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.

BY N. B. DOUCET, ESQ.

NUMBER II.

MONTREAL:

PRINTED BY JOHN LOVELL, SAINT NICHOLAS STREET.

1841.

CONTENTS OF NO. II.

X.—Of the Code.

The principal matters treated in this work are :

First—Of the catholic faith, of churches, of bishops, persons in holy orders, and of their jurisdiction, of the imperial ordinances, of ignorance in matters of fact, and matters of law, of the magistrates and their duties.

Second—Of law suits and law proceedings, of advocates, and persons intrusted with the interest of others.

Third—Of the duties of judges, and of all matters relative to judicial order, wills, donations, actions, demands of heirship, consecrated ground for sepultures, funeral services.

Fourth—Of personal actions, obligations, actions resulting therefrom.

Fifth—Of marriages, contracts of marriages, second marriages, appointment of tutors and curators.

Sixth—Again treats of wills, substitutions, legacies in trust, and successions.

Seventh—Of prescriptions, judgments and their execution, of privileges.

Eighth—Of judgments in possessory actions, pledges, mortgages, and their accessories, novations, delegations, evictions, paternal authority, customs, deeds of gift, &c.

Ninth—Of crimes and their punishment, accusations, prisons, high treason, adultery, illicit intercourse, public and private violence, injuries to the person or to character, defamation, libels, harbouring criminals.

Tenth—Of the public treasury, of vacant property, taxes, change of domicil, prohibition to perpetuate public places in families.

Eleventh—Trades, public registers, police.

Twelfth—Dignities, military discipline, public employment, illegal profits, &c.

XI.—Of the Digest and its Division.

In the year A. D. 533, Tribonian, and seventeen other jurists, by order of Justinian, gave the digest, composed of the best decisions, given on all matters by ancient jurists. That collection was divided into fifty books.

XII.—Of the Institutes.

While these seventeen jurists were progressing in the compilation of the digest, Justinian directed three of them to make a smaller work, to prepare those who afterwards would undertake the study of the laws. That work is divided into four books, which were promulgated, the 11th of the *Calends* of December, A. D. 533.

The first book gives the definition of justice, jurisprudence, law, state of persons, tutorship and curatorship.

The second of property and things, their division, different ways of acquiring, obligations, of heirs, successions, wills, degrees of relationship, stipulations, obligations, their causes, of contracts, having a specific denomination, *contrats nommés*, and of those having no specific denomination, *contrats innomés*.

XIII.—Of the Code as corrected, and of the Novels.

The success which had accompanied the promulgation of the institutes, engaged Justinian to cause the code to be corrected. Five of the jurists who had been em-

ployed in the redacting of the first code, at the head of whom was still Tribonian, suppressed some of the constitutions contained in the first as superfluous, and added to it a few others given by Justinian, since the compilation of the other, together with fifty decisions that this emperor had given to make more clear and certain many points of jurisprudence which had remained undecided. Such was the last compilation of the Roman laws, which still make part of the jurisprudence of almost all nations of the world.

CHAPTER XV.

GOTHIC LAWS.

I. Of the Celtic, Germanic and Gothic Nations. II. The Druids. III. Their Sacrifices. IV. Their Doctrines. V. Authorities. VI. The Bards. VII. Political Laws. VIII. Lord and Vassal. IX. Homage.

I.—Of the Celtic, Germanic, and Gothic Nations

Their religion was that of the druids, who adored, under different appellations, the same gods as the Greeks and Romans. Apollo, Mars, Jupiter, and Minerva were severally worshipped; but to Mercury, as the inventor of the useful arts, they paid a more particular veneration.(1) To these superior gods, they added, like other polytheists, a multitude of local deities, the genii of the woods, rivers and mountains.(2) Some fanciful writers have pretended that they rejected the use of temples through a sublime notion of the divine immensity: perhaps the absence of such structures may, with more probability, be referred to their want of architectural skill. On the oak they looked with peculiar reverence. This monarch of the forest, from its strength and durability, was considered as the most appropriate emblem of the divinity.(3) The tree and its productions were deemed holy: to its trunk was bound the victim destined for slaughter; and of its leaves were formed the chaplets worn at the time of sacrifice.(4)

II.—The Druids.

The druids were accustomed to dwell at a distance from the profane, in huts or caverns, amid the silence and gloom of the forest. There, at the hours of noon

(1) Cæs. vi. 15, 16.
(2) Gild. ii. Many of these local deities are named in inscriptions which still exist.
(3) Max. Tyr. Dissert. xxxviii. p. 87. (4) Plin. xvi. 44.

or midnight, when the deity was supposed to honour the sacred spot with his presence, the trembling votary was admitted within the circle of lofty oaks to prefer his prayer and listen to the responses of the minister.(1)

III.—Their Sacrifices.

In peace they offered the fruits of the earth: in war they devoted to the god of battles the spoils of the enemy. The cattle were slaughtered in his honour: and a pile formed of the rest of the booty was consecrated as a monument of his powerful assistance.(2) But in the hour of danger or distress human sacrifices were deemed the most efficacious.

Impelled by a superstition which had steeled all the feelings of humanity, the officiating priest plunged his dagger into the breast of his victim, whether captive or malefactor; and from the rapidity with which the blood issued from the wound, and the convulsions in which the sufferer expired, presumed to announce the future happiness or calamity of his country.(3)

IV.—Their Doctrines.

To the veneration which the druids derived from their sacerdotal character, must be added the respect, which the reputation of knowledge never fails to extort from the ignorant. The great objects of the order were, according to themselves, "to reform morals, to secure peace, and to encourage goodness:" and the following lesson, which they inculcated to the people, was certainly conductive to those good ends: "The three first principles of wisdom are, obedience to the laws of God, concern for the good of man, and fortitude under the accidents of life."(4) They also taught the immortality of the human soul; but to this great truth they added the absurd fiction of metempsychosis.(5)

V.—Their Authority.

It will not excite surprise that men, whose office and pretended attainments raised them so much above the vulgar, should acquire and exercise the most absolute dominion over the minds of their countrymen. In public and private deliberations of any moment, their opinion was always asked, and was generally obeyed. By their authority, peace was preserved: in their presence, passion and revenge were silenced; and at their mandate contending armies consented to sheathe their swords. Civil controversies were submitted to their decision; and the punishment of crimes was reserved to their justice. Religion supplied them with the power to enforce submission. Disobedience was followed by excommunication; and from that instant the culprit was banished from their sacrifices, cut off from the protection of the laws, and stigmatized as a disgrace to his family and country.(6)

---

(1) Mela, iii. 243. Luc. i. v. 453, iii. v. 399, 423. Tac. Ann. xiv. 30.
(2) Cæs. iv. 16.
(3) Diod. Sic. v. 354. Tac. Ann. xiv. 30. Cæs. vi. 15. Plin. xxx. 1. Strab. iv. 108.
(4) These two triads may be seen in Davis (Celt. Researches, 171, 182).
(5) Cæs. vi. 13. Mel. iii. 243. Diod. Sic. v. 352. Strabo, iv. 107.
(6) Cæs. vi. 12. Diod. Sic. v. 254. Strabo, iv. 197. Dio. Chrys. orat. xlix. p. 538.

VI.—Their Bards.

As the druids delivered their instructions in verse, they must have had some notion of poetry, and we find among them a particular class distinguished by the title of bards.

The bard was a musician as well as a poet, and he constantly accompanied with his voice the sounds of his harp. Every chieftain retained one or more of them in his service. They attended in his hall, eulogised his bounty and his valour, and sang the praises and the history of their country. At the festive board, in the hour of merriment and intoxication, the bard struck his harp, and every bosom glowed with admiration of the heroes whom he celebrated, and of the sentiments which he aimed to inspire. He accompanied the chief and his clan to the field of battle: to the sound of his harp they marched against the enemy; and in the heat of their contest animated themselves with the hope that their actions would be renowned in song, and transmitted to the admiration of their posterity.(1)

VII.—Political Laws.

Of these the most important, and that which formed the groundwork of all the rest, may be discovered among the Germans in the age of Tacitus. From him we learn that every chieftain was surrounded by a number of retainers, who did him honour in time of peace, and accompanied him to the fight in time of war. To fight by his side they deemed an indispensable duty; to survive his fall an indelible disgrace.(2) It was this artificial connexion, this principle which reciprocally bound the lord to his vassel, that held together the northern hordes, when they issued forth in quest of adventures. They retained it in their new homes; and its consequences were gradually developed, as each tribe made successive advances in power and civilization. Hence sprang the feudal system with its long train of obligations, of homage, suit, service, purveyance, reliefs, wardships, and scutage.

VIII.—Lord and Vassal.

The artificial relation between the lord and his vassel was accurately understood, and its duties were faithfully performed both by the Gauls and Anglo-Saxons. When Cynewulf, a Saxon, was surprised in the dead of night at Merton, his *men* refused to abandon, or even survive him: and when on the next morning the eighty-four followers of Cyneheard were surrounded by a superior force, they also spurned the offer of life and liberty, and chose rather to yield up their breath in a hopeless contest, than to violate the fealty, which they had sworn to a murderer and an outlaw.(3) An attachment of this romantic and generous kind cannot but excite our sympathy. It grew out of the doctrine, that of all the ties which nature has formed or society invented, the most sacred was that which bound the lord and the vassal; whence it was inferred that the breach of so solemn an engagement was a crime of the most disgraceful and unpardonable atrocity. By Alfred it was

(1) Diod. Sic. v. p. 354. Athenæus, vi. p. 246. Ammian. Mar. xv. 24. Strabo, iv. 197.
(2) Tac. Germ. 13, 14.
(3) Chron. Sax. anno 750, p. 57.

declared inexpiable: the laws pronounced against the offender the sentence of forfeiture and death.(1)

X.—Homage.

It was not, however, an institution which provided solely for the advantage of one party. The obligations were reciprocal. The vassal shared with his fellows in the favours of his lord, and lived in security under his protection. It was a contract, cemented by oaths, for the benefit of each. "By the Lord," said the inferior, placing his hands between those of his chief, "I promise to be faithful and true; to love all that thou lovest, and shun all that thou shunest, conformably to the laws of God and man; and never in will or weald (power), in word or work, to do that which thou loathest, provided thou hold me as I mean to serve, and fulfil the conditions to which we agreed when I subjected myself to thee, and chose thy will."(2)

CHAPTER XVI.

CÆSAR'S FIRST INVASION OF BRITAIN.

I. Of the Britons. II. Origin of the Britons. III. Their Manners. IV. Their Religion. V. Government of the Britons. VI. Fate of Caractacus. VII. Reduction of Anglesey. VIII. Britons abandoned by the Romans. IX. The Natives invite the Saxons.

I.—Of the Britons.

For our first acquaintance with the history of Britain, we are indebted to the pen of a Roman general. Julius Cæsar, in the short space of three years, had conducted his victorious legions from the foot of the Alps to the mouth of the Rhine. From the coast of the Morini he could descry the white cliffs of the neighbouring Island: and the conqueror of Gaul aspired to the glory of adding Britain to the dominions of Rome. The refusal of the Gallic mariners to acquaint him with the number of the inhabitants, their manner of warfare, and their political institutions; and the timidity of Volusenus, who, though he had been sent to procure information had returned without venturing to approach the island, served only to irritate his curiosity, and to inflame his ambition. The Britons, by lending aid to his enemies, the Veneti, had supplied him with a decent pretext for hostilities: and on the twenty-sixth of August, in the fifty-fifth year before the Christian era, Cæsar

(1) Chron. Sax. 58. Leg. Sax. p. 33, 34, 35, 142, 143. Even the word vassal seems to have been known in England as early as the reign of Alfred. Asser, his instructor, calls the thanes of Somerset, nobibiles vasalli Sumertunensis plagæ. Asser, 33.

(2) Leg. 401. 50. 63. Bromp. 859.

sailed from Calais, with the infantry of two legions. To cross the strait was only the work of a few hours: but, when he saw the opposite heights crowned with multitudes of armed men, he altered his course, and steering along the shore, cast anchor before the spot which is now occupied by the town of Deal. The natives carefully followed the motions of the fleet, urging their horses into the waves, and by their gestures and shouts, bidding defiance to the invaders. The appearance of the naked barbarians, and a superstitious fear of offending the gods of this unknown world, spread a temporary alarm among the Romans: but after a short pause it was dispelled, by the intrepidity of the standard-bearer of the tenth legion; who, calling on his comrades to follow him, leaped with his eagle into the sea. Detachments instantly poured from the nearest boats: the beach, after a short struggle, was gained; and the untaught valour of the natives yielded to the arms and discipline ef their enemies.

II.—Origin of the Britons.

The Britons as also the principal nations of Europe are shewn, from the radical difference in their languages, to be descended from the three great families of the Celtæ, Gothi, and Sarmataæ: and from the countries which they have successively occupied, it appears that the Celtæ were the first who crossed the limits of Assia into Europe; that as the tide of population continued to roll towards the west, they were pushed forward by the advance of the Gothic nations; and that these in their turn yielded to the pressure of the tribes of the Sarmatæ.

III.—Their Manners.

By the Roman writers all the natives of Britain are indiscriminately denominated *barbarians*, a term of indefinite import, which must vary its signification with the subject to which it is applied. Though far removed from the elegance and refinement of their invaders, the Belgic tribes of the south might almost claim the praise of civilization in comparison with their northern brethren. Their dress was of their own manufacture. A square mantle covered a vest and trowsers, or a deeply plaited tunic of braided cloth: the waist was encircled with a belt: rings adorned the second finger of each hand, and a chain of iron or brass was suspended from the neck.(1)

Their huts resembled those of their Gallic neighbours. A foundation of stone supported a circular wall of timber and reeds; over which was thrown a conical roof, pierced in the centre for the twofold purpose of admitting light, and discharging the smoke.(2) In husbandry they possessed considerable skill. They had discovered the use of marl as a manure: they raised more corn than was necessary for their own consumption: and to preserve it till the following harvest, they generally stored it in the cavities of rocks.(3) But beyond the borders of the southern tribes, these faint traces of civilization gradually dissappeared. The midland and western nations were unacquainted with either agriculture or manufacture. Their riches consisted in the extent of their pastures, and the number of their flocks. With milk and flesh

(1) Plin. viii. 48. xxxiii. 1. Dio Nic. in Nerone, p. 169. Whitaker's Manchester, vii. 5.
(2) Cæs. v. 12. Diod Sic. v. p. 347 Strabo, iv. 197.
(3) Plin. Hist. Nat. xvii. 6. 8. Diod. Sic. v. p. 347.

they satisfied the cravings of hunger; and, clothed in skins, they bade defiance to the inclemency of the seasons.(1) But even sheep were scarcely known in the more northern parts; and the hoardes of savages, who roamed through the wilds of Caledonia, often depended for support on the casual produce of the chase. They went almost naked: and sheltered themselves from the weather under cover of the woods, or in the caverns of the mountains. Their situation had hardened both their minds and bodies. If it had made them patient of fatigue and privation, it had also taught them to be rapacious, bloody, and revengeful. When Severus invaded their country, the Roman legions were appalled at the strength, the activity, the hardihood, and ferocity of these northern Britons.(2)

IV.—Their Religion.

The religion of the natives was that of the druids, whether it had been brought by them from Gaul, as is the more natural supposition, or, as Cæsar asserts, had been invented in the island.

V.—Government of the Britons.

The form of government adopted by the British tribes has scarcely been noticed in history. In some, the supreme authority appears to have been divided among several chieftains; in most, it had been intrusted to a single individual; but in all, the people continued to possess considerable influence.

We are told that the Britons were quarrelsome, rapacious, and revengeful; that every nation was torn by intestine factions; and that pretexts were never wanting to justify oppression, when it could be committed with impunity.(3) It was this rancourous hostility among themselves which accelerated their subjugation to the power of Rome. "There is not," says Tacitus, "a more fortunate circumstance than that these powerful nations make not one common cause. They fight single and unsupported, and each in its turn is compelled to receive the Roman yoke."(4)

Such were the Britons, who by their bravery and perseverance baffled the attempts of the first, and the most warlike of the Cæsars. From that period to the reign of Claudius, during the lapse of ninety-seven years, they retained their original independence.

VI.—Fate of Caractacus.

Caractacus was the most celebrated and the last of their chiefs. His fame had already crossed the seas; and the natives of Italy were anxious to behold the man who had braved for nine years the power of Rome. As he passed through the imperial city, he expressed his surprise that men, who possessed such palaces at home, should deem it worth their while to fight for the wretched hovels of Britain. Claudius and the empress Agrippina were seated on two lofty tribunals; the pretorian guards stood on each side; and the senate and the people had been invited

(1) Cæs. v. 14.
(2) Mela, iii. p. 264. Dio Nic. in Severo, p. 340. Herodian, iii. 47.
(3) Maxime imperitandi cupidine, et studio prolatandi ea quæ possident. Mela, iii. 205. Tacit. Agric. xii.
(4) Tacit. Agric. xii.

to witness the spectacle. First were borne the arms and the ornament of the British prince; next followed his wife, daughter, and brothers, bewailing with tears their unhappy fate; lastly came Caractacus himslf, neither dispirited by his misfortunes, nor dismayed at the new and imposing spectacle. Claudius, to his own honour, received him graciously, restored him to liberty, and, if we may credit a plausible conjecture, invested him with princely authority over a portion of conquered Britain. The event was celebrated at Rome with extraordinary joy. By the senate the captivity of Caractacus was compared to the captivity of Perses and Syphax: by the poets, Claudius was said to have united the two worlds, and to have brought the ocean within the limits of the empire.(1)

VII.—Reduction of Anglesey.

The isle of Anglesey, the nursery and principal residence of the druids, had hitherto offered a secure retreat to those priests, to whose influence and invectives was attributed the obstinate resistance of the Britons. To reduce it, Suetonius ordered his cavalry to swim across the strait, while the infantry should pass over in boats. On their approach to the sacred isle, they beheld the shore lined not only with warriors, but with bands of male and female druids. The former, with their arms outstretched to heaven, devoted the invaders to the god of war; the latter, in habits of mourning, with their hair floating in the wind, and lighted torches in their hands, were running in all directions along the beach. The Romans were seized with a superstitious horror. For a moment they refused to advance: shame and the reproaches of their leader urged them to the attack. The victory was easy and bloodless. On that day the power of the druids received a shock from which it never recovered. Their altars were overturned; their sacred groves fell beneath the axe of the legionaries; and their priests and priestesses were consumed in the flames, which they had kindled for the destruction of their captives.(2)

VIII.—Britain abandoned by the Romans.

About the year A. M. 400, the great fabric of the Roman power was shaken to its foundation. Hordes of barbarians, under different denominations, issuing from the unknown regions of the east and the north, had depopulated the fairest of the provinces; and a torrent of Goths, Vandals, and Alans, under the celebrated Alaric, had poured from the summit of the Julian Alps into the flourishing plains of Italy. It became necessary to recall the troops from the extremities to defend the heart of the empire; and the cohorts which had been stationed along the walls in Britain, fought and triumphed under the command of Stilicho in the bloody battle of Pollentia.(3) After the retreat of Alaric the British forces seem to have returned to the island, and to have driven back the Picts, who had taken advantage of their absence to plunder the neighbouring province.

