 23, (except 7 & 8.	Burglary, robbery, &c. .	7 & 8 G. 4, c. 29.
11 W. 3, c. 7, (vulg. 11 & 12, ...	Assaults on seamen, . .	9 G. 4, c. 31, s. 26.
9 Ann, c. 14, . . .	Assaulting and provoking to fight, ...	s. 27.
13 Ann 4, c. 21, (vulg. 12 Ann, st. 2, c. 15), s. 4, 5,	Relating to stealing from ships in distress, . .	7 & 8 G. 4, c. 29, s. 18, 19.
1 G. 1, st. 2, c. 5, s. 4, 6, .	Liability of hundred in riots,	c. 31, s. 2.
4 G. 1, c. 11, except s. 7, .	Robbery, &c. transportation of felons, &c. except what relates to the Admiralty Jurisdiction, . . .	This Act made returning from transportation capital. Quære if re-enacted.
12 G. I, c. 34, . . .	Combinations of workmen, .	See 7 & 8 G. 4, c. 29. See the 6 G. 4, as to combination. If any assault is committed in consequence of combination, s. 25 of 9 G. 4, c. 31, provides the punishment.
2 G. 2, c. 25, s. 3, . .	Stealing orders and securities, ...	7 & 8 G. 4, c. 29, s. 5.
11 G. 2, c. 22, s. 5 to the end, ...	Liability of hundreds, .	7 & 8 G. 4, c. 31, passim.
	Beating, wounding, &c. .	9 G. 4, c. 31, s. 12.
22 G. 2, c. 27; . . .	Combinations of workmen, .	Vide supra.
22 G. 2, c. 46, s. 34, . .	Writs of Execution againsts inhabitants of hundred, .	See now 7 & 8 G. 4, c. 31, s. 3, 7, &c.

* Recognized as existing in 2 Geo. 3, c. 29.

Statutes Repealed in part.	*Subjects of Acts Repealed in part.*	*Clauses relating thereto in the new Acts.*
25 G. 2, c. 36, s. 1, . .	Advertisements prohibited as to goods lost with an intimation that "no questions would be asked," .	7 & 8 G. 4, c. 29, s. 58, 59.
s. 11, . .	Payments to prosecutors in cases of felony, . .	7 G. 4, c. 64.
c. 37, . . .	Murder, ...	9 G. 4, c. 31, s. 2 to 8.
26 G. 2, c. 19, s. 1, 2, 3, 4, 8, ...	Stealing from wrecks, search warrants for ditto, . .	7 & 8 G. 4, c. 29, s. 18.
	Assaults to hinder salvage, .	9 G. 4, c. 31, s. 24.
27 G. 2, c. 3, . . .	Allowances to poor witnesses, ...	7 G. 4, c. 64, s. 22 to 26.
28 G. 2, c. 19, s. 3, . .	Burning goss, &c., and perpetuating, 25 G. 2, c. 36,	7 & 8 G. 4, c. 30, s. 17.
c. 36, s. 6, 7, 8, 9,	Liability of parishes, &c., if trees, &c., are cut or destroyed, ...	As to destroying trees, &c., see 7 & 8 G. 4, c. 30, s. 19; as to stealing, c. 29, s. 38, but the liability of hundreds, &c., to make good the damage is not continued by the late Act except in case of riots.
30 G. 2, c. 21, s. 1, . .	Obtaining money by false pretences, . . .	7 & 8 G. 4, c. 59, s. 53.
18 G. 3, c. 19, . . .	Prosecutor's costs, . .	7 G. 4, c. 64.
19 G. 3, c. 74, (except s. 70.	Transportation, imprisonment, &c. . . .	2 & 8 G. 4; c. 28, s. 9.
30 G. 3, c. 48, . . .	Petit Treason, . . .	Distinction from murder no longer continued, see 9 G. 4.
33 G. 3, c. 67, s. 5 & 6, .	Firing ships and obstructing and assaulting seamen, .	7 & 8 G. 4, c. 30, s. 9, and 9 G. 4, c. 31, s. 24 to 29.
39 & 40 G. 3, c. 77, s. 1 & 5,	Misdemeanor, stealing under 5s. wilful injuries, &c.	c. 29, 30.
43 G. 3, c. 59, . . .	As to laying the property, .	2 G. 4, c. 64, s. 22 to 24.
44 G. 3, c. 92, s. 7, 8, .	Theft and larceny, . .	9 G. 4, c. 29, passim.
53 G. 3, c. 162, . . .	Relating to larceny as respects imprisonment and hard labour, . . .	7 & 8 G. 4, c. 29, passim.
57 G. 3, c. 19, s. 38, . .	Liability of hundreds, towns, &c.	
58 G. 3, c. 38, . . .	Extending regulations of the 11 W. 3, . . .	As to seamen, see 9 G. 4, c. 13, s. 26 & 30.
c. 70, . . .	Repealing those parts of several acts allowing rewards for prosecuting felons, ...	7 G. 4, c. 64, s. 22.
1 G. 4, c. 90, . . .	Explaining 43 G. 3, c. 113,	Vide supra.
1 & 2 G. 4, c. 88, . .	Assaulting, wounding, &c. .	Assaulting officers in order to rescue prisoners, see s. 12 and s. 25 of 9. G. 4, c. 31.
3 G. 4, c. 114, . . .	Receivers and false pretences, ...	7 & 8 G. 4, c. 29, s. 54 to 57 as to receivers.
		As to false pretences, s. 53,
	Assaults, ...	9 G. 4, c. 31, s. 24 to 29.
c. 126, s. 128, .	Felonies on turnpike trusts,	7 & 8 G. 4, c. 30, s. 14, and 7 G. 4, c. 64, s. 17.

Statutes Repealed in part.	*Subjects of Acts Repealed in part.*	*Clauses relating thereto in the new Acts.*
3 G. 4, c. 46, . . .	Repealing several acts so far as they inflict capital punishments, . . .	See the exception at the end of clause 1, of c. 27.
c. 53, . . .	Giving clergy in certain larcenies, ...	7 & 8 G. 4, c. 28, s. 6 & 7.
c. 54, . . .	Giving clergy in certain felonies, on convictions under the 9th of G. 1, and the 27th G. 2, . .	
6 G. 4, c. 94, s. 7, 8, 9, and 10	Misdemeaners by factors, &c.	s. 37.