The natives, left without a military force, and exposed to the inroads of their enemies, determined to reject an authority which was unable to afford them pro-

(1) Tacit. Ann. xii. 31—36.
(2) Tacit. Ann. xiv. 29, 30.
(3) Compare Gildas, c. 12, and Bede i. 12, with Claudian (De laud. Stilic. ii. ver. 217).

lection. They deposed the Roman magistrates, proclaimed their own independence, took up arms, and with the spirit of freemen, drove the barbarians out of their territories.(1) When the intelligence reached Ravenna, Honorius, the legitimate emperor, wrote to the states of Britain, "to provide for their own defence." By this ambiguous expression he has been thought to have released them from their allegiance: perhaps his only object was to authorize their present efforts, that he might thus reserve a claim to their future obedience.(2)

IX.—The Natives invite the Saxons.

Soon after the Britons had asserted their independence, the greater part of Europe was depopulated by the two dreadful scourges of pestilence and famine. This island did not escape the general calamity: and the Scots and Picts seized the favourable moment for the renewal of their inroads. The dissensions of the native chieftains facilitated their attempts: district after district became the scene of devastation, till the approach of danger admonished the more southern Britons to provide for their own safety. Some solicited, but in vain, the protection of Ætius, the Roman general in Gaul;(3) others, under the guidance of Vortigern, the most powerful of the British kings, had recourse to an expedient, which, however promising it might appear in the outset, proved in the result most fatal to the liberty of their country. The emperors had long been accustomed to purchase the services of the barbarians; and the Armoricans, who, like the Britons had thrown off the Roman yoke, had, with the assistance of the Saxons, successfully maintained their independence.(4) Vortigern resolved to pursue the same policy. A Saxon squadron of three chiules, or long ships, was cruising in the channel in quest of adventures, and its two commanders, the brothers Hengist and Horsa, eagerly accepted the overtures of the British prince, to aid in fighting his battles, and to depend for their reward on his gratitude. They landed at Ebbsfleet, and were cantoned in the isle of Thanet.(5)

They soon turned their arms against the Britons themselves, who, however, did not tamely submit. On one occasion Germanus, a Gallic prelate, resumed a character, in which he had distinguished himself during his youth. A party of Picts and Saxons were plundering the coast: he put himself at the head of the Britons, and led them to a defile, where they awaited in ambush the approach of the invaders. On a sudden by his command they raised a general shout of Hallelujah: the cry was reverberated from the surrounding hills: the enemy fled in amazement, and numbers perished in an adjoining river. By ancient writers this action was celebrated under the name of the Hallelujah victory.(6) It was the last of the Britons.

---

(1) Zosim. vi. 376. (2) Id. 318.
(3) Gild. c. xvi. xvii. xxi. (4) Sid. Apol. Paneg. Avit. v. 369.
(5) Gild. c. xxiii. Nen. xxviii.
(6) Prosp. in Chron. p. 630, ad. ann. 429. Constan. vit. S. Ger. c. I. 28. Bad. i. 17. Hunt. 178. See Lingard, p. 81, 83, 84, 85.

CHAPTER XVII.

GENERAL PRINCIPLES OF THE LAWS OF ENGLAND.

I. Introduction. II. Common Law. III. Lex non Scripta. IV. Civil Law. V. Canon Law. VI. Statute Law. VII. Saxon Laws. VIII. Saxon Lawgivers. IX. Condition of the Saxon People. X. State of Landed Property. XI. Thainland. XII. Origin of the Feudal System. XIII. Bockland. XIV. Folkland. XV. Descents. XVI. Alienation. XVII. Testaments. XVIII. Method of Conveyance.

I.—Introduction.

About the middle of the second century the Saxons, an obscure tribe of barbarians, occupied the district between the Elbe and the Eyder on the neck of the Cimbrican Chersonesus;(1) in the course of two hundred years the same appellation had become common to all the nations from the extremity of the peninsula to the Weser, the Ems, and the Rhine.(2) They formed a kind of voluntary association, which was loosely held together by similar interests, and congenial pursuits. Pillage by land, piracy by sea, was their only profession; and though the imperial fleet had often been employed to check, it could never subdue their dauntless and enterprising spirit. But as the power of Rome declined, the audacity of the Saxons increased: their expeditions became more frequent, their descents more destructive: from plunder they proceeded to colonization; and the men who had depopulated, afterwards repeopled the better portion of Britain. Adventurers from each of the associated tribes were among the colonists; but the majority consisted of Jutes, Angles, and Saxons properly so called.(3) The original seat of the Saxons has already been mentioned: the Angles were their neighbours on the north as far as the site of the present town of Flensburgh: and beyond the Angles dwelt the nation of the Jutes, with no other boundary than the ocean.

From the language of the Saxons, their gigantic stature and national institutions, it is evident that they were of Gothic descent. Their whole time was alternately devoted to indolence and rapine. To earn by labour what might be acquired by force, they deemed unworthy the spirit of a freeman, and consigned the culture of their land with the care of their flocks to the meaner labour of women and slaves. Every warrior attached himself to the fortunes of some favourite chieftain, whom he followed in his piratical expeditions. These chieftains guided the councils of the tribe; and from them, in times of danger, was selected a leader, who exercised

---

(1) Ptol. in 4° Europæ tab. (2) Eutrop. ix. p. 659.
(3) Bed. 1, 15. Ethelwerd, Chron. 1, p. 476.

the supreme command, and was dignified with the title of conyng, or king. His authority, however, was but temporary. It expired with the exigency to which it owed its existence.(1)

The warlike exertions of these tribes were at first checked by their want of arms: but during three centuries of intercourse or hostility with the Romans, they had learned to supply the deficiency. They bore a target on the left arm, and employed for offence the spear, the sword, and the battle-axe. The two latter were long and ponderous; and to their destructive effects is attributed the havoc, which the Saxons never failed to make in the broken ranks of an enemy.(2) As their ships were not fitted for the transportation of cavalry, they usually fought on foot in one compact body; but after their settlement in Britain, the chieftains, with the most wealthy of their retainers, came mounted into the field. Their esteem for the war-horse rose to a species of veneration; but previously to his initiation, his nostrils were slit, his ears were stitched up, and his sense of hearing was entirely destroyed. From that moment he became sacred to the god of war, and was conceived on important occasions to announce the will of the deity.(3)

In the infancy of their naval power the Saxon boats resembled those of the other northern tribes; and a few planks surmounted with works of osier and covered with skins, bore the fearless barbarian across the ocean, in the search of spoil and adventures. But in the fifth century their chiules, or war-ships, had assumed a more formidable appearance: and from the number of warriors whom they carried, and the length of the voyages which they made, we may conclude that they were formed of more solid and lasting materials. In these the Saxons repeatedly issued from their ports, sometimes steering for a particular point, sometimes trusting entirely to the guidance of the winds; but whether they were conducted by chance or design the object was invariably the same, to surprise and pillage the unoffending inhabitants on some parts of the British or Gallic coasts. Sidonius, the eloquent bishop of Clermont, has described in animated language the terrors of the provincials and the ravages of the barbarians. "We have not," he says, "a more cruel and more dangerous enemy than the Saxons. They overcome all who have the courage to oppose them. They surprise all who are so imprudent as not to be prepared for their attack. When they pursue, they infallibly overtake: when they are pursued, their escape is certain. They despise danger: they are inured to shipwreck: they are eager to purchase booty with the peril of their lives. Tempests, which to others are so dreadful, to them are subjects of joy. The storm is their protection when they are pressed by the enemy, and a cover for their operations when they meditate an attack. Before they quit their own shores, they devote to the altars of their gods the tenth part of the principal captives; and when they are on the point of returning, the lots are cast with an affectation of equity, and the impious vow is fulfilled."(4)

Upon the establishment of the Saxons and Angles in South Britain, after the year 450, the whole of that part of the island was divided into the seven following kingdoms, viz:—

(1) Huntingd. 178, 181.
(2) Wilk. Con. i. 150.
(3) Sidon. viii. 6.
(4) Bed. v. 10. Wittich. i. p. 7.

1. Kent, founded by Hengist in 455: it terminated in 823. 2. Sussex, or the South Saxons, was founded by Ella in 491, and ended about the year 600. 3. East Angles, founded by Uffa in 751, and ended in 792. 4. Wessex, or West Saxons, founded by Cerdic in 519, and ended about 1012. 5. Northumberland, established by Ida in 547, and ended in 827. 6. Essex, or the East Saxons, founded by Ereenwin in 527, and ended in 810. 7. Mercia, founded by Cridda in 584, and ended in 824. This was frequently united with Deira.

The laws of England may be divided into four distinct branches or heads: the common law, civil law, canon law, and statute law.

II.—Common Law.

What is called common law consists of a collection of customs and maxims, which derive their binding power, and the force of laws, from long and immemorial usage, coupled with the express sanction, or the tacit consent, of the legislature.(1)

III.—Lex non Scripta.

One of the most remarkable designations of the common law was that of *lex non scripta*, which it derives from its own nature, because there are no records extant to show its legislative enactment, it being one of its peculiar perfections, that it has been in use time out of mind, or, in the solemn language of the law, time whereof the memory of man runneth not to the contrary. The common laws of England, says Lord Chancellor Ellesmere, are grounded upon the law of God, and extend themselves to the original law of nature, and the universal law of nations, and are not originally *leges scriptæ*.(2)

IV.—Civil Law.

By the civil law is to be understood the civil and municipal law of the Roman empire, which, owing to peculiar circumstances, was first partially admitted into England, and finally established so as to form a branch of the jurisprudence.(3)

V.—Canon Law.

The canon law is a body of ecclesiastical laws, originally compiled from the decrees of councils, bulls, and decretal epistles of the Holy See, and the opinions of the ancient fathers, which were digested by Gratian, under the title of Decretum Gratiani; to these were added, the Decretalia of Gregory IX., the Sextus Decretalium of Bonifice VIII., the Extravagantes of John XXII., and the Extravagantes Communes of later popes; comprising the whole *corpus jnris canoncia*—(body of canon law). Some parts of this law were adopted at an early period by the Saxons, but far the greater part was introduced at the same time with the civil law, as will be more particularly noticed in its proper place.(4)

VI.—Statute Law.

The statute law is the last branch of law which enters into the composition of English jurisprudence. A statute is any act of the legislature which serves as a

(1) Hale's Hist. Common Law, c. 1. (2) Ellesmore Disc. on the Postnati.
(3) See page 80. (4) A. D. 1151. 1230. 1298. 1349.

rule for the conduct of the community, in which sense all the public acts or laws of the Saxon kings were statutes; but in a restricted sense, a statute signifies any thing which was *statutum*, decreed, or determined by the king's majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in parliament assembled.

Statutes are either declaratory or confirmatory of the common law, or they serve to abridge or enlarge the common law, or altogether to introduce a new law. Most of the old acts, such as Magna Charta, the statute of Marlbridge, Merton, &c., are for the most part confirmatory of the common Law, and on that account the more valuable, because they thereby serve to prevent good laws and customs from falling into desuetude. Modern statutes, on the other hand, are for the most part introductory of some new law or regulation; and being framed with a view to diminish as much as possible the discretionary power of those by whom they are administered, they are remarkable for their number, their prolixity, and oftentimes for their incorrectness and want of clearness.(1)

The statute commencing with Magna Charta, and ending with those of Edward II., including such as are of incertain date, have been distinguished by the title of the *Vetera Statuta*. Hitherto they had been mostly named from the place where the parliament was held, or the statute passed, as the statute of Merton and Marlbridge; the statutes of Westminster, first, second, and third; the statutes of Gloucester, Carlisle, Lincoln, Acton, Burnet; and others were denominated from the subject matter of them; as the statute of Ireland and Wales, the statute of essoins, of vouchers, of sheriffs, *confirmatione chartarum*, *Prerogatea Regis de Melibus;* others distinguished by initial words, as *Quia Emptores*, *Cerconspectu agatis*; some few under Edward II. are distinguished by the year of the king's reign, which is at present the usual mode of citing statutes. In a collective sense, those passed before the union with Ireland in 1801, are called English statutes, since that union, statutes of Great Britain and Ireland, and after the union with Scotland, imperial statutes.

VII.—Saxon Law.

The common law is of such antiquity, that it was coeval with the first peopling of Great Britain. From the earliest records of Saxon times may be traced many of the rules and principles of law which are acknowledged in the present day; as the jurisdiction and proceedings of courts, the distribution of powers and offices among the ministers of justice, and the like. Among the Saxon kings there was a series of lawgivers whose codes, then occasionally distinguished by the name of dombocks, are still extant, and present us with the outlines of that scheme of English jurisprudence which afterwards obtained a footing. These codes contain little more than a brief abstract of laws, or general rules, for the guidance of the judges or magistrates, the details being left to be decided either by their discretion, or by the known customs of the place.(2)

---

(1) A. D. 1215. Co. 2 Inst. passim.
(2) LL. Wiht. & Edw. Sen. opud Wilk. 18.

VIII.—Saxon Lawgivers.

The first of these codes, which is also said to be the oldest in Europe, was that of Ethelbert, who began to reign A. D. 561; his was followed by the codes of Hlothaire, Edric, and Wihtred, all kings of Kent, and of Ina, king of the West Saxons; after which we have the laws of Alfred the Great, Edward the Elder (his son) Athelstan, Edmund, Edgar, Ethelred Canute, and Edward the Confessor. Alfred, the most celebrated of the Saxon legislators, not only embodied the laws of his country into a regular form, but did more than any other king towards their observance. By the wisdom of his regulations and political institutions, he acquired the title of Conditor Legum Anglicanarum, (the founder of English law), as did Edward the Confessor acquire that of Restitutor Legum Anglicanarum, (the restorer of the English law), on account of the completeness of the collection which he formed of all the laws then in force throughout England.(1)

IX.—Condition of the People.

The Saxon people were divided into freemen and slaves. The freemen were again divided into *eorls* earls, *thanes* and *ceorls* or husbandmen. The eorls were civil officers superior in dignity to the thanes, as appears from the different heriots required from them by law of Canute. The heriot of the earl was eight horses, that of the thane four horses, besides other things in proportion. The thanes were properly the feudal lords or nobles, so called from the Saxon *thenian*, to serve, because they were bound to do special service for their lords and attend upon the king when required. They were distinguished into the *thani majores*, in Saxon properly *thegen*, who were immediately in the service of the king, and the *thani minores*, in Saxon *theoden*, who were in the service of the higher thanes. The ceorls were the farmers or husbandmen, to whom the cultivation of the land was assigned. The slaves were either domestic slaves, who performed the various offices of the house in the families of their master, or they were employed in the labours of the field, and were on that account called *villani* villeins, because they lived in the vills or villages. These slaves or villeins were in the lowest state of degradation, being considered as the property of their owners. In the laws of Wales it is expressly said, that the master had the same right to his slaves as to his cattle. There was another description of persons, namely *frilazin* or freedmen, who had been emancipated from their bondage; but their condition was very little better than that of the villeins.(2)

X.—State of Landed Property.

Whether the landed property of the Saxons was subject to the feudal laws, and to what extent, has been a matter of much controversy, which owing to the scanty information to be gathered from the records of those times, can never be positively decided. The legal historian must, therefore content himself with stating authentic facts, and leave the reader to draw his own conclusions.

---

(1) Ran. Cest. 1, 1, c. 50 Lib. Ramens, sec. 5; Gemiticen, 1, 6, c. 9.
(2) LL. Can. c, 69. Jud. Civ. Lond. apud. Wilk. 71. Spelm. Feud and Ten. c. 5. Spelm in Voc.

XI.—Thainland.

The lands of the Saxons were divided into thainland, bockland, and folkland. Thainland was that which was granted by the Saxon kings to their thains, or thanes, who were properly such as attended at court, and held their land immediately of the king, the term thane being as before observed, in the first instance, a title of office, although it afterwards became one of dignity: of these lands the thanes reserved a portion for the support of their household, called inlands, which were cultivated by their villeins: the rest called outlands, they let out to the ceorls for a certain rent, and in all probability for the same sort of services as were required of the thanes from the king. The thainlands were distinguished by the name of baronies, and other appellations after the conquest.

When lands held by the thanes reverted to the crown, it appears they were called revelands, because they fell under the immediate government of the king's officer, the reve, or sheriff.(1)

XII.—Origin of the Feudal System.

The origin of the feudal system is commonly traced from the Lombards and other northern nations, who, on the decline of the empire, made irruptions into different parts of Europe, and obtained from their kings or leaders allotments of land in the countries where they settled, which the possessors again parcelled out into smaller allotments to their inferiors. This practice of granting lands on condition of military service appears to have been adopted by the Roman emperors; for we learn from Lampridius, that Alexander Severus gave to the officers and soldiers stationed on the frontiers the lands that were taken from the enemy, to be theirs on condition that they and their heirs should do military service; and Probus made similar grants to the veterans in Isauria, requiring that their sons, from the age of eighteen and upwards, should serve in the army. These barbarians were, therefore, rather the imitators than the introducers of a practice, which suited well with their circumstances as the settlers in a new country.(2)

XIII.—Bockland.

Bockland or bookland, the next species of landed property among the Saxons, was that which was held by charter or deed, and answered to what was afterwards called freehold. This was occupied by the ceorls, who were the free or soccage tenants of the thanes.(3)

XIV.—Folkland.

Folkland, in Latin *terra popularis*, the last species of landed property, was holden at the will of the lord without any deed, and mostly occupied by the degraded class of men. From this last sort of estate sprung what has since been termed copyhold land.(4)

---

(1) Spelm. Orig. of Fuds. c. 5. Spelm. c. 25. Spelm. Feuds. c. 24. Spelm. Feuds, and Ten. c. 8.
(2) Murator. Anti. Ital. Diss. 10 547. Lamprid. Vit. Severus. Seld. Tit. of Hon. c. 1. s. 23 Duck de Us. Jur. Cir. I. I. c. 6.
(3) Spelm. Feuds and Ten. c. 5. (4) Spelm. Feuds ubi supra.

XV.—Descents.

The lands of the Saxons descended for the most part equally to all the males, without any right of primogeniture, of the custom of kavelkind in Kent is still a vestige. The same was the case if they were all daughters; but if there were sons and daughters, it is probable that, after the manner of the Saxons on the continent, they did not share alike. By the laws of Wales a daughter received but half a son's portion.(1)

XVI.—Alienation.

Alienation was, by a law of Alfred, so far restricted, that no one could dispose of inheritable property contrary to the will of the original purchaser.(2)

XVII.—Testaments.

Testaments were not in use among the ancient Germans, but probably came into use soon after the introduction of Christianity, for we read of testaments as early as the reign of Alfred. In the form and manner of making wills, as also in the mode of disposing of lands and goods, the Saxons appear to have observed the rules of the civil law. Æthelwolf, in imitation of Charlemagne, divided his lands by will between his three sons; and Alfred, his youngest son, did the same, as appears from his will, which is still extant.(3)

XVIII.—Method of Conveyance.

A legal transfer of lands might be made among the Saxons without any deed or writing, but in lieu thereof by certain ceremonies, as that of holding by the horn, by the arrow, and the like. Thus Edward the Confessor granted to the monks of St. Edmund's Bury in Suffolk the mannor of *Brok per cultellum*. Nevertheless deeds were not altogether unknown to the Saxons, by whom they were generally denominated *gewrite*, writings. The particular deed by which an estate was conveyed was termed a *land-boc*, whence the land was denominated boc-land. For the ratification of deeds it was usual to have them read in the county court in the presence of the assembly, by whom they were attested, by the signature of their names, as well as that of the parties.(4)

---

(1) Lindenb. Cod. Antiq. 476. (2) LL. Alf. c. 37.
(3) Tac. de Germ.. c. 20. Hicks' Diss. 51. (4) Ingulph.Hist. Croyl. 901.

CHAPTER XVIII.

THE SAXONS.

I. Division of the Country. II. Counties. III. Earl. IV. Hundreds. V. Tithings. VI. Friburg or Frank-pledge. VII. Tithingman. VIII. Ecclesiastical State. IX. Union of the Secular and Ecclesiastical Powers. X. Tithes. XI. Military State. XII. Administration of Justice. XIII. Officers of Justice. XIV. Alderman. XV. Gerefa or Reve. XVI. Courts or Justice. XVII. Folcmote. XVIII. Hallmote. XIX. Hundred Gemote. XX. Scyregemote. XXI. Witenagemote.

I.—Division of the Country.

AMONG the regulations ascribed to Alfred for the establishment of order and government, was that of dividing England into counties, and these into hundreds and tithings. But although the merit of invention is commonly given to this great prince, it appears that some of these divisions existed before his time, and that to him belongs the honour of having reduced them to order, and rendering them subservient to the purposes of police.(1)

II.—Counties.

The county had existed in France under the name *comté* at an early period, and was so called from the *comte*, *comes*, or earl, by whom it was governed. The comes was an officer of great antiquity in the Roman empire, so named, *à comitando*, from their attending the emperors, because they were always attached to their persons, and were in their immediate service. When Alfred the Great had got rid of his enemies, he set about new modelling the kingdom, and divided it into more regular and uniform portions, to which he gave the name of *scyre*, shire, from *icyran*, to divide, signifying literally a division. The officer to whom the government of the shire was entrusted was sometimes called an alderman, more properly an earl, which, from the Danish *Jarl*, signified a man or a retainer, or as some think from *ære*, honour signified a dignity.

III.—Earl.

The earl, as respected his office, corresponded altogether with the comes of the Latins, and the comte of the French. He had both a civil and military administration of the country, and acted like the comes, both as a judge and a commander of the forces. In his judicial capacity he was probably styled *aldermann*, and in

(1) Ingulph. Hist. Croy'. 495; Gul. Malms. de Gest. Reg. Angl. 24. A.D. 880.

his military capacity he had the title of *hertoch*, from *here*, an army, and *tohen*, to lead, answering to the Latin *dux*, and the French *duc*.(1)

At first the earl had their appointment from the king, and held their office at his pleasure; but from the increasing power of these earls or dukes, and the tacit consent of the sovereign, this office became in process of time hereditary, and sometimes elective, if we may believe the laws ascribed to Edward the Confessor. Among the perquisites enjoyed by the earl was that of the *tertium denarium*, or a third or the profits of fines and penalties imposed at the county court.(2)

IV.—Hundreds.

The hundred, which was a subdivision of a shire, was a name of number, and was at first probably applied to the number of a hundred families or villages. The hundred is mentioned by name in the laws of Ina, and had been introduced into France as early as the reign of Clotaire, under the name of *centena*, for the express purpose of making such district answer the purpose of civil government. Traces of this institution are also to be found among the ancient Germans. The chief man of the hundred was called *centenarius* among the Franks and other nations on the continent, and *hundredarius aldermannus* or *hundredi*, among the Saxon. This officer had likewise both a civil and military duty.(3)

V.—Tithings.

The tithing was a subdivision of the hundred, and, as its name imports, was the tenth part of a hundred. This division is also mentioned in the laws of Ina, but it does not appear that it was connected with the police of the kingdom until the time of Alfred, who, for the prevention of robberies and other offences, required every member of the tithing to be answerable for the good conduct of the rest. So far then as regards the constitution and object of this regulation, Alfred is justly entitled to the praise of being the inventor.(4)

VI.—Friburg or Frank-pledge.

This community was called in the Saxon *friborg*, or *friburg*, that is to say, frank-pledge, from *freo*, free, and *borg*, a pledge, because every free man was a pledge or security for the good conduct of the others.(5)

VII.—Tithingman.

The head man of the tithing was called *friborgsheofod*, or *borghealder*, that is, the elder of the borgh; also sometimes *theothungman*, that is, the tithing-man, which afterwards became the common appellation. In Latin the tithing was called *decenna* or *decina*, the members *deconnarii*, and the head man *decanus friborgi*.(6)

---

(1) Asser. Vit. Alf. Alcuin. in Epist. 35.. [Sax.
(2) Annal. Sax. 49; Spelm. Concil. 1, 190; LL. Edw. Conf. c. 33, apud Wilk. LL. Ang.
(3) Spelm. Gloss. in Voc.; Du Canage, Gloss. in Voc.; Tac. Germ. c. 6.
(4) Spelm. Gloss.; Du Cange, Gloss.; Dugd. Orig. Jur. 23.
(5) LL. Edw. Conf. c. 32.
(6) LL. Edw. ubi *supra*.

The tithing-man had more particularly to answer for the good conduct of the rest; for when any one of the tithing fled on account of any offence, it was his business to assemble the others and to use all possible diligence to produce the offender. If he were not forthcoming, and the tithing could not purge themselves, they were subject to be fined. In order to support this regulation, every one was obliged at the age of twelve to enrol himself of some decennary or tithing, at which period he took an oath to be true and faithful to the king. This oath was afterwards called the oath of allegiance; and the proceeding of administering the oath and examining the state of the decennaries, which took place once a-year, was denominated *visgs franci plegii*, or view of frank-pledge.(1)

This pledging also extended to strangers; so that if any one took a stranger in, and suffered him to stay there three nights, and the stranger committed any crime, the person so harbouring him was considered as having made himself a pledge for him. The person who was entertained for one night was denominated in the Saxon *uncuth*, that is unknown; on the second night *twanight gest*, and on the third night *agenhine*, that is as much as to signify an inmate.(2)

Although the tithing is now fallen into disuse, yet the names of tithingman and headborough are still retained to denote the office of petty constable.(3)

VIII.—Ecclesiastical State.

With these political divisions was connected the ecclesiastical state as it was first established in England. The Saxons having embraced Christianity through the ministry of St. Austin, and other monks sent by Pope Gregory; the Church of England, as to its doctrine and discipline, was framed after the model of the Church of Rome. Canterbury, where the missionaries were first received, A. D. 596, was the first English see, of which St. Austin was consecrated archbishop the next year. London was raised to a bishop's see, and Mellitus chosen the first bishop in 604; York was raised to an archbishopric, and Paullinus placed at its head in 624; and at the time when the venerable Bede closed his history, we are informed that there were sixteen bishops who had their seats at the most important places at that time. Canterbury was always acknowledged to be the metropolitan church of all England, and has continued ever since, notwithstanding the title of the primacy was disputed by some archbishops of York.(4)

IX.—Union of the Secular and Ecclesiastical Powers.

Between the secular and ecclesiastical powers there was at this period a happy union in England, owing to the piety of the Saxon princes and the moderation of the clergy, who were not yet subject to any foreign influence. To the bishop belonged not only the ecclesiastical government of the diocese, but also a considerable share in the civil administration; for the bishop and the earl or alder-

(1) LL. Edg. c. 6; LL. Can. 19; LL. Ed. Conf. c. 32.
(2) LL. Can. c. 25; LL. Edw. Conf. c. 27.
(3) LL. Edw. Conf. c. 34.
(4) Bed. Hist. l. 1, c. 27, l. 2, c. 4, &c. A. D. 650.
(5) LL. Edg. c. 5; LL. Can. c. 17; Spelm. Rem. 50.

man co-operated for the preservation of the peace and the maintenance of good order.(5)

X.—Tithes.

Among the subjects which engaged the attention of those synods, the payment of tithes was frequently considered. The introduction of tithes into England is probably coeval with that of Christianity. Offa, king of Mercia, having set the example of giving the tenth of his goods to the church, the payment of them is enjoined by most of the subsequent kings whose laws are extant. It should seem that, in the commencement, people might pay their tithes to what priests they pleased, which was called the arbitrary consecration of tithes; or they might put them into the hands of the bishop, to be distributed among the clergy; but as this practice afforded a facility to fraud and abuse, it was enacted by a law of Edgar, that the payment of tithes should be confined to the parish to which they belong; from which it may be gathered that England was at this time divided into parishes, and is supposed to have been so from the time of Alfred the Great. Besides tithes, there are other church dues mentioned at that time, as *romscot*, which was probably the same as was afterwards called Peter-pence; and *soulscot*, a sort of expiatory offering made by a person at his decease to the church for the good of his soul, which was afterwards called a mortuary or corse-present.(1)

XI.—Military State.

The military law of the Saxons was similar to that of their German ancestors. All their youth were trained to the use of arms, and every freeman was obliged to be ready to take the field whenever they were called upon so to do. The only persons exempted were the clergy, who, like the priests among the pagans, were prohibited the use of arms; and the slaves who were not allowed the honour of bearing them. That the people might always be furnished with the necessary arms, and expert in the use of them, the freemen of each tithing, hundred, and county, were appointed to meet at certain times and places, for the purpose of going through their exercises, and having their arms inspected; besides which, a general review of all the armed men and arms in the kingdom took place on one and the same day of every year, in the month of May. These regulations, in which we may trace the origin of our present militia, are supposed to have been made by Alfred, and to be coeval with the scheme of political economy which he established. The troops of each division were commanded by the officers or headmen of the respective districts, namely, the counties by the heretochs or dukes, the hundreds by the hundredaries, and the tithings by the tithingmen.(2)

XII.—Administration of Justice.

In treating of the administration of justice, there will be further occasion to point out the utility of these divisions. Under this head may be considered the officers of justice, the courts of justice, and the judicial proceedings.

---

(1) Seld. on Tithes, c. 10; LL. Edg. c. 2; apud Wilk. 76; LL. Cam. c. 13.
(2) Bed. Ecc. Hist. 1, 2, c. 13; Spelm. Concil. i. p. 238; LL. Edw. Conf. c. 35.

XIII.—Officers of Justice.

The two principal officers of justice were the alderman and gerefa.

XIV.—Alderman.

The *ealderman*, *ealdorman*, or *alderman*, that is literally, the elderman, was like the senator of the Romans, so called *non propter ætatem sed propter sapientiam et dignitatem*—(not on account of his age, but because of his wisdom and dignity). He was an officer of distinction, and the next in rank to an atheling or nobleman. He presided with the bishop at the scyregemote, and was a member of the witenagemote. In the early part of the Saxon history he appears to have sometimes headed the forces of the country, and is said to have been the same as the earl; but, subsequently, his office was purely judicial, and after the conquest was executed by the *justitia* or *jastitiarius*. He was sometimes styled *cyninges ealdermann*, or the king's alderman, because he was specially appointed by the king to administer justice, wherefore it was a penal offence to quarrel or fight in his house, or in his presence. There was likewise an *aldermannus totius Angliæ*—(an alderman of all England), *aldermannus comitatus*, *aldermannus hundredorum*, &c., to denote the difference of rank and jurisdiction.(1)

XV.—Gerefa or Reeve.

The *gerefa*, or reeve as he is called in English, was an officer of justice, inferior in rank to an alderman. He was a ministerial officer, who was appointed to execute processes, to keep the king's peace, and to put all the laws into execution. He witnessed all contracts and bargains; brought offenders to justice, and delivered them to punishment; took bail or security of such as were to appear at the scyregemote or county court, and presided at the hundred court and falcmote.(2)

XVI.—Courts of Justice.

The courts of justice among the Saxons were modelled, according to the divisions of the kingdom, into counties, hundreds, and tithings.(3)

XVII.—Falcmote.

The lowest of these tribunals, in point of jurisdiction, was denominated a *falcmote*, from the words *folc*, people, and *mote* or *gemote*, a meeting or court; that is, literally, an assembly of the people or inhabitants of any tithing or town, who were summoned by a bell, called a mote-bell.(4) This was in the nature of a tithing court, at which the tithingman or *tienheofod*, as he is sometimes called, presided, and settled all small disputes between the neighbours, as matters of trespass in meadows, corn, and the like. But the name of folcmote was applied generally to

(1) LL. Edw. Conf. c. 35; Jud. Civ. Lond. apud Wilk. p. 71; In Præf. LL. Alur. c. 11, apud Brompt. Sax. Chron. 48, 78; LL. In. c. 26; LL. Alf. c. 21.
(2) LL. Wilh. apud Wilk. 12; Jud. Civ. Lond. apud Wilk. 69. Ibid 65.
(3) Tacit. Germ. c. 12.
(4) LL. Edw. Conf. c. 35.

all courts which were adapted to the convenience of the people within any district; thus the hundred court was frequently called by the same name.(1)

XVIII.—Halmote.

The *halmote* was the lord's court, so called from *hal*, the hall, where the lord's tenants or freemen met, and justice was administered. This court, which was granted to the thanes as a franchise, had a civil and criminal jurisdiction.(2)

XIX.—Hundred Gemote.

The *hundred gemote*, or court of the hundred, was, as its name imports, a court held, for the benefit of the inhabitants of the hundred, every month; at which the alderman, but more frequently the gerefa, presided, and all who were sommoned were obliged to attend, on pain of being heavily mulcted.(3) The hundred court was called a *wapentake* in the northern counties; from the Saxon *wapen*, arms, and *tac*, a touch; because, when the chief of the hundred entered upon his office, he appeared in the field on a certain day on horseback, with a pike in his hand, and all the principal men met him there with lances; when he alighted they touched his pike with their lances, as a token of submission to his authority.(4) In this court causes of great moment were heard and determined, as Mr. Dugdale has shown from several records; besides which, it took cognizance of theft, trials by ordeal, view of the frank-pledge, and the like. Whence, after the conquest, this court was called the sheriff's tourn, and, as regarded the examination of the pledges, the court of the view of frank-pledge.(5)

XX.—Scyregemote.

The *scyregemote*, that is, literally, the mote or court of the shire, in Latin *curia comitatus*, was the principal court among the Saxons, which was held twice a-year for the determining of all causes, both ecclesiastical and secular; the former of which were heard and determined before the bishop, and the latter before the alderman. Appeals were made from the hundred court to the county court.(6)

XXI.—Witenagemote.

The last and supreme court in the kingdom was that which was held in the king's *aula* or palace, in which the Saxon kings administered justice in person. This was a court of appeal, where the sentences of inferior judges were reversed or confirmed.(7)

But these occasional courts, respectable as they might be, were eclipsed by the superior splendour and dignity of the "mickle synoths or witenagemots," the great meetings, or the assemblies of the counsellors, which were regularly convened at the festivals of Christmas, Easter, Whitsuntide, and occasionally at other times, as

---

(1) Spelm. Rem. 50. (2) LL. Edw. Conf. c. 21, et. seq.
(3) LL. Inæ a pud Spelm. Gloss. in Voc.; Dug. Orig. 26, LL. Ethel. c. 20; LL. Edw. Conf. c. 3. (4) Dug. Orig. Jur. 27. (5) LL. Edg. c. 5.
(6) LL. Edg. c. 5; LL. Can. c. 17; Dudg. Orig. Jur. 23.
(7) Sax Chron. passim.

difficult circumstances or sudden exigencies might require. Who were the constituent members of this supreme tribunal, has long been a subject of debate; and the dissertations, to which it have given rise, have only contributed to involve it in greater obscurity. It has been pretended that not only the military tenants had a right to be present, but that the ceorls also attended by their representatives, the borgholders of the tithings. The latter part of the assertion has been made without a shadow of evidence, and the former is built on very fallacious grounds. It is indeed probable that, in the infancy of the Anglo-Saxon states, most of the military retainers may have attended the public councils; yet even then the deliberations were confined to the chieftains; and nothing remained for the vassals but to applaud the determination of their lords. But in later times, when the several principalities were united into one monarchy, the recurrence of these assemblies, thrice in every year within the short space of six months, would have been an insupportable burthen to the lesser proprietors; and there is reason to suspect that the greater attended only when it was required by the importance of events, or by the vicinity of the court. The principal members seem to have been the spiritual and temporal thanes, who held immediately of the crown, and who could command the services of military vassals. It was necessary that the king should obtain the assent of these to all legislative enactments; because without their acquiescence and support it was impossible to carry them into execution. To many charters we have the signatures of the witan. They seldom exceed thirty in number; they never amount to sixty. They include the names of the king and his sons, of a few bishops and abbots, of nearly an equal number of ealdormen and thanes, and occasionally of the queen, and of one or two abbesses.(1) Others, the fideles or vassals, who had accompanied their lords, are mentioned as looking on and applauding; but there exists no proof whatever that they enjoyed any share in the deliberations.

The legal powers of this assembly have never been accurately ascertained; probably they were never fully defined. To them, on the vacancy of the crown, belonged the choice of the next sovereign; and we find them exercising this claim not only at the decease of each king, but even during the absence of Ethelred in Normandy. They compelled him to enter into a solemn compact with the nation, before they would acknowledge him a second time as king of England.(2) In ordinary cases their deliberations were held in the presence of the sovereign; and as individually they were his vassals, as they had sworn "to love what he loved, and shun what he shunned," there can be little doubt that they generally acquiesced in his wishes. In the preambles to the Saxon laws the king sometimes assumes a lofty strain. *He* decrees: the witan give their advice. He denominates himself the sovereign: they are *his* bishops, *his* ealdormen, *his* thanes. But on other occasions this style of royalty disappears, and the legislative enactments are attributed to the witan in conjunction with the king.(3) The same diversity appears in treaties concluded with foreign powers. Some bear only the name of the king; in others the witan are introduced as sanctioning the instrument by their concur-

(1) See Ingulf, 32, 44, 45; Gale, iii. 517.
(2) Chron. Sax. 145.
(3) Leg. 14, 34, 48, 73, 102, 113.

rence.(1) In their judicial capacity they compromised or decided civil controversies among themselves; summoned before them state criminals of great power and connexions; and usually pronounced the sentence of forfeiture and outlawry against those whom they found guilty.(2) As legislators they undertook to provide for the defence of the realm, the prevention and punishment of crimes, and the due administration of justice.(3)

CHAPTER XIX.

JUDICIAL PROCEEDINGS AMONG THE SAXONS.

I. Judicial Proceedings. II. Ordeal. III. Trial by Compurgators. IV. Trial by Witnesses. V. Criminal Cases. VI. Grand Jury. VII. Penalties and Offences. VIII. Murdrum. IX. Stealing. X. Outlaws. XI. Breach of the Peace. XII. Pax Regis. XIII. Defamation. XIV. Witnesses to Contracts. XV. Sanctuary. XVI. Abjuration. XVII. Hue and Cry.

I.—Judicial Proceedings.

AMONG a people but lately emerged from barbarism, the administration of justice is always rude and simple; and though the absence of legal forms and pleading may casually insure a prompt and equitable decision, it is difficult without their aid to oppose the arts of intrigue and falsehood, or the influence of passion and prejudice.

The proceedings before the Anglo-Saxon tribunals would not have suited a more advanced state of civilization; they were ill-calculated to elicit truth or to produce conviction, and in many instances, which have been recorded by contemporary writers, our more correct or more artificial notions will be shocked by the credulity or the precipitency of the judges. As it has been before observed, the intelligent observer will discover in their proceedings the origin of several institutions, which to this day marks the administration of justice in English tribunals.(4)

The crimes to which the Anglo-Saxons were principally addicted were homicide and theft. Among men of violent passions, often intoxicated, always armed, quarrels, riots, and murders were inevitable; and the national manners opposed

(1) Leg. 47, 51, 104; Chron. Sax. 132.
(2) Chron. Sax.
(3) Ingulf, 10, 16,; Chron. Sax. 126, 130, 165.
(4) Lingard's Ap. to Hist. Eng. vol. 1, p. 478.

many obstacles to the impartial administration of justice. The institutions of lord and vassal secured to litigants, both abettors and protectors, and the custom of making presents on all occasions polluted the purity of every tribunal.(1)

There were three kinds of trial of which express mention is made—namely, the trial by ordeal, by compurgators, and by winesses.

II.—The Ordeal.

The ordeal, from the Saxon *ordel*, a judgment or determination, signified by distinction that judgment which was passed upon the guilt or innocence of a person an appeal to heaven, wherefore it was called *judicium Dei*, (the judgment of God). This mode of trial was universally prevalent among the Saxons, Lombards, Franks, Alemani, and other northern tribes that occupied Europe, and was no doubt immediately derived from their ancestors the Germans, who, as Tacitus informs us, were much addicted to divination. But this relic of superstition was not confined to the northern tribes, for we find express allusion to a similar custom among the Greeks and Romans. The ordeal was performed in different ways: the principal of which, as used by the Saxons in England, were those by fire and water; the former for persons of free condition, and the latter for villeins. The fire ordeal was performed by walking barefoot over a certain number of burning ploughshares, as Queen Emma, the mother of Edward the Confessor, is said to have done; or by carrying a bar of red-hot iron in the hand for a certain distance. According as the accused party came off unhurt or otherwise, he or she was declared innocent or guilty. In order to give all possible solemnity to the trial, the accused were obliged for some days previous to perform various religious duties, such as fasting, prayer, ablutions, and the like, preparatory to the ceremony.(2)

The water ordeal was performed either in cold or hot water. In the former case the accused was stripped naked, bound hand and foot, and a rope tied round his body, when he was thrown into a pool; and if he floated he was pronounced guilty, but if he sunk he was acquitted, and drawn out immediately. In performing the hot-water ordeal, the accused party was to plunge his or her hand into boiling water up to the wrist if the accusation was *simplex*, that is, the crime was not heinous; and up to the elbow if the accusation was *triplex*, that is, the crime was heinous.(3)

There was another species of ordeal in use among the Saxons called *corsned*, from the Saxon *cors*, accursed, and *sned*, a cake or piece of bread. This was performed by eating a piece of bread over which the priest pronounced a certain imprecation; and if the accused ate it freely he was pronounced innocent, but if it stuck in his throat it was considered as a proof of his guilt. Sometimes the eucharist was used in lieu of common bread.(4)

---

(1) Lingard's Ap. to Hist. Eng. vol. 1, p. 495.
(2) Tacit. Ger. c. 10; Sophoc. Antig. v. 264; Virg. Æn. 1, 11, v. 787; Glanv. 1, 11, c. 4; Rudborne, Hist. Wint. 1, 4, c. 1; LL. Can. c. 13; LL. Edw. Con. c. 9; LL. Athelst. ap. Brompt.
(3) Du Cange. Glos. in Voc. Aqua.
(4) LL. Inæ. c. 77; LL. Athelst. c. 6, 7. See Crabb's Hist. Eng. Law, rom c. 1 to 10.

III.—Trial by Compurgators.

The trial by compurgators was *per sacramentum vel juramentum*, that is, by the oath of the party himself, confirmed by the oaths of his neighbours. The manner of conducting this trial was as follows: the party accused of any crime was obliged to bring a certain number of persons, as prescribed by law, who laid their hands on the Gospels, or some relics, and he laid his hand over all the rest. Then he swore by God and all the hands that were under his, that he was not guilty of the crime laid to his charge; and they were supposed by this act to declare, upon their oaths, that they believed he had sworn the truth. Thus a person was said to swear by any given number of hands, according to the number of persons joining in the oath; wherefore *jurare septima manu* signified to swear by six persons besides the accused, and *jurare duodecima manu* to swear by eleven persons besides the accused. These persons were mostly called *compurgators*, because they contributed by their oaths to purge or clear the accused party of the crime laid to his charge, likewise *purgatores*, *sacramentales*, *sacramentarii*, *juratores*, *conjuratores*, &c.(1)

As to the law of compurgators, the law of the Saxons and other nations varied much; requiring in some cases not more than one, two, or three, and in others as many as thirty, fifty, or even a hundred. As to the condition of the parties, they were to be the peers or equals of the accused. In the treaty between Alfred and Guthrum the Dane, it is ordained, that if a king's thane was accused of homicide, he was to purge himself by twelve king's thanes. If an inferior thane was accused he was to purge himself by eleven of his equals and one king's thane. In regard to the qualifications of the compurgators, they were to be *boni et legales*, (good and lawful), and such persons as had not been charged with any crime. That none might not be admitted to take the oath but such as were competent, they were examined previously by the judges.(2)

This mode of trial was denominated *purgatio canonica*, (canonical purgation), because it was admitted by the canons of the church, in distinction from the ordeal and other modes of trial, which were distinguished by the name of *purgatio vulgaris*, (common purgation), because they were adopted by the secular power. It was afterwards applied to secular matters in actions of debt upon simple contract, when it was called *vadiatio legis*, (wager of law). The laws of the Saxons, which required that no contract should be made without witnesses, rendered this mode of proof for the most part unnecessary, but it was perfectly consistent with the manners and institutions of that age, that, in cases where the witnesses were dead, or otherwise unable to attend, they should allow a man of good reputation to clear himself of an unjust demand by his own oath and that of his neighbours.(3)

IV.—Trial by Witnesses.

As to the trial by witnesses, that was an obvious mode of coming at the truth of a matter, which had been resorted to by all nations at all times, and was much

(1) Du Cange Gloss. in Voc. Juramentum.
(2) Du Cange Goss. ubi supra; LL. Æthel c. 15; Fœd. inter Alf. et Guth. apud Wilk. 47—Hick's Diss. Epistol. 34, 35 Spelm. Gloss. ad. Voc. Jurata.
(3) Reeves' Hist. i. 23, 24.

facilitated among the Saxons in civil causes by the law, so often repeated and enforced, requiring witnesses to every bargain.(1)

V.—Trial by Jury.

Whether the trial by jury existed among the Saxons has, like many other matters connected with those remote periods, been a subject of controversy. From all the records that have been preserved from those times, it is clear that there was no such thing as a jury of twelve men sworn to give their verdict on the evidence offered to them; but it is also equally clear that the decision of at least important points was not left to a single judge.

VI.—Grand Jury.

But in criminal matters a law of Ethelred establishes, that a grand jury existed among the Saxons; for the law directs that twelve thanes, with the sheriff at their head, should go, and, on their oath, inquire into all offences, not charging any one falsely, nor wilfully suffering any offender to escape. From the condition of the parties, and the office required of them, namely, *accusare*, that is, to make presentment of offenders, it is beyond all question that they had only to determine what offenders should be put upon their trial and what not.(2)

VII.—Penalties and Offences.

The gratification of private revenge, the strongest passion in the breast of an untutored mind, was very prevalent among all the northern tribes, who, forming themselves into families or clans, were bound by particular laws of honour to resent the affronts or injuries offered to any of the members. This principle of retaliation naturally produced violent and deadly feuds, which for a time broke through all the restraints of government. As the Saxons retained this characteristic of their ancestors, their kings adapted the laws to the humour of the people, so as to moderate and regulate their passions rather than attempt to suppress them altogether, which they knew to be impossible. For this reason, we find that they adopted the principle of compensation, for every personal injury whatever, even to the taking away of life. In the code of Ethelbert, the first Saxon legislator, there appears to be hardly any other penalty attached to any offence, however heinous.(3)

If a man killed another, the slayer was to compensate his death by the payment of a certain sum, greater or less, according to the circumstances of the case. If a man killed his chief guest, his death was to be compensated with eighty shillings, and that of his other guests according to their rank. By the laws of Athelstan, the life of every man, not excepting that of the king himself, was estimated at a certain price, which was called the *were*, or *æstimatio capitis*. The were for the life of a king was 30,000 krymras, or about £300 sterling; that for a prince, 15,000; that for a bishop or alderman, 8,000; that for a sheriff, 4,000; that for a

(1) Wilk. LL. Anglo-Sax. 9, 16. (2) LL. Ethel. c. 6.
(3) Tac. Germ. c. 20; Lin. denbrog. Cod. Antiq. passim.

thane or priest, 2,000; and that for a ceorl, 260. The price of wounds was also varied according to the nature of the wound, or the member injured.(1) The violation of female chastity was also to be compensated in a similar manner, and with similar distinctions as to the rank and condition of the parties.(2)

On this principle of compensation it appears, that if a man in hewing a tree happen to kill another, the relations were entitled to the tree.

The ordinary compensation for theft was six shillings; but if committed in a church, the offender was to restore fourfold. If a bishop was robbed, restitution was to be made elevenfold, which was greater than in the case of a king. In this manner was every offence considered in the light of a civil injury, and the object of the laws was to repair the fault rather than to punish the offender. There was, therefore, no distinction made between things done with deliberate malice and those done in the heat of passion or by inadvertence; a kind of lenity which, however admissible in a rude and simple state of society, was soon found to be inadequate to the purposes of good government.(3)

VIII.—Murdrum.

For the protection of the Danes from the resentment of the English, a law was made by Canute imposing a fine on the hundred, called murdrum, when the slayer was not found.(4)

IX.—Stealing.

Afterwards, punishments were not confined to pecuniary mulcts, for we read of various corporal pains inflicted on offenders, as imprisonment, mutilation, slavery, and death, in addition to the penances imposed by the church. A thief who was caught in the act of stealing might be killed with impunity if he attempted to escape or made resistance; and theft was afterwards made a capital offence, unless the thief or his friends redeemed his life by paying his full were. A thief frequently accused of theft was to lose a hand or a foot; and, by a law of Athelstan, he was upon a second conviction to be hanged. None were to escape punishment who were above the age of twelve, or who stole above the value of twelve pence. The accomplices and aiders of thieves were subject to the same penalties as thieves themselves. So, likewise, if a thing was stolen, and the family of the thief was privy to it, they were all to be made slaves; but there was an exception in favour of the wife, who was supposed to be under the subjection of her husband, and was therefore not considered as a party in the stealing, unles the things stolen were found in her separate possession.(5)

X.—Outlaws.

If an offender fled from justice, and was not to be found within the space of thirty-one days, he was outlawed, and any one might kill him if he made resist-

---

(1) LL. Ethelb. c. 26; LL. Inæ, c. 70. A. D. 940.
(2) LL. Ethelb. c. 10, et seq.
(3) LL. Ethelb. c. 32.
(4) LL. Edw. Conf. c. 15.
(5) LL. Wib. c. 35; LL. Inæ, c. 12; LL. Inæ, c. 37; Jud. Civ; Lund. apud Wilk. 70; Jud. Civ. Lund. apud Wilk. 65; LL. Inæ, c. 7.

ance. An outlaw was called in the Saxon *wulfeshcofod*, that is, wolf's-head; which was as much as to say that any one might kill him in the same manner as they would a wild beast.

XI.—Breach of the Peace.

To prevent the causes and beginnings of quarrels, laws were made against every breach of the peace, but particularly in certain places, or before certain persons, whose presence the Saxons were taught in a particular manner to respect. Fighting, or even drawing a weapon, in the presence of the archbishop, was punished with a fine of one hundred and fifty shillings; before a bishop or an alderman, with a fine of one hundred shillings. If the offence was committed near the residence of the king, or in the king's court, the life of the offender was to be at the king's mercy.(1)

XII.—Pax Regis.

The *pax regis*, (the king's peace), or verge of the court as it was afterwards called, extended from the palace-gate to the distance of three miles, three furlongs, three acres, nine feet, nine palms, and nine barley-corns. Besides, the *pax regia*, or king's protection, was attached to other places, as the four public roads, Watlingstrete, Foss, Hakenildstrete, and Erminstrete; also to navigable rivers carrying provisions to cities and towns, whence such public ways were designated in a peculiar manner the king's highways. On the same principle there was the *pax ecclesiæ*, (the peace of the church), or a particular privilege attached to churches. Sacrilege was punished with the loss of the hand which committed the offence, unless redeemed with the payment of the full were; and any breach of peace in a cathedral incurred the penalty of death, unless redeemed; but if committed in inferior churches, it was only punishable with a fine, according to the importance of the place.(2)

XIII.—Defamation.

As a further prevention of quarrels and breaches of the peace, calumny and defamation were visited with a heavy penalty even at an early period. By a law of Hlothaire, king of Kent, a calumniator or defamer was obliged to pay one shilling to the person in whose house the words were uttered, six shillings to the person calumniated, and twelve shillings to the king.(3) By laws of Alfred, Edgar, and Canute, a spreader of false reports was to lose his tongue, unless he redeemed it by paying his full were. Besides, breaches of the peace in the houses and on the premises of private persons were visited with penalties, according to the condition of the party or the circumstances of the case; in all which particulars we may trace the origin of many parts of our jurisprudence as it exists in the present day; but there was one law among the Saxons which has not survived that period.(4)

---

(1) LL. Inæ, c. 45.
(2) Hick's Diss. 114; LL. Athels. apud Wilk. 63; LL. Alf. c. 8; LL. Alf. c. 30.
(3) LL. Hloth.; apud Wilk. 9. A. D. 680.
(4) LL. Alf. c. 28; LL. Edg. c. 4; LL. Can. c. 26.

namely, a law of Hlothaire, king of Kent, which inflicted a heavier punishment on breaches of the peace if committed in ale-houses than if they were committed elsewhere.(1)

If any one was present at the death of a man, he was looked upon as *particeps criminis*, (an accomplice in the crime), and liable to a fine; but there was an exception made at that time, as there has been since, in favour of those who stood in a near relation to each other. By a law of Alfred, a slave might fight in defence of his master, or a father might defend his son, and a man might attack any one whom he caught with his wife.(2)

XIV.—Witnesses to Contracts.

For the prevention of frauds, as well as of disputes, it was more than once enjoined, that no contracts or bargains should be made but in the presence of two or three witnesses, or of the gereſa; and if any thing was sold without observing this law, the thing bargained for was to be forfeited.(3)

In addition to the above-mentioned regulations for the preservation of the peace, the Saxons adopted the humane practice of sanctuaries, or places of refuge for offenders, particularly in the cases of homicide; after the manner of the cities of refuge among the Jews, and the *asyla*, or inviolable cities among the Greeks and Romans.

XV.—Sanctuary.

After the introduction of Christianity, the Saxons converted their churches, as the Britons before had converted their temples, into sanctuaries, whither homicides might flee to protect themselves from the hasty resentment of the injured party. They might also seek refuge with an alderman, an abbot, or a thane, for three days, and with a bishop for nine days. A penalty was inflicted on the violation of sanctuary. By a law of Alfred, no one was to take revenge until he had demanded compensation, and it had been refused. If the offender fled to his own house, the injured party might besiege him there for seven days; and, if needful, might have the assistance of the magistrate to prevent his escape. If, at the expiration of that time, the aggressor were willing to surrender himself and his arms, his adversary might detain him for thirty days, but was afterwards obliged to restore him safe to his friends, and be contented with the compensation. This privilege of sanctuary extended also to thieves, who in such cases might make restitution of the plunder; but if the thief repeated the offence, he was then obliged to leave the church, and *provinciam forisjurare*, to forswear the country, that is, swear that he would not return to it; which, when applied to the kingdom, was afterwards called abjuring the realm.(4)

---

(1) LL. Hloth. c. 12.
(2) Reeves' Hist. i. 17; LL. Inæ, c. 34; 1 Comm. 429; LL. Alf. c. 38.
(3) LL. Hloth. c. 16; Ethel. c. 4; Athel. c. 12; Can. c. 22.
(4) LL. Athels. c, 2; LL. Wih. apud Wilk. 13; LL. c. 2, 38; LL. Edw. Conf. c. 6.

XVI.—Abjuration.

For the more certain detection of offenders, it was ordained by a law of Ina, that whoever suffered a thief to escape was to pay the were or *forgyld* of the offender; and if it were an alderman, he was to lose his office.(1)

XVII—Hue and Cry.

In confirmation of this, it was enjoined by Canute that whoever suffered a thief to escape *absque clamore*, that is, without making *hutesium et clamorem*, or hue and cry, as it was afterwards called, was to suffer the punishment of the thief, if he could not purge himself. So likewise if any one neglected to join the clamour when he heard it.

As a further means of bringing offenders to justice, endeavours were made to give all possible solemnity to the taking of an oath by various religious rites, which accompanied the ceremony; besides the penalties which were inflicted on those who violated the obligation of an oath.(2)

By the league between Edward and Guthrum the Dane false swearers were banished; by a law of Athelstan they were denied Christian burial; by one of Edmund they were incompetent to give evidence until they had purged themselves. Perjury by a law of Canute was punished with the loss of the hands, and the payment of half the full were.(3)

---

(1) LL. Inæ. c. 36—A. D. 700; LL. Can. c. 26—A. D. 1020.
(2) LL. Athels. upud Wilk. 63.
(3) Fœd. inter. Edw. et Guth. c. 11; LL. Athels. c. 25; LL. Edm. c. 1; LL. Can. c. 23.

CHAPTER XX.

PROGRESS OF THE LAWS FROM THE NORMAN CONQUEST, ANNO DOMINO 1066, TO THE CONFIRMATION OF MAGNA CHARTA.

SECTION I.—LAWS UNDER WILLIAM THE CONQUEROR.

I. Introduction. II. Confirmation of the Saxon Laws. III. Feudal Tenures. IV. Earls. V. Sheriffs. VI. Courts. VII. Separation of the Secular from the Ecclesiastical Judicature. VIII. Trial by Battel. IX. Trial by Jury. X. Pleadings in French. XI. Doomsday Book.

I.—Introduction.

THE accession of William I., surnamed the Conqueror, has been generally regarded as a memorable epocha in the history of English law, on account of the changes which are supposed to have taken place in the nature of landed property, the judicial form of proceeding, and what was still more, in the tone and temper of the times, which required a more rigorous exercise of the law. But, great as these changes may have been, they appear to have sprung not so much from any determination on the part of the conqueror, as from the circumstances which accompanied his taking possession of the English throne. Without entering into the question respecting his title, it is clear that he considered himself as the legitimate successer to Edward the Confessor, and founded his claim to the throne not so much on his victory over Harold as on the title which he had acquired by the will of his predecessor. His harsh treatment of the English was evidently the consequence of their disaffection and continued resistance; and, had he met with a better reception of his English subjects, it is fair to conclude that he would have dealt with them more as a king than as master. "William," says Mr. Reeves,(1) "put off the character of an invader as soon as he conveniently could, and took all

(1) Reeves' Hist. Eng. Law, i. 30.

measures to quiet the kingdom in the enjoyment of its own laws." The correctness of this observation may better be learned by a statement of facts than by any enlargement on an unimportant point of dispute.

II.—Confirmation of the Saxon Laws.

As soon as the king found leisure from the occupations of war, he turned his thoughts to the establishment of good laws for the government of the realm: wherefore, in the fourth year of his reign, he called together his barons at Berkhamstead; and in the presence of Lanfranc, Archbishop of Canterbury, he solemnly swore that he would observe the good and approved laws of Edward the Confessor. At the same time selecting twelve men from among the English who were learned in the laws, he desired them to make a collection of such laws and customs as had been in the time of the Saxon kings.(1)

When the collection was finished and presented to the king, he seemed to give the preference to the Danish laws; upon which we are informed that the commissioners, breaking out into great lamentation, conjured the king, by the soul of King Edward, that he would suffer them to be governed by the laws and customs in which they and their children had been brought up. The king yielded to their entreaties, and called a general council, at which he consented that the laws of Edward the Confessor, with such additions and alterations as he thought proper to make, should in all things be observed. Gervasius Tilburiensis, who lived about that time, observes: "The laws of England being propounded, according to the triple division thereof into Werchenlage, West Saxonlage, and Danelage, rejecting some and approving others, he added thereunto the foreign laws of Neustria, which seemed well adapted to the preservation of the peace of the realm." Wherefore it appears that the collection was of a twofold nature; comprehending, in the first place, the laws of Edward the Confessor, properly so called; and, secondly, such additions as the king thought proper to make: all which are to be found transcribed in Mr. Selden's "Notes on Eadmer," and also in Wilkin's "Collection of the Anglo-Saxon Laws."(2)

III.—Feudal Tenures.

Among the most important and remarkable of William's laws must be reckoned those which relate to the king's service and military tenures. One of these laws runs thus: "We decree that all freemen shall bind themselves by pledge and oath to serve their lord William faithfully every where, both within and without the realm of England, (formerly called the kingdom of Britain), and to defend him against his enemies and against strangers." From this law it may be gathered that two things were now required from the kings tenants, or the possessors of feuds, according to the Norman system, which had not been required by the Saxon kings. First, that they should take an oath of fealty or fidelity to the king; and, secondly, that their military service was to be indeterminate, and might be required of them either at home or abroad; whereas, among the Saxons, it was confined to the

(1) Ingulph. Hist.; Matt. Paris. Vit. Fred. Abb. Sanct. Alb. Hoved. 600.
(2) Hale. Hist. Com. Law, c. 5. See Crabb's Eng. Law, c. 5.

defence of the realm. By another law the king declared his grants to be *jure hæreditario* (by hereditary right), and thus converted feuds into hereditary fiefs, which among the Saxons were, as they had been originally every where, beneficiary and for life. From this change flowed many consequences, which had a material influence on landed property, such as wardships, marriage, reliefs, aids, and dower; but as the records of those times make little or no mention of these particulars, it is probable that they were not all as yet ingrafted into the system, but gradually gained a footing, as circumstances favoured.

The clergy were charged with military service, on account of the lands which they held in right of their sees; and were bound, the same as the barons, to do suit at the *curia regis* (king's court), which was in conformity with the practice of the Saxons. For then the bishops and the thanes, by virtue of their office, took an important part in the administration of justice; but, as the barons had acquired a permanent right in their lands, they became hereditary counsellors of the crown, having both an obligation and a right to attend the courts and councils of the king.(1)

William expressly assured his earls, barons, and other tenants *in capite* (tenants in chief, that is, holding directly under the king), that he would protect them in the enjoyment of their possessions, which they were to hold free, from all unjust exactions, and from tillage. This language was in conformity with that to be met with in the Saxon grants.(2)

IV.—Earls.

The other alterations in the laws introduced by the Conqueror were such as regarded the administration of justice. The government of the counties was entrusted to the earls, with a similar jurisdiction as in the time of the Saxons, except in the county of Chester, which was erected into a county palatine in favour of his nephew Hugh Lupus, to whom he granted the whole country, "to have and to hold to him and his heirs, freely by the tenure of the sword, as he, the king, held the kingdom of England by the crown." By reason of this grant, the earl palatine had all the high courts and officers of justice which the king had, with criminal jurisdiction.(3)

V.—Sheriffs.

The office of the sheriff probably acquired importance after the conquest. He was called in Latin *vice comes*, because he performed all the ministerial duties of the earl, and in his judicial character he took the place of the alderman, at least for a time. The latter officers were now confined to cities and boroughs, where they acted as judges.(4)

VI.—Courts.

Justice was administered in the early part of this reign in the same courts and nearly in the same manner as in the time of the Saxons, namely, in the scyrege-

(1) Spelm. Concil. ii. 4.
(2) Crabb's Eng. Law, c. 10.
(3) Co. 4, Inst. 211.
(4) Matt. Paris, 1196.

mote, now called the *comitatus*, or county court; in the hundred court, now called the *hundredum;* and in the lords' court, or *curia baronis*, as it was named, the title of baron having taken the place of that of thane. Sometimes the two former of these courts were summoned at the pleasure of the king, when any cause of importance demanded their attendance. Thus on the occasion of restoring to Lanfranc, archbishop of Canterbury, the possessions which his predecessor Stygand had forfeited, the king commanded the whole county to assemble without delay, and all the men of the county of Norman birth, and especially the English versed in the ancient laws and customs, to meet together.(1)

VII.—Separation of the Secular from the Ecclesiastical Judicature.

The most important change produced in the judicature of the kingdom was the separation of the ecclesiastical from the secular courts, which we learn from a charter enrolled, 2 Ric. II. No. 5, *Pro decano et capitulo ecclesiæ beatæ Mariæ de Lincoln*, (for the dean and chapter of the church of St. Mary of Lincoln).

VIII.—Trial by Battel.

To the modes of trial already in use was added by this king, also, that by the duel or battel, a mode of deciding judicial contests. Superstition, combined with their passion for arms, gave birth to the persuasion that successful valour was the best test of truth and innocence. For this, like other ordeals, was an appeal to the judgment of God for the discovery of the truth or falsehood of an accusation that was denied, or of a fact that was disputed, founded on the supposition that heaven would grant the victory to him who maintained the just cause. Thus did the judicial combat become the most honourable, and, at the same time, the most common, method of deciding disputes among the different nations of Europe. The first law we meet with on the subject occurs in the code of Gundebald, A. D. 501, king of Burgundy.(2)

IX.—Trial by Jury.

As to the trial by jury, we read in this reign, for the first time, of twelve men sworn to speak the truth on any particular matter. In a cause between Gundulf, bishop of Rochester, and Pichot, the sheriff, respecting certain lands retained by the latter which belonged to that see, when the suitors or freemen of the county court, awed by the influence of the sheriff, gave their verdict in his favour; the bishop of Baieux, who presided, suspecting their veracity, and the motive of their decision, commanded them to choose from among their number twelve, who should confirm it on oath.(3)

X.—Pleadings in French.

The introduction of the French language into the English courts of judicature has been also ascribed to the Conqueror, who is said to have required that it should

(1) Hicks' Diss. 31 ; Spelm. Gloss. in Voc. Comitatus.
(2) Vel. Pat. 1, 2, c. 118 ; Du Cange Closs. ad Voc. Duellum ; Spelm. Gloss. ad Voc. Campus ; Leg. Burgund. tit. 45, apud Lindenbrog. Cod. Antiq.
(3) Hicks' Thes. Diss. Epist. 38, et seq. ; Reeves' Hist. i. 84.

be generally taught in schools, to the exclusion of the English; with a view, as some have imagined, of imposing a badge of slavery on a conquered people; but others have supposed, with greater reason, that this was purely a measure of expediency: as the administration of laws rested principally with himself and his Norman followers, it was of importance that judicial proceedings should be conducted in a language that was familiar to them.(1)

XI.—Doomsday Book.

One of the most distinguished measures of this reign was the great survey of the demesne lands throughout the land, recorded in two books called Great Doomsday or Domesday Book, and Little Doomsday Book, which is said to have been formed upon the model of a similar work executed by Alfred, not now extant. In the seventeenth, or, according to some, in the fifteenth year of his reign, William appointed commissioners for the purpose of executing this work, which was completed, A. D. 1086. As the object of this work was to show what were demesnes of the crown and what were not, it has always been resorted to in the English courts to determine all questions respecting ancient demesne, and particularly what was due to the crown.(2)

SECTION II.—LAWS UNDER HENRY I., A. D. 1100 TO 1135.

I. Charter of Henry I. II. Abolition of Moneyage. III. Feudal Burthens lightened. IV. Descents. V. Curia Regis. VI. Curia Baronis. VII. Reunion of the Secular and Ecclesiastical Jurisdictions. VIII. Placita. IX. Trial by Jury.

I.—Charter of Henry I.

Henry I. showed a decided predilection for the Saxon laws. To conciliate his English subjects, he granted them a charter, in which he expressly confirmed the laws of Edward the Confessor, that had been approved by his father. He likewise made many provisions that were calculated to lessen the burthens of the people.(3)

II.—Abolition of Moneyage.

He abolished moneyage, an oppressive tax of Norman origin, paid every three years, to prevent the renewal of the coinage.

---

(1) Spelm. Cod. apud Wilk. p. 288.
(2) Chron. Sax. 190; Ingulph. Hist. 79; Hoved. 460; Matt. West. 229; Mad. Hist. Exchec. 1. 296.
(3) Crabb's Eng. Law. c. 10.

III.—Feudal Burthens lightened.

He relieved his barons and other tenants *in capite*, from some feudal burthens, which appear in the two former reigns to have been arbitrarily imposed. He required that none but a just and reasonable relief should be paid, and that nothing should be paid for a licence to marry their daughters, nor a licence refused, unless any baron wished to enter into an alliance with the king's enemies. He likewise recommended his barons to observe the same rules towards their tenants. The relief here spoken of as the *justa et legitima relevatio*, (just and lawful relief)—(relief is a sum of money paid by the heir for permission to enter upon his inheritance)—appears to be the same as the period of the Saxons, although in after times they are spoken of as distinct obligations. Notwithstanding the provisions here made respecting licences to marry, marriages became, in process of time, one of the most oppressive of the feudal burthens.(1)

This charter, which laid the foundation for the subsequent charters of Henry's successors, is intituled, "Institutiones Henrici Primi," the preamble to which runs as follows: "Anno Incarnationis Dominicæ MCI Henricus filius Wilhelmi regis, post obitum fratris sui Wilhelmi, Dei Gratia Rex Anglorum, omnibus fidelibus salutem, sciatis me Dei misericordia et communi concilio baronum totius regni Angliæ ejusdem regem coronatum esse"—(In the year of the incarnation of our Lord 1101, Henry the son of King William, after the death of his brother William, by the grace of God, king of the English, to all the faithful, health; know ye that I, by the mercy of God, and the common council of the barons of all the realm of England, am crowned king of the same). Note. King John (A. D. 1190) was the first English king who used the plural number *we* instead of *I*, in official instruments.(2)

Matthew Paris has twice recited this charter of King Henry, namely, under the years 1100 and 1213, and two copies of it are entered in the Red Book of the Exchequer, one of which is prefixed to King Henry's laws, published by Lambard and Wilkins.(3) It is likewise printed in Richard of Hagustald's History of King Stephen, and a copy of it, taken from the Textus Roffensis, has since been published by Hearne, and afterwards again by Mr. Justice Blackstone in his Law Tracts. This is acknowledged to be the most correct copy of any, being compiled by Ernulf, bishop of Rochester, who died A. D. 1114.

IV.—Descents.

The law of descents, as respects land, appears to have varied in this collection both from the Saxon and Norman codes, for whereas by the former they descended equally to all the sons, and by the latter to the eldest son only. Henry adopted a middle course, and directed the principal estate to descend to the eldest: "Primum patris fœdum primogenitus filius habeat. Emptiones vero vel deinceps acquisitiones suas det cui magis velit"—(The eldest son shall have the principal fee of the father; but the father may give his purchase to whom he will). As to the collateral descents, the law runs thus: "Si quis sine liberis decesserit, pater aut mater

(1) Co. 2 Inst. 8. (2) Crabb's Eng. Law, c. 6, p. 55.
(3) Lamb. Archaion; Wilk. LL. Anglo-Sax.

ejus in hæreditatem succedat, vel frater vel soror si pater et mater desint, si nec hos habeat, frater aut soror patris vel matris et deinceps in quintum geniculum, qui cum propinquiores in parentela sint, hæreditario jure succedant, et dum virilis sexus extiterit et hæreditas abinde sit, fœmina non hæreditetur"—(If any man dies without children, his father or mother shall succeed to his inheritance, or his brother or sister if there be no father or mother; if there be neither of these, then his father's or mother's brother or sister; the nearest of kin shall succeed by right of inheritance, and while there is any male, if the inheritance is from the male line, a woman shall not inherit). This was in conformity with the law of the Saxons on the continent, from which it is taken verbatim.(1)

V.—Curia Regis.

In the administration of justice, Henry followed the Saxon schemes of jurisprudence, with a slight intermixture of Norman principles and forms. The supreme court of the kingdom was now regularly distinguished by the name of the *Curia Regis*, or the King's Court; an appellation that appears to have been introduced at the conquest; but the jurisdiction of this court was defined much in the same manner as it is by the law of Canute and Edward the Confessor. It took cognizance of such matters as immediately concerned the *pax regis*, or as it was afterwards more emphatically expressed, the king's crown and dignity, such as the violation of the king's protection, contempt of the king's writs, killing or injuring any of the king's household, treason, cheating, slander, outlaws, false coiners, treasure trove, wreck of the sea, rape, offences against the forest laws, reliefs of the barons, fighting in the king's palace, breaches of the peace in a man's house, harboring an outlaw, desertion, unjust judgments, denial of justice, evading the king's law, offences on the king's highway, and other matters of a similar nature.(2).

VI.—Curia Baronis.

The jurisdiction of the king's court is thus devised to distinguish it from the jurisdiction of the sheriff, or the franchises enjoyed by the lords in their courts, which were now distinguished by the Norman appellation of *Curia Baronis*, or by the Saxon appellation of *halmote*.(3)

VII.—Reunion of the Secular and Ecclesiastical Jurisdictions.

Henry wished to recur to the practice of determining ecclesiastical as well as civil matters in the county court, as was done before the conquest. This we learn from one of his laws, which runs as follows: "Sicut antiqua fuerit institutione formatum, generalia Comitatuum Placita certis locis et vicibus, et definito tempore per singulas Angliæ provincias convenire, nec ullis ultra fatigationibus agitari, nisi propria regis necessitas, vel commune regni commodum sæpius adjiciant. Intersint autem episcopi, comites, vicedomini, vicarii, centenarii, aldermanni, præfecti,

(1) LL. Hen. 1, c. 70; Lindenbrog. Cod. Antiq. 476.
(2) LL. Can. c. 12, 13, 14; LL. Edw. Conf. c. 35; LL. Hen. I. c. 10.
(3) LL. H. I. c. 9, 10; ibid, c. 20.

præpositi, barones, vavassores, tungrevii et cæteri terrarum domini diligenter intendentes, ne malorum impunitas aut graviorum privatas, vel judicum subversio, solita miseros laceratione conficiant. Agantur itaque primo debita veræ Christianitatis jura: secundo Regis Placita, postremo causæ singulorum dignis satisfactionibus expleantur"—(As it was established by ancient regulations, that the general county courts should be held at fixed times and places, throught the severel shires in England, nor should they be burthened with other sessions, unless the interests of the crown or kingdom required that they should more frequently assemble. They shall be attended by the bishops, earls, sheriffs, vicars, hundredors, aldermen, mayors, reeves, barons, vavasours, town-bailiffs, and other principal officers, who are diligently to endeavour that the poor be not ruined by the impunity of crime, the oppressions of the powerful, or the corruption of judicial officers. First let them despatch ecclesiastical causes, then pleas of the crown, and lastly let justice be awarded to the plaints of private individuals).

This projected reunion, which, if it had been carried into effect, would have restored the county court to its ancient splendor, was frustrated by archbishop Anselm; who, wishing to keep the clergy as distinct from, and as independent of, the laity as possible, prohibited bishops from determining secular causes.(1)

VIII.—Placita.

The causes or suits in a court were now called *placita*. *Placitum*, in French *plait*, was employed by the feudists to denote any assembly or court of the freeholders or vassals, which was sometimes held in the open field, whence the term has been derived from the German *platz*, an open space, or the Latin *pletea*, a highway; but it is with much more reason to be deduced from the *placitum* of the Roman law, which signified a sentence or judgment. *Placitum* was also used at this time in the sense of a day, as *placitum nominatum*, a day appointed for the defendant to plead or answer; *placitum fractum*, a day lost to the defendant; also in the sense of a mulct or fine imposed in courts.(2)

IX.—Trial by Jury.

The trial by jury in criminal suits was recognised, as far at least as regards some of its most important principles. By one law, every one was to be tried by his peers, who were of the same neighbourhood as himself. "Unusquisque per pares suos judicandus est, et ejusdem provinciæ, peregrina vero judicia modis omnibus submovemus"—(Every man shall be tried by his peers of the vicinage; and we wholly reject all foreign forms of trial). By another law the judges, for so the jury were then called, were to be chosen by the party impleaded, after the manner of the Danish *nembdas;* by which, probably, is to be understood that the defendant had the liberty of taking exceptions to, or challenging the jury, as it was afterwards called.(3)

---

(1) Spelm. Cod. Vet. apud Wilk.; LL. Anglo-Sax. 301.
(2) LL. H. I. c. 7. 33; Du Cange, ad Voc. Wynne's Eunom. Dial. 11; LL. H. I. c. 20, 46, 54; ibid, c. 12, 13.
(3) LL. H. I. c. 3, 31; ibid, c. 5; Ante, p. 35.

SECTION III.—LAWS UNDER STEPHEN, A. D. 1235 TO 1154.

I. Charters of Stephen. II. Introduction of the Civil and Canon Law. III. Comparison between the Civil Law, Canon Law, and Common Law.

I.—Charters of Stephen.

As an additional means of conciliating the favour of his subjects, Stephen granted them two charters; but he is generally charged with having been little scrupulous in the observance of either. By the first he confirmed the charter of his predecessor Henry, particularly as regards the Saxon laws; and by the second he renewed and enlarged the privileges bestowed on the clergy, both by the conqueror and his son Henry. Of the first there is a copy preserved in an ancient MS. in the College library. Richard of Hagustald, the historian of this prince, has given the latter of these two charters, the original of which is said to have been in the hands of Mr. Hearne, although it now appears to be lost.(1)

II.—Introduction of the Civil and Canon Law.

The principal circumstances worthy of notice in this reign was the regular introduction of the civil and canon law, which is commonly supposed to have taken place at this period.(2)

III.—Comparison between the Civil Law, Canon Law, and Common Law.

Between these three codes, there are several points of difference entitled to notice in treating of English law. The civil law favored the prerogatives of the crown; the canon law asserted the claims of the pope as well as the rights of princes. The common law favoured the pretensions of the people in certain particulars. It was a favourite maxim in the civil law, "Quod principi placet, legis habet valorem, (whatsoever pleases the king hath the force of law), not in the absurd sense attached to it by some, that the arbitrary capricious will of the prince was law, but the sole legislative power was vested in the prince, uncontrolled by any other power. By the civil law, natural children, whose parents afterwards intermarried, became legitimate, and might inherit; but by common law they always remained bastards, and were incapable of being heirs.(3)

---

(1) Blackstone's Law Tracts, 287.
(2) Arthur Duck; Terrasson, Histoire de la Jurisprudence Romaine.
(3) Domat's Civil Law; Taylor's Elm. of Civ. Law, passim.

The civil law was, in several particulars, less favourable to women than the law of England, as that they could not hold public offices, they could not be surety for another, could not be witnesses to a will, nor guardians, except to their own children, nor arbitrators, &c. On the other hand, by the civil law, a woman might give, buy, and sell, without the consent of her husband; so likewise, neither the husband nor the wife were affected by the debts, contracts, or injuries, of each other. The common law differs in all these particulars, considering man and wife to be one flesh.

The civil law required the consent of father or mother to render a marriage valid; neither the common law nor the canon law nullify marriages for want of consent. The common law and canon law allow of no dissolution of marriage, but by reason of adultery; by the civil law it is otherwise.(1)

By the civil law the father had a property in whatever his son acquired, and such was the law of Henry I.; but it was afterwards otherwise by the law of England.(2) By the civil law the minor had a tutor or guardian for his person, and a curator for his estate, and the guardianship was committed to the next in blood, or to him who was to take by inheritance, in case the orphan died. By the law of England, on the contrary, the guardianship was given to the next of kin to whom the land could not descend, for it was a maxim of the law, that to commit the care of the minor to him who is next heir at law, is "quasi agnum lupo committere ad devorandum"—(as it were, to commit the lamb to the wolf, to be devoured).(3)

By the civil law, guardians were frequently appointed by the magistrates, and probably from this arose the practice in the ecclesiastical courts of occasionally appointing guardians for the personal estate and person, when there were no other guardians either by tenure or otherwise.

The canon law differs from the civil law, in reckoning degrees in the collateral line; for by the former, in whatever degree the persons are distant from the common stock, in the same degree they are distant from each other: thus, my brother and I are but one degree distant from each other, because we are distant but one degree from our father, the common stock whence we sprung; but by the civil law we are said to be two degrees, because the rule of civilians is, that there are as many degrees as there are persons begotten, not reckoning the common stock from which all descend. The common law computes degrees after the manner of the canon law.

As to the succession to the estates of intestates, it appears that the civil law had no regard to primogeniture, nor showed any preference to males before females, in which two points it differed from the common law at this period, and still more so thereafter.

The trial by jury is unknown to the civil law, the office of deciding from the evidence belonging exclusively to the judge. This is a grand mark of distinction between the common law courts and those in which the proceedings are according to the civil law, as the Ecclesiastical Courts, the Chancery, and others. It must

(1) Crabb's Eng. Law, c. vii. p. 64.
(2) LL. Hen. I. c. 70; Bract. 1, 2, c. 5.
(3) Fort. de Laud. Ler. Ang. c. 44.

not, however, be forgotten, that the canons or constitutions of the English church favoured this trial, as appears from the law of Henry I., before cited, where, in criminal cases, this course of proceeding was recommended by the clergy.

By the civil law, counsel were not allowed to notorious criminals, nor by the law of England at that period, and long after; but this has since undergone a change in some respects.

The depositions of witnesses were taken in writing, according to the forms of the civil law, but the proceedings of the common courts were, probably, at all times conducted *vivâ voce* (orally). The charge against a person in the civil law was, and is, called the libel; the summons, a citation; the pleading *litis contestatio*, &c. What has here been said on the subject of the civil and canon law, will suffice to show in what manner, and to what extent, they obtained admittance into England at this period.(1)

SECTION II.—LAWS UNDER HENRY II., A. D. 1154 TO 1189.

I. Introduction. II. Charter of Henry I. Confirmed. III. Foreign Codes of Feudal Law. IV. Lex Salica. V. Lex Longobardorum. VI. Capitularia. VII. Grand Coutumier. VIII. Assises de Jerusalem. IX. Feudal Law in England and Scotland. X. Glanville. XI. Regiam Majestatem. XII. Law of Landed Property since the Conquest. XIII. Knight's Fees. XIV. Knight's Service. XV. Socage Tenure. XVI. Incidents to Knight's Service. XVII. Homage. XVIII. Fealty. XIX. Warranty. XX. Reliefs. XXI. Heriots. XXII. Escheat. XXIII. Sergeanties. XXIV. Frankalmoigne. XXV. Dower. XXVI. Maritagium. XXVII. Curtesy. XXVIII. Succession and Descent. XXIX. Mode of Conveying Lands. XXX. Livery and Seisin. XXXI. Charters. XXXII. Chirographs. XXXIII. Indentures. XXXIV. Feoffment. XXXV. Release. XXXVI. Demise. XXXVII. Testaments.

I.—Introduction.

HENRY II., who is described by historians as a prince of great wisdom and virtue, contributed more than any before, or perhaps after him, towards the improvement and methodizing of the laws of England.(2)

II.—Charter of Henry I. Confirmed.

As the establishment of the Saxon laws was at that peried a matter of great moment, his first step on his accession to the throne was to confirm the charter of

(1) Crabb's Eng. Law, c. vii. p. 66. (2) Ibid, c. viii. p. 67.

Henry I., and to enjoin that "Leges Henrici avi sui inviolabiliter observari"—(that the laws of Henry his grandfather should be inviolably observed). At the same time as the rights and interests of men were now much more diversified and complicated than in the time of the Saxons, new laws sprung up or were formed by express enactment, to meet the circumstances as they arose.(1)

III.—Foreign Codes of Feudal Law.

The feudal system was now in full force in England as well as in other countries of Europe, and different codes of laws founded on these principles were now extant. Among the foreign codes, the principal are the Lex Salica, Lex Longobardorum, the Capitularia, the Assises of Jerusalem, the Liber Feudorum, and the Grand Coutumier.

IV.—Lex Salica.

The *Lex Salica*, or the Salique Law, is so called from the Salians, a people of Germany, who, passing the Rhine under their king Pharamond, settled in Gaul, and first formed a code of laws.(2)

V.—Lex Longobardorum.

The *Lex Longobardorum*, or the Law of the Lombards, is the next code in point of antiquity and importance, which contains more evident traces of the feudal polity than most others. This survived the destruction of that kingdom by Charlemagne, and it is said to be still in force in some parts of Italy.

VI.—Capitularia.

The *Capitularia*, or Capitularies, so called from the small chapters or heads into which they were divided, was a collection of the Laws promulgated by Childebert, Clotaire, Carloman, Pepin, Charlemagne, and other kings. The best collection of these laws is said to be that of Angesise, abbot of Fontenelles, published in 817. Of the subsequent editions, that by Baluze, in 1677, is reckoned the most complete.

VII.—Grand Coutumier.

The *Grand Coutumier*, or the Coutumier of France, is a collection of the customs, usages, and forms of practice, which had been in use from time immemorial in the kingdom of France. It was first projected by Charles VII. in 1453, but was not completed until 1609.

VIII.—Assises de Jerusalem.

The Assises de Jerusalem is among the number of the most ancient collections of feudal jurisprudence. It was made at a general assembly of lords after the conquest of Jerusalem, and was formed principally of the laws and customs of France.

---

(1) Crabb's Eng. Law, c. viii. p. 68.
(2) Otto Frising. 1, 4, c. 32; Du Cange, Gloss. in Voc. Lex.

IX.—Feudal Law in England and Scotland.

On the laws of England and Scotland, two treaties are extant. One was written by Ranulph de Glanville or Glanvil, chief justiciary of England to Henry II.

X.—Glanville.

Glanville was much in the confidence of his sovereign, and served him in the different capacities of soldier, statesman, and judge: "Cujus sapientiâ,"(1) observes Hoveden, "conditæ sunt leges subscriptæ, quas Anglicanas vocamus"—(by whose learning were compiled the laws which is called the English code). His work was entitled, *Tractatus de Legibus, et Consuetudinibus Angliæ*—(a treatise concerning the laws and customs of England)—and was probably composed at the express command of the king; for, in the Cottonian collection there is also a MS. of Glanville, which bears the title of "Laws of Henry the Second." It was first printed at the instance of Sir Wm. Stamford. The distinguished author of this book, after having enjoyed the confidence of his royal master until his death, assumed the Order of the Cross, and perished, valiantly fighting at the siege of Acre in 1190.(2)

XI.—Regiam Majestatem.

The second treatise referred to, is on the laws of Scotland, and is entitled *Regiam Majestatem*, because it commences with the words *regiam majestatem*, in the same manner as Glanville commences his work with the words *regiam potestatem*. The many points of resemblance between this work and that of Glanville put it beyond all doubt that the one was copied from the other, but to which the merit of originality is to be ascribed has been made a matter of dispute.(3)

XII.—Law of Landed Proporty since the Conquest.

As to the law of landed property, it had probably undergone greater changes since theconquest than it did at that period, when it appears to have changed more in language than in principles.

XIII.—Knight's Fees.

From a record in the second year of King John, it should seem that a single knight's fee might constitute a barony; but, if the treatise *de Modo tenendi Parliamentum*—(of the mode of holding parliament)—is to be credited, an earldom consisted of twenty kights' fees, and a barony of thirteen. A knight's fee, called in Latin *feudum militare*, was that estate in land which subjected the person holding it to military service.(4)

XIV.—Knight's Service.

Knight's service was at this time distinguished in Latin by the name of *servitium militare;* in French *service de chevalerie.* In the charter of Henry I., those who

(1) Hoved. 600; Mad. Hist. Exchcq. 123; Bridgeman's Leg. Bibl. Co. 4; Inst. 345.
(2) Mad. Hist. Exchcq. 87.
(3) Crabb's Eng. Law, c. viii. p. 71.
(4) Seld. Tit. Hon. pt. 2, c. 5, sect. 26.

held by knight's service were called "milites qui per loricas terras suas defendunt" —(soldiers who defended the country by their armour)—answering to the *fief d'haubert* of the Normans.(1)

XV.—Socage Tenure.

Socage tenure, the next principal tenure, was distinguished by that name in this day. Socage, in the Latin of the middle ages *socagium*, is mostly derived from the Saxon *soc*, a plough, denoting properly plough-service, answering to the *fief roturier* of the Normans. It may, with equal propriety, be derived from *socne*, a franchise, or liberty; for socage tenure was characterized for its freedom, being a more independent, though less honourable tenure, than that of knight's service. The sokemen were the husbandmen, or freemen, among the barons, and socage tenure was now called a frank or free tenure.(2)

XVI.—Incidents to Knight's Services.

The incidents or obligations by which these two tenures were distinguished from each other were distinctly known and marked out in this day. The incidents to knight's service were homage, fealty, warranty, wardship, marriage, reliefs, heriots, aids, escheats, and forfeiture.

XVII.—Homage.

Homage, in Latin *homagium*, was a service of submission paid by the tenant to the lord; so called from *homo*, a man, because in performing it the tenant said, "I become your man, that is, your servant." When the tenant did homage to his lord, he was to be ungirt, and his head uncovered. The lord was to sit, and the tenant to kneel, holding his hands together between his lord's hands, and say, "I become your man from this day forward for life, for member and worldly honour, and unto you shall be true and faithful, and bear you forth for the lands that I hold of you, saving the faith that I owe to our sovereign lord the king."(3)

XVIII.—Fealty.

Fealty contracted from fidelity, was the oath taken by the tenant at his admittance, who swore to be true to the lord of whom he held the lands. It differed from homage in several particulars. It was incident to all kinds of tenures, and was used at the first creation of feuds, when they were held at the lords pleasure or for life; but homage was properly incident to knight's service, because it concerned actual service in war, and was probably not introduced until feuds became hereditary. Homage was performed kneeling, but the oath of fealty was taken standing; besides, in doing simple homage as to a private person, the tenant was not sworn. Homage is supposed not to have existed in the time of the Saxons, but was introduced at the conquest.(4)

---

(1) Crabb's Eng. Law, c. viii. p. 74.
(2) Soun. on Gavelk. 138.
(3) Glan. 1, 9. c. 1; Reg. Maj. 1, 2; Grand Court, c. 126.
(4) LL. Hen. I. c. 5; Spelm. Feuds and Ten. c. 3.

XIX.—Warranty.

Homage and fealty were obligations on the part of the tenant; but warranty, which was an obligation on the part of the lord, arose from the relations contracted between the parties, for Glanville lays it down as a rule, "Quantum homo debet ex homagio, tantum illi debet dominus præter solam reverentiam"(1)—(whatever the tenant oweth by reason of homage, the same the lord oweth to the tenant excepting submission). This mutuality of obligation was recognized by the feudal laws of other countries. If land was given for the homage and service of the tenant, and a third person instituted a suit for that land, so that the tenant was evicted out of the feud, the lord was bound to warrant the land to the tenant, or to give him a *competens excambium*, an equivalent in value.(2) Warranty, like the words guarantee and guard, comes from the old German *wahren*, to look after, in the sense of protecting and defending. Sir Henry Spelman derives it from *war*, signifying arms or defence.(3)

XX.—Reliefs.

Relief, called in Doomsday Book *relevium* or *relevatio* is a French word, derived from the Latin *relevare*, to relieve or take up that which was fallen, because it was a sum of money paid by the tenant or vassal, when he was of age, whereby he relieved or raised up his lands, after they had fallen into his lord's hands by reason of wardship.(4)

XXI.—Heriots.

The heriot, which was an obligation that existed among the Saxons, has sometimes been confounded with the relief, but it has been shown by Bracton, a writer in a susequent reign, to be a distinct thing, the heriot being a voluntary present, made by the tenant at his death to his lord, of his best beast, or his second best, according to the custom of the place. It had not, like the relief, any respect to the inheritance.(5)

XXII.—Escheats.

Escheats, from the French *eschoir*, to fall incidentally, was the casual descent of lands and tenements to the lord *propter defectum sanguinis*—(for lack of inheritable blood)—that is, when the tenant died without heirs; which was a part of the feudal system in every country.(6)

XXIII.—Sergeanties.

As lands were, in course of time, granted for other besides military services, tenures were varied on that ground. Of this description were the two kinds of

---

(1) Glanv. 1. 9, c. 4.
(2) Assis. de Jer. c. 99; Cout de Beauv. c. 58.
(3) Cowel. Interp. Spelm. Gloss. ad Voc.
(4) Bract. fol. 84; Co. Inst. 76, a.
(5) Ante, p. 10; Bract. fol. 86.
(6) Glanv. 1, 7, c. 17; Lib. Feud. 1, 2, tit. 86.

sergeanties, which are only alluded to by Glanville; also the tenure by escuage or scutage, which was a commutation of a money payment for personal service, that is said to have commenced in the fourth year of this king's reign, when he published an ordinance, that such of his tenants as would prefer to pay him a certain sum should be exempted from attending him either in person, or by deputy, in the expedition he then contemplated to Toulouse.(1)

XXIV.—Frankalmoigne.

There was another tenure of a spiritual nature, to which Glanville alludes, namely, the tenure by frankalmoigne, or free alms, as it was afterwards called, whereby a religious corporation, sole or aggregate, held lands to them and their successors for ever, *in liberam eleemosynam*, or *freealms*, for which no other service was required than prayers, and other religious exercises, for the good of the donor's soul.(2)

XXV.—Dower.

Connected with the subject of tenures were some other incidents, in respect to landed property, and property in general, which were come into notice. These were dower, maritagium, descents, alienation, and testaments.

Dower, called by the foreign feudists *doarium*, is derived *ex donatione*, and was equivalent to *donarium*. The term *dos* signified among the Romans, who knew nothing of endowing their wives, the marriage portion which the wife brought to her husband, whence Tacitus remarks it as a singularity among the Germans. "Dotem non uxor marito sed uxori maritus affert"—(the wife does not bring a dowry to the husband, but the husband bestows it on the wife). Although dower was unknown to the Romans, yet we have the authority of the Scripture for the use of it in the earliest ages of the world. The practice prevailed among the Grecians, until, by a refinement of manners, they began to look upon it as disgraceful. Whence Aristotle reckons it as one proof that the manners of the ancient Greeks were barbarous, because they bought their wives.(3)

On the establishment of the feudal system, dowries became universal, but they varied in quantity in different countries. The Goths did not allow dower to exceed a tenth. The Saxons, on the continent, allowed the wife the half of what the husband acquired, besides the dower which was assigned to her at the marriage. The assises of Jerusalem assigned a half, but the Lombards only a fourth. A law of Edmund gave a half, provided the widow did not marry again. The laws of Henry I. allowed a woman a third for her dower; which corresponded with what was allowed by the Sicilians and Neapolitans, and after them by the Normans and Scotch.(4)

---

(1) Chron Nor. p. 995; Spelm. Cod. Vet. apud Wilk. LL. Anglo-Sax. p. 321.
(2) Glanv. 1, 7, c. 1; Grand Cout. c. 6.
(3) Tac. Germ. c. 18; Gen. c. 34, v. 2; Polit. 1, 2, c. 8.
(4) Lindenb. Cod. Antiq. LL. Wiseg. 1, 3, tit. 1; LL. Sax. tit. 8; Assis. de Jerus. c. 187;—LL. Longob. 1, 2, tit. 4; LL. Edm. c. 2, apud Wilk.; LL. Hen. I. c. 70; Grand Cout. de Norm. c. 102.

A woman might be barred of her dower by being separated from her husband, *ob aliquam sui corporis turpitudinem*—(on account of carnal transgressions)—or on account of her relationship and consanguinity; and yet in both these cases the children were considered as legitimate, and inheritable to their father. Divorce generally was a bar to dower in the Norman code. By a law of Canute, the infidelity of the wife was punished, not only with the forfeiture of every thing she possessed to her husband, but also with the loss of her nose and ears.(1)

XXVI.—Maritagium.

Maritagium, which answered to the *dos* of the Romans, signified the portion which a man gave with his daughter in marriage. This was of two kinds *maritagium liberum*, (free marriage), and *maritagium servitio obnoxium*, (marriage liable to services).

Maritagium liberum was, when a freeman gave part of his land with a woman in marriage, quit of all services to the chief lord. Land so given enjoyed this immunity down as low as the third heir; and, during this interval, the heirs were not bound to any homage for it, but after the third heir the land was again subject to the accustomed services. When the land was given in *maritagium servitio obnoxium*, the husband of the woman and his heirs, down to the third, were to perform all services except homage; but the third heir was to do homage for the first time, and all his heirs after him. In the mean time fealty, instead of homage, was to be performed by the women and their heirs.(2)

XXVII.—Courtesy.

When a man received lands with his wife in *maritagium*, or as a marriage portion, and had an heir by her, male or female, that was heard to cry within four walls, the maritagium remained to the husband during his life, whether the heir lived or not, but after his death it went to the original donor: this was called *Lex Angliæ*, and afterwards in English the courtesy of England, because the law was principally confined to England, but it was not altogether unknown to the Romans or the German tribes, and was probably introduced into England by the Saxons.(3)

XXVIII.—Succession and Descent.

The doctrine of primogeniture was one essential part of the feudal system, which was fully established in England at this period. If lands were held by knight's service or military tenure, then, according to the law of the realm, the eldest son succeeded to the father *in totum*, (to the whole estate), and none of his brothers had any claim whatever; but if the lands were held in socage tenure, and had been anciently partible, then the inheritance was divided among all the sons in equal parts, reserving to the eldest son the *primum fœdum*, (principal fee), as it

(1) Reg. Maj. 1, 2, c. 15; Grand Cout. de Norm. c. 102; Glanv. 1, 6, c. 17; LL. Can. c. 50, apud Wilk. Anglo-Sax. 142.
(2) Glanv. 1, 7, c. 18; Reg. Maj. 1, 2, c. 57.
(3) Glanv. ubi supra; Reg. Maj. 1, 2, c. 58; Craig. de Jur. Feud. 1, 2, c. 19, s. 4; Lindenbrog. Cod. Antiq. 92.

was termed in the laws of Henry I., provided he made an adequate satisfaction to the other brothers on that account. But if the land was not *antiquitus divisa*, (anciently partible), then it was the custom in some places for the eldest son to take the whole inheritance, and, in some, the younger. To succession of the lands equally to all the sons was, as before observed, a relic of the Saxon law, which was still retained in Kent, and some other parts as incident to the tenure in gavelkynd, whence the name is derived by some, as much as to say, *gif eal cyn*, "given to all the children."(1)

XXIX. Mode of Conveying Lands.

The mode of conveying lands or tenements, had undergone some change since the Conquest, at least as far as regarded the solemnities which accompanied this proceeding.

XXX. Livery and Seisin.

The transferring of possession of lands or tenements from the donor to the donee, which was afterwards distinguished by the Norman appellation of *livery of seisin*, in Latin *traditio*, was to be done either in person or by attorney, and might be performed in various ways, as by delivering of the rings of the door, of a turf, or of any other symbol, answering to the Saxon mode of transfer, *per baculum et cultellum*—(By staff and *knife*)—before mentioned. Livery was also done by publicly reading the letters of attorney in the presence of the neighbours, who were called together for that purpose. This solemnity, as we learn from a writer in a subsequent reign, was of such effect in passing a freehold, that a gift was imperfect without it, being considered in law a *nuda promissio*, Naked promise.(2)

XXXI. Charters.

Deeds were now come into general use, and were known, from the most part, by the name of *chartæ*, charters, from *chartae*, the paper or parchment on which they were written. They were either royal charters, containing grants from the king to his subjects, or they were private charters, containing gifts or grants from one subject to another.

Charters were executed with various circumstances of Solemnity, as the seal, date, attestation, and direction.(3) Seals were very little, if at all, in use amon the Saxons, who were mostly in the practice of affixing the sign of the cross. Edward the Confessor partially introduced the Norman practice of affixing to charters seals of wax which, at the Conquest, become general. This was mostly done by means of a label of parchment or a silk string, fastened at the bottom of the instrument.(4) Charters were not always dated, although they were more generally so after the Conquest than before; but this was the less necessary, as they

(1) Spelm. Reliq. c. 27; Somner. Tract. do Gav. 42; Robins on Gav. 24, 25; Lamb. Peramb. p. 545.
(2) Glenv. l. 7. c. 1.
(3) Reeves' Hist. i. 88.
(4) Ingulph. Hist. 901; Mad. Form. Dis. 9; Hick's Diss. Epist. 160.

were mostly executed in the presence of several witnesses, whose names were inserted under the clause of *hiis testibus.* (In the presence of these witnesses.) Sometimes charters were executed in open court, after the Saxon manner, and in the presence of a numerous assembly, wherefore we frequently find a long list of witnesses, concluded with the addition *cum multis aliis.* (And many others.) It was not unusual for the king to be a witness to the charters of private men; and in after times, as in the reigns of Richard and John, the king witnessed his own charters, in the words *teste meipso.* (1) (Witness myself.)

XXXII. Chirographs.

Private charters were frequently called *chirographa,* chirographs, from the Greek *cheir* the hand, and *grapho* to write, signifying what was written with a person's own hand. In this kind of charters, it was usually to write the contents twice on the same parchment, having the word *chirographum,* or some other word, written in large letters between the two copies, and being afterwards cut in a straight line through the midst of the letters, one would exhibit one half of the capitals, and the other the other half.(2)

XXXIII. Indentures.

The practice of cutting in straight lines prevailed as early as the times of the Saxons, and continued until the reign of Henry III., after which it became usual to cut a waving or undulating line, and lastly to cut indentwise in small notches, *instar dentium.*—(Like teeth.) whence such deeds acquired the name of indenture, which has been retained ever since, although the indented line has been laid aside, and the undulating line only retained.

XXXIV. Feoffment.

A gift, grant, or feoffment, was, at this period, comprehended under the general name of *donatio.* The Term feoffment, in the Latin of the middle ages *feoffamentum,* which signified properly the grant of a feud or fee, appears not to have come into use before the reign of Richard I.; about which time we find the charter containing the deed, distinguished by the name of *charta feoffamenti.* (Deed of feoffment.) The words of donation were generally *dedi et concessi,* (Have given and granted,) to which afterwards was added the specific term *feoffavi.* The words of limitation to convey a fee were, at that time, not reduced to any settled form, being varied at the pleasure of the donor, sometimes simply to the *feoffee et suis,* or *suis post ipsum jure hæreditario perpetue possidendum;* (To have and to hold to the feoffee and his heirs, or to his heirs after him forever by right of inheritance.) or, in a more particular manner, limited to certain heirs, as *Ricardo et uxori suæ et hæredibus suis qui de eâdem veniunt.*(3) (To Richard and his wife and his heirs born of her.

In such deeds a clause of warranty was invariably inserted, to the effect that should the feoffee be evicted of the lands given, the feoffor should recompense him

(1) Hick's Diss. Epis. 26; Mad. Form. Diss. 14.
(2) Mad. Form. Diss. 2
(3) A. D. 1186; Reeves' His. i. 91.

with others of equal value. This Clause of warranty was often expressed in very strong terms, as *contra homines, or omnes gentes;* (Against all men or all people,) or, *contra omnes homines et fœminas,* (Against all men and women,) &c. To the warranty was often added an oath of the party, and also the clause that if he could not warrant, then he or his heirs should give other lands; and, in some cases, that more than the value of the land should be given by way of *excambium,* (Exchange,) if the donor or his heirs could not warrant.(1)

XXXV. Release.

A release was properly that which released a person from the claim of another, which, in those unsettled times, was as necessary for protection against hostile claimants, as a confirmation was against disseisors. The words of release were *quietum clamavi, remisi, relaxavi,* (Have quitclaimed, remised, released,) and the like.(2)

XXXVI. Demise.

Estates were likewise made for life or for terms of years, which was afterwards called a demise. This was done by a convention or covenant, of which more will be said hereafter.

XXXVII. Testaments.

As to the disposal of a man's effects at his death, this was not governed by the same law as that which regulated the alienation of lands. When any one wished to make his will, if he was not involved in debt, all his moveables were divided into three equal parts, of which one belonged to his heir, another to his wife, and a third was reserved to himself. If he died leaving no wife, or leaving no issue, in either case the half was reserved to himself, and the other half to the wife or to the issue. Glanville, however, alludes to the customs of certain places, which regulated the disposition of a man's effects; one of which was, that he was to remember his lord by the best and chief thing he possessed, in the shape of a heriot; then the church, in the shape of a mortuary; and afterwards other persons, as he thought best; but he concludes with the remark, that *ultima voluntas libera esset;* (The last will should be free.) (3)

A woman who was *suijuris,* (Independent) might make a will, but if she was married, she had not the liberty, as it would have been making a will of her husband's goods. It seems, however, that it was not unusual for husbandsto give a sort of property to their wives, even during the coverture in the *rationabilem divisam,* (Reasonable portion,) or the third part of their effects, to which, at their death, they would have been entitled.(4)

---

(1) Mad. Dis. 9.
(2) Reeves' Hist. i. 62.
(3) Glanv. 1. 7. c. 5.
(4) Reg. Maj. 1. 2. c. 7; Hale's Hist. Com. Law, c. 11. 2; Comm. 492; Glanv. ubisupra.

Trial by Jury.

The trial by jury, in the modern sense of the word, was now partially applied to criminal matters, for it was directed by the Constitution of Clarendon, that, should anybody appear to accuse an offender before the archdeacon, then the sheriff, at the request of the bishop, "faciet jurare duodecim legales homines de vicineto seu de villa, quod inde veritatem secundum conscientiam suam manifestabunt"—(he shall cause twelve lawful men of the vill or of the vicinage to swear that they will declare the truth thereof, according to their conscience). This mode of trial was said to be "per juratam patriæ seu vicineti, per inquisitionem vel per juramentum legalium hominum"—(by a jury of the country or vicinage, by the inquisition or oath of lawful men).(1)

SECTION V.—LAWS UNDER RICHARD I, A. D. 1189 TO 1199.

I. Introduction. II. Laws of Oleron. III. Weights and Measures.

I.—Introduction.

Although Richard I. is better known as a warrior than as a legislator, yet we find that he was not altogether unmindful of the subject of legislation.

II.—Laws of Oleron.

To him England is indebted for its code of maritime law known by the name of the Laws of Oleron, which were so called because they were instituted by him while he lay at the Island of Oleron, on his return from the Holy Land.(2) These laws, 47 in number, were framed for the purpose of keeping peace and deciding controversies; and, although many of them are, from a change of manners, become obsolete, yet they met with a general reception throughout Europe for a length of time, and served as the basis on which the more extended system of maritime law was afterwards framed.(3)

III.—Weights and Measures.

This king likewise established a common rule for weights and measures, and regulated the coinage, that it should be of the same weight and fineness.(4) In the administration of justice, he followed the course laid down by his father, by

(1) Const. Clar. c. 6; Ante, p. 59; Glanv. l. 14. c. 1.
(2) Matth. Par. Ann. 1196; Seld. Mare claus. l. 2. c. 24.
(3) Sullivan's Lect. 331; Henry's His. vol. iii. p. 535.
(4) Brompt. 1258; Trivet. Ann. 127; Hoved. 423.

sending his justices itinerant to every county in England; but he seems to have improved upon this plan of proceeding, by giving to those justices more minute means of inquiry, under the name of *capitula coronæ*, &c.

SECTION VI.—LAWS UNDER JOHN, A. D. 1199 TO 1216.

I. Introduction. II. Magna Charta. III. Arbitrary Consecration of Tithes.

I.—Introduction.

The reign of King John has been considered memorable on account of the great charter of liberties, well known by the name of Magna Charta, so called, as Lord Coke supposes, not so much from the quantity of the matter as from its importance. At the same time, it is admitted on all hands, that it contains nothing but what was confirmatory of the common law, and the ancient usages of the land, and is, properly speaking, only an enlargement of the charter of Henry I. and his successors. It was not, therefore, so much the grant itself, as the circumstances under which it was made, which, at that time, and ever since, has given such an interest to this transaction.(1)

In consequence of the discontent occasioned by the excesses and follies of this king, the barons formed a league at the close of the year A. D. 1214, at Bury St. Edmund's, in Suffolk, whence they proceeded, soon after, in hostile array, to the king at London, demanding a confirmation of their liberties. The king was, at first, unwilling to yield to demands that were accompanied with such an air of menace, but finding the barons resolute in their purpose, and feeling himself straitened by his own deserted and necessitous condition, he at length agreed that a conference should be held at Runningmede, or Runemede, a meadow between Staines and Windsor, which Matthew of Westminster says was so called to denote *pratum consilii*,—(the field of counsel) because it had been heretofore frequently the theatre of public deliberations.(2)

On the day appointed, the 15th of June, 1215, the barons came to the conference in great numbers, whilst the king was attended by a few only, who remained faithful to him. Having encamped apart, like open enemies, the conference was then opened, and continued until the 19th; then some articles or heads of agreement were drawn up, and reduced to the form of a charter, to which the king's seal was affixed.

(1) 2 Inst. Proem.
(2) Blackstone's Tracts, 299.

II.—Magna Charta.

Copies of this charter, as also of the charter of the forest, were afterwards made in such number, that one was deposited in every county, or, at least, in every diocese. One copy is entered in a book belonging to the archbishop's library at Lambeth, whence Sir Henry Spelman transcribed the articles into his *Codex Veterum Legum*, which are to be found in Wilkin's collection; but, according to Mr. Justice Blackstone, the original articles themselves, from which his copy was exactly printed, is now in the British Museum. It was in the possession of Archbishop Laud, and, after passing through many different hands, came at length to Bishop Burnet, and afterwards to Earl Stanhope, by whom it was presented to the British Museum.(1)

The articles are written on parchment, and thus endorsed in a cotemporary hand: "Articuli magnæ chartæ libertatum sub sigillo regis Johannis—(Articles of the Great Charter of our liberties under the seal of King John). They are said to be all legible and perfect, with the exception of a few letters. There are likewise supposed to be two, if not three, original copies, of which two are in the British Museum, which were found in Sir Robert Cotton's collection. A third, which was collated by Mr. Tyrrell with Matthew Paris's copy, was, at that time, in the archives of the dean and chapter of Salisbury, but it is not extant at present.

The contents of this charter will be considered in the next reign, when it was confirmed, with some alterations, by Henry III.(2)

III.—Arbitrary Consecration of Tithes.

The arbitrary consecration of tithes, which was forbidden by the laws of Edgar and Canute, was not altogether done away, or was revived during the confusions of the times. Pope Innocent III., therefore, in his decretal epistle, directed the archbishop to see that the tithes were paid to the respective parish churches.(3)

---

(1) Blackstone's Tracts, 297.
(2) Reeves' Hist. i. 209.
(3) Co. 2 Inst. 641; Seld. on Tithes, c. 9.

CHAPTER XXI.

MAGNA CHARTA, BILL OF RIGHTS, AND THE PRINCIPAL ENACTMENTS OF THE STATUTE LAW,

FROM THE CONFIRMATION OF MAGNA CHARTA TO THE REIGN OF HENRY VII., INCLUSIVELY.

SECTION I.—LAWS UNDER HENRY III., A. D., 1216 TO 1272.

I. Confirmation of the Great Charter. II. Magna Charta and Charta de Foresta separated. III. Renewal of the Confirmation. IV. Cancelling of all the Charters. V. Their Solemn Reconfirmation. VI. Principal Contents of Magna Charta, from Manuscripts. VII. Liberty of the Church. VIII. Liberty of the Subject. IX. Delays in the Administration of Justice Prohibited. X. Exactions Prohibittd. XI. Tenures. XII. Alienation Restricted. XIII. Mortmain. XIV. Forms of Administering Justice. XV. Courts. XVI. King's Bench. XVII. Justices of Assize and Nisi Prius. XVIII. County Courts. XIX. Frivolous Prosecutions Prevented. XX. Writ de Odis et Atia. XXI. Amerciments. XXII. Coroner. XXIII. Constable. XXIV. Bailiff.

I.—Confirmation of the Great Charter.

The reign of Henry III., like that of his father John, is interesting in a legal point of view, on account of the confirmation of the great charter, and the other legal enactments, which were made for the purpose either of declaring, confirming, abridging, or enlarging the common law.

Although Henry III. was only nine years of age when he ascended the throne, yet the first public act which was done in his name, with the advice of William Marescall, Earl of Pembroke, the king's guardian, was the renewal of the great charter, with such additions and alterarions as were thought necessary.(1)

II.—Magna Charta and Charta de Foresta separated.

This was done in a national council held at Bristol, A. D. 1216, on which occasion the articles relating to the forest were thrown into a separate charta, called the *Charta Forestæ*, as distinguished from Magna Charta.

(1) Blackstone's Tracts, 309, 310.

III.—Renewal of the Confirmation.

In the ninth year of this king's reign, he was declared of age by a papal bull, being then seventeen years old. It was, therefore, thought expedient that he should confirm the act of his infancy; and, accordingly, after some demur on his part, and some alterations made in the charters themselves, he confirmed Magna Charta and the Charta de Forestæ, in the form in which they have been handed down to us.(1)

IV.—Cancelling both the Charters.

Notwithstanding this confirmation of the charters, the king called a council three years after, to meet at Oxford, when he declared himself of full age; and, taking the administration of affairs into his own hands, he, as his first step, cancelled both the charters; alleging that he had acted under the control of others.

V.—Their Solemn Reconfirmation

Although this measure excited much dissatisfaction, and drew forth some menaces, yet nothing further was done on the subject of the charters until the 30th year of the king, when, being in want of a supply, he was induced to yield to the wishes of the nation, by confirming them with much solemnity, in an assembly held in the great hall at Westminster. On this occasion, the Archbishop of Canterbury and the other Bishops, apparelled in their pontificals, with tapers burning, denounced a sentence of excommunication against the breakers of the charters; when, casting down their tapers, extinguished and smoking, concluded with the execration—"So may all that incur this sentence be extinguished, and stink in hell;" upon which the king immediately subjoined, "So help me God, I will keep all these things inviolate, as I am a man, as I am a Christian, as I am a knight, and as I am a king."(2)

VI.—Contents of Magna Charta.

The contents of this famous charter may be considered as they respect the privileges and liberties of the subject, the law of tenures, commerce, and the administration of justice.

VII.—Liberty of the Church.

In the first place, it was ordained that the Anglican church should be free, and enjoy all its immunities, which was a confirmation of a similar clause in the charter of Henry I., and also of the common law.

But that clause in John's charter, which gave the dean and chapter of cathedrals the liberty of electing bishops, without the consent of the king, if it were refused, was omitted in this charter.(3)

---

(1) Matt. Paris. Char. Donat. Hen. Knt. Ann. 1223.
(2) Matth. Par. Ann. 1253; Annal Waver; Hemingford, Trivet, &c.
(3) 1 Comm. 379.

VIII.—Liberty of the Subject.

The liberty of the subject, both as to his person and his property, was secured by a special provision in chap. 29. "Nullus liber homo capiatur vel imprisonetur vel disseisietur de libero tenemento suo nisi per legale judicium parium suorum, vel per legem terræ"—(No free man shall be arrested, or imprisoned, or deprived of his freehold, except by the regular judgment of his peers, or the law of the land). By the *judicium parium* is here to be understood, either in a particular sense the trial of any baron by his peers or equals, being lords in parliament, or, in a general sense, the trial by jury; both which was in conformity with the principles and practices of the common law.(1)

The clause, "nisi per legem terræ," that is, but by the law of the land, implied that no one should be put to answer without presentment before justices, by the due process of the common law, and the old law of the land.

IX.—Delays in the Administration of Justice Prohibited.

The last clause, "nulli vendemus, nulli negabimus, aut differemus rectum vel justitiam"—(to no man will we sell, deny, or delay right and justice) is supposed to refer to the fines and oblations which were made to the king for the purpose of obtaining justice; and which, though sanctioned by the usages of the times, was considered oppressive, and was doubtless exceedingly irregular. The ancient records of the Exchequer contain numerous instances of money, horses, or other valuables, given for the express purpose of being enabled the better to prosecute a suit; and sometimes the litigant party proffered the king a certain portion, as a half, a fourth, &c. payable out of the debts which the king, as the administrator of justice, should help them in recovering; which practice, being liable to much abuse, and many inconveniences, was done away by this provision. But fines on originals being certain, were, notwithstanding this provision, continued.(2)

X.—Exactions Prohibited.

As many exactions had been made for erecting bridges, banks, and bulwarks, it was declared by chapter 15, that no town or freemen should be distrained to make bridges or banks, but only those who were formerly liable in the reign of Henry II. For the same reason, none were, by chapter 16, to have the exclusive right of fishing, except such as enjoyed that privilege in the reign of Henry II.; and all weirs or kidels were, by chapter 23, to be destroyed, except such as were placed on the coast. Such erections were considered as a species of purpresture, and of course were forbidden by the common law.

XI.—Tenures.

In regard to tenures, several provisions were made, with a view of defining the feudal law, so as to abate its rigors. Reliefs, which, in the time of Henry II., depended upon the pleasure of the king, were, by chapter 2, to be fixed at the rate

(1) 2 Inst. 49.
(2) Hale's Hist. Com. Law, c. 6.

of the *antiquum relevium*, namely, £100 for an earldom, and 100 marks for a barony. In the case of escheats, the heir was, by chapter 31, to pay the king no other relief than what he would have paid the baron. Scutage was to be taken as in the reign of Henry II. Wardships, particularly in regard to the king's tenants, were defined, in conformity with the common law, by chapters 3, 4, 5, and 27. The king was, by chapter 22, to have the year and day of those convicted of felony, but not the waste, as in Glanville's time. The rights of widows were defined by chapter 7, much in their favour. The widow was to receive her dower without difficulty; and if it had not been assigned to her before, it was to be assigned after her husband's death, namely, a third part of the lands of her husband, which were his during her coverture; whereby it appears that the law of dower was enlarged since Glanville's time, when a woman could only have a third of what her husband possessed at the marriage. It is also added in the last charter of Henry III., although omitted in the previous charters, that she was, before the assignment, to have her reasonable estover, that is, her sustenance allowed her; and she might, if she pleased, continue forty days after his death in the chief house of her husband, if it were not a castle. This was afterwards called her quarantine.(1)

XII.—Alienation Restricted.

A provision against the alienation of lands was made by chapter 32, which is not to be found in the charter of king John, or in that first given by this king, namely, "Nullus liber homo det de cætero amplius alicui, vel vendet alicui de terrâ suâ, quam ut de residuo terræ suæ possit sufficienter fieri domino feudi servitium ei debitum, quod pertinet ad feudum illum"—(no free man will for the future grant or sell any of his lands, without retaining enough to answer to the lord of the fee, for the services thereto appurtenant). The purpose of this provision was to uphold and preserve feudal tenures, which suffered much from the practice of subinfeudation; that is, of tenants making feoffments of their lands, for others to hold them of their superior lords; whereby the latter were in time stripped of their profits of wardships and marriages, which fell into the hands of the mesne or middle lords, who, being likewise thereby impoverished, were disabled from doing their services to their superiors.(2)

Another restriction was put on alienating lands, by chapter 36, whereby it was ordained, that it should not be lawful, for the future, for any one to give his land to a religious house, and to take it back again to hold of that house; nor should it be lawful for a religious house to take lands of any one, and lease them out to the doner.(3)

XIII.—Mortmain.

This sort of alienation is called mortmain, from the two words *manus mortua*, a dead hand, so called, as Sir Edward Coke supposes, from the effect of the alie-

(1) Ante, p. 78; Mag. Chart. 9 Hen. III. c. 2; ibid. c. 3, 4, 27; ibid. c. 22; Ante, p. 79;—Mag. Chart. 9 Hen. III. c. 7; Ante. p. 84; Blackstone's Tracts, 317.
(2) Mag. Chart. 9 Hen. III. c. 32; Blackst. ubi supra.
(3) Mag. Chart. 9 Hen. III. c. 36.

nation, for that thereby the lords lost their knights' services, and their escheats, &c.; or it may, with equal propriety, be explained by supposing that, as ecclesiastical bodies consisted of members, who were considered as dead in law, and holden by such persons was literally held in *mortuâ manu.*(1)

XIV.—Forms of Administering Justice.

The modes of administering justice, both as respects the jurisdiction of courts and their proceedings, as also the redress of injuries, were defined by this charter.

XV.—Courts.

One of the most important regulations on the subject of courts, is that contained in chapter 11, which ordained that "Communia placita non sequantur nostram curiam sed teneantur in aliquo certo loco"—(the common pleas shall not follow our court, i. e. the court of king's bench, but shall be holden at fixed places)—by which it was understood, that the *communia placita*, common pleas, that is, suits between party and party, were no longer to be entertained in Curia Regis, which always followed the person of the king, but were to be determined in a stationary court, whither all persons might resort.(2)

XVI.—King's Bench.

By this regulation, the distinction between the courts of King's Bench and Common Pleas, or Common Bench, as it was otherwise called, was fully established by law, although, as before observed, it had been gradually forming by practice: henceforth these courts were distinguished by different appellations: the Curia Regis being styled *Curia Regis coram ipso rege, coram nobis*, or *coram Domino Rege, ubicunque fuerit*—(the king's court before the king himself, before us, or before our lord the king wherever he may be)—although it still retained the old appellations of *Aula Regis*, *Curia Nostra*, and *Curia Magna*. This court retained these names, because, although the kings of England had probably for some time ceased to sit in person there, to hear and determine causes, yet the causes which were heard in that court properly belonged to the king.(3)

The *Bancum*, or Bench, was called *Curia Regis apud Westmonasterium*, or *de Westmonasterio*, *Justitiarii in Banco sedentes*, or *Justitiarii de Banco*. The description given by Bracton of the different courts corresponds with what has been advanced on this subject, namely, that they had become distinct courts before this time, but their jurisdiction was not defined until now. "Habet rex," says this author, speaking of the King's Bench, "plures Curias in quibus diversæ actiones terminantur, et illarum curiarum habet unam propriam sicut aulam regiam et justitiarios capitales qui proprias causas regias terminant, et aliorum omnium per querelam, vel per privilegium, seu libertatem"—(the king hath divers courts, wherein the several kinds of actions are tried; and of these courts, he hath one,

(1) Co. Inst. 2, I.; 1 Comm. 479.
(2) Mag. Chart. 9 Hen. III. c. 11.
(3) Mad. Hist. Exchcq. 541; Dial. de Scacc. I, 1; Reeves' Hist. i. 245.

as it were a royal court, and justices thereof, who decide the king's causes, and also those of private persons, upon plaint, or bill of privilege)—whereby it appears that the King's Bench was now considered as peculiarly the king's court, where causes, which particularly concerned the king's crown and dignity, were heard, and where the causes that concerned the subjects with one another were heard only by a particular privilege. Of the justices who sat in this court, he adds, that some were "capitales, generales, perpetui, et majores"—(of supreme authority, general jurisdiction, durable tenure of office, and superior rank)—who were, "a latere regis residentes"—(near the person of the king)—and formed a court of appeal, according to the old usage, and took cognizance of all errors in judgment of inferior jurisdictions, "qui omnium aliorum corrigere tenentur injurias et errores"—(who are bound to correct the unjust and erroneous decisions of all other courts). In speaking of the Common Pleas, he observes, "Habet etiam curiam et justitiarios in banco residentes qui cognoscunt de omnibus placitis, de quibus authoritatem habent cognoscendi, et sine warranto jurisdictionem non habent nec coercionem"—(he hath also a court and justices of the common bench, who try all causes whereof they have cognizance, and have neither jurisdiction nor authority without special warrant)—from which it is clear that the bench had no authority but by the writs returnable there.(1)

XVII.—Justices of Assize and Nisi Prius.

For the more speedy administration of justice, a provision was made in chapter 12, for justices to go a circuit once every year, without waiting for the justices in eyre, who usually went only once in seven years. Before the making of statute, writs of assize of novel disseisin and *mort d'ancestor*, were returnable as in Glanville's time, *coram me vel justitiariis meis*—(before me or my justices)—but now they were returnable, *coram justitiariis nostris cum in illas partes venirent*—(before our justices, whensoever they shall go thither):—by force of this regulation the king, or, in his absence, the chief justiciary, sent justices into every county once a year. These justices were afterwards distinguished by the names of justices of assize and nisi prius, as will be further explained in its proper place.(2)

XVIII.—County Courts.

The two courts of the sheriff, namely, *comitatus*, the county court, and *turnus*, the tourn, as they were now called, were regulated by chapter 35. The former was to be held in the accustomed place from month to month, as it had been in the time of the Saxons, but no oftener; and the tourn was to be held twice a year, namely, after Easter and Michaelmas; and at the latter time a view of frankpledge was to be held, for the purpose of taking the oath of all above twelve years of age, who were to enter into some decennary, according to the old law.(3)

---

(1) Bract. 103; Co. 4 Inst. 70.
(2) Mag. Chart. 9 Hen. III. c. 12; Glanv. l. 13, c. 3; F. N. B. 177.
(3) Mag. Chart. 9 Hen. III. c. 35.

XIX.—Frivolous Prosecutions Prevented.

By chapter 28, provision was made against frivolous and vexations prosecutions, wherein it was enjoined that "Nullus ballivus de cætero ponat aliquem ad legem manifestam nec ad juramentum simplici loquelâ suâ sine testibus fidelibus ad hoc inductis"—(no bailiff may hereafter put any man to his *lex manifesta*, or to his oath, upon a naked plaint, without introducing lawful witnesses). The *lex manifesta* here spoken of, called by Glanville *lex apparens*, referred to the trial by ordeal, or by that of the duel, which being considered as *judicia Dei*, (judgments of God), were supposed to bring to light that which was hidden. *Ponere ad juramentum*, was the putting a man to purge himself by compurgators in a criminal suit, or by *sectatores* in a civil suit. From this statute we may gather that no free man was to be put to any of these trials, unless the plaintiff corroborated his *loquela*, plaint or declaration, by credible witnesses.(1)

XX.—Writ de Odis et Atia.

A provision against false imprisonment, or imprisonment on false charges, was made in chapter 26, in confirmation of the common law, appointing the writ *de inquisitione*, (of inquiry), otherwise called *breve de odio et atia*, (writ of hatred and malice), or *breve bono et malo*, (of good and evil), to be given gratis. This writ, which in those days was a great security for personal liberty, lay for any one committed to prison on a charge of homicide, who otherwise could not be bailed. It was directed to the sheriff, commanding him to make inquisition by the oaths of lawful men, whether the accused party was *rettatus odio et atia. e. i.* charged through hatred or malice; and in case it was found that he committed the deed *se defendendo vel per infortunium*, in self-defence or by mischance, then a writ of *tradas in ballium*, (deliver to bail), might issue, commanding the sheriff, if the prisoner could find twelve good and lawful men of the county to be mainprise for him, he should deliver him into the hands of the sureties.(2)

XXI.—Amercements.

The practice of the courts in regard to the *misericordia* or amercement, was defined and limited by chap. 14, which ordained that no freeman should be amerced, but according to the measure of his offence, saving, in the language of Glanville, his *contenementum*, countenance, or necessary support; as for a merchant, his merchandise, or for a husbandman, his weinage, that is as much as to say, his carts and implements of husbandry. Moreover, no amercement was to be assessed but by the oaths of honest and lawful men in the vicinage. Upon this statute was grounded the writ afterwards called *de moderatâ misericordiâ*, (of moderate amercement).(3).

---

(1) Mag. Chart. 9 Hen. III. c. 28; Spelm. Gloss. ad Voc.
(2) Mag. Chart. 9 Hen. III. c. 26; Glanv. 1, 14, c. 3.
(3) Mag. Chart. 9 Hen. III. c. 14; Glanv. 1, 9, c. 11.

XXII.—Coroner.

Coroner, in the Latin of the middle ages *coronator*, from *corona*, the crown, was so called because he took cognizance only of pleas of the crown, and was the principal conservator of the peace. If any credit is due to the Mirror, his office was of great antiquity, having been established by the Saxon kings; but it is most probable that such offices were established soon after the Conquest. They are first mentioned by name in this charter, although allusion is made to the office in the Capitula of Henry II., and in those given in the reign of Richard I. to the justices in eyre; wherein they were commissioned to choose three knights and one clerk in every county, to be *custodes placitorum coronæ*, (keepers of the pleas of the crown). The office of the coroner was then, as it is now, to make inquisition, when any man came to a violent or untimely death, *super visum corporis*, (upon view of the body), and to take indictments thereon; also to inquire concerning treasure trove, and to take appeals *de raptu virginum, de pace et plagis*, (of rape, of breach of the peace, and assault and battery).

XXIII.—Constables.

Of the constable, a high officer of the crown, mention has already been made; but the constable here referred to was a judicial officer, who acted as a warden or keeper, as appears from chap. 19 of this charter, and other records, as the constable of the castle of Dover, or of the Cinque Ports, which was the same as the warden of the castle and Cinque Ports.

XXIV.—Bailiff.

Bailiff, from the French *baillif*, was, properly speaking, any officer or minister who acted in the name and for another, so called, because a commission was bailed or delivered to him. The name was introduced at the Conquest, like the former word constable, and has been commonly applied to inferior officers, although the sheriff calls his county a bailiwick. For the most part, the bailiff was, and is, bailiff either of a hundred, a liberty, or a manor, &c., and as such may act for another in the place of his employer.

To this charter are added the usual words, *hiis testibus*, (in the presence of these witnessess), with a list of the greatest names in the kingdom, among the lords spiritual and temporal, This conclusion of the king's grants, with the words *hiis testibus*, was continued until the reign of Richard II. when it was laid aside in all cases, except in patents of creation. Since that time they have concluded with the words *teste me ipso*, or *in cujus rei testimonium has litteras nostras fieri fecimus patentes, teste me ipso*, (witness ourself, or, in witness whereof, we have caused these letters patent to be made; Witness ourself). The ancient deeds of subjects retained this form until the reign of Henry VIII.(1)

---

(1) Mir. c. 1, § 3; Wilk. Leg. Anglo-Sax. 346, et seq.; Bract. 50.

SECTION II.—BILL OF RIGHTS.

I. Suspending of Laws. II. Levying Money. III. Petitioning the King. IV. Standing Army. V. Keeping of Arms. VI. Freedom of Elections. VII. Freedom of Speech in Parliament. VIII. Excessive Bail Prohibited. IX. Impeachment of Jurors. X. Grants and Promises.

The circumstances under which William and Mary ascended the throne gave rise to the Bill of Rights, which seems to be a continuation of Magna Charta, of which the leading articles are here given.(1)

I.—Suspending of Laws.

Art. 1—The pretended power of suspending or executing laws by regal authority, without the consent of parliament, is illegal.

II—Levying Money.

Art. 4—The levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament, or for longer time, or in any other manner than the same is or shall be granted, is illegal.

III.—Petitioning the King.

Art. 5—It is the right of the subject to petition the king, and all commitments and prosecutions for such petitioning are illegal.

IV.—Standing Army.

Art. 6—The raising or keeping a standing army within the kingdom in time of peace, unless it be with the consent of parliament, is against law.

V.—Keeping of Arms.

Art. 7—The subjects which are Protestants may have arms for their defence, suitable to their condition, and as allowed by law.

VI.—Freedom of Elections.

Art. 8—The election of members of parliament is to be free.

VII.—Freedom of Speech in Parliament.

Art. 9—Freedom of speech, and debates on proceedings in parliament, are not to be impeached or questioned in any court or place out of parliament.

---

(1) See the History of the Bill of Rights, sanctioned by William and Mary before they ascended the throne, as the first of their reign.

VIII.—Excessive Bail Prohibited.

Art. 10—Excessive bail ought not to be required, nor excessive fines imposed, nor cruel nor unusual punishment inflicted.

IX.—Impeachment of Jurors.

Art. 11—Jurors ought to be duly empannelled and returned, and jurors passing upon men in trials of high treason ought to be freeholders.

X.—Grants and Promises.

Art. 12—All grants and promises of fines, and forfeitures of particular persons, before conviction, is illegal.

Having sanctioned this document, framed by the lords and commoners, William and Mary received the crown of England and regal dignity.

SECTION III.—LAWS UNDER HENRY III. CONTINUED.

I. Proceedings in the Eyre. II. Grand Jury. III. Petit Jury. IV. Abolition of the Ordeal.

I.—Proceedings in the Eyre.

Criminal justice was, for the most part, administered in the country by the justices itinerant; previous to whose coming, for fifteen days at least, there issued a general summons for all persons to attend at a certain time and place. On their arrival, the first step was to read the writs for the commission authorizing them to act. Then one of the justices, the *major*, and *discretior*, (superior in rank and discretion), as he is termed by Bracton, propounded the occasion of their coming, and informed the whole assembly that the king commanded his liege subjects, by their faith, and as they valued their own property, to render all possible assistance in suppressing burglaries, robberies, and every sort of crime. After which, they took aside some of the leading men of the county, called by Bracton, *busones*, i. e. probably, *barones comitatus*, (barons of the county), to whom they explained more fully the provisions made by the king and council, for the preservation of peace, and enjoined on them, in a more especial manner, to lend their aid, by causing all outlaws, murderers, robbers, and suspected persons, that came in their way, to be arrested, and delivered over to the officers of justice; thus giving them, as it were, a commission, to act as justices of the peace, although such magistrates were not regularly instituted until some time after.(1)

(1) Bract. 115.

II.—Grand Jury.

The bailiffs and sergeants were then sworn in open court, to choose four knights out of every hundred, who were, upon their oath, to choose twelve others, and if not knights, twelve *liberi et legales homines*, (free and lawful men), who were neither appellors nor appealed, nor suspected of any crime. The names of these twelve were to be inserted in a schedule, to be delivered to the justices. Then one of the twelve of each hundred took the following oath: "Hear this, ye justices, I will speak the truth of that which you shall command me, on the part of our lord the king; nor will I, for any thing, omit so to do, so help me God, and these Holy Gospels." After which, every one took the oath for himself severally, in this manner: "The oath which John here has taken, I will keep on my part, so help me God, and these Holy Gospels." When the swearing was concluded, the *capitula itineris*, before-mentioned, were read over to them, and they were informed that they were to be ready with their verdict on a certain day.(1)

III.—Petit Jury.

In this case they performed the office of the grand jury, but as the ordeal was now gone out of use, and cases frequently occurred where the duel, for various reasons, could not be resorted to, they were called upon, under the direction of the judge, to determine the guilt or innocence of the party accused. The latter was then informed, that if he had suspicion of the jurors, he might have them removed; after which, being severally sworn, the judge proceeded to charge them in this manner: "This man here present is charged with homicide (or any other crime), and defends the death, and puts himself therefore upon your word, *de bono et malo*, (for good and evil); and therefore we charge you, by the faith you owe to God, and the oath you have taken, to make known to him the truth thereof; nor do you fail, through fear, love or hatred, but having God above before your eyes, do you declare, whether he is guilty of that with which he is charged, or not guilty; and do not bring any mischief upon him if he is innocent.(2)

According to their verdict, the party indicted was, for the most part, either acquitted or condemned; but if the justices had reason to suspect, that either through fear, love, or hatred, they concealed the truth, or that they were misled in the information they had received; in all such cases the justices used to examine the jurors very closely, in order to detect such irregularities.(3)

IV.—Abolition of the Ordeal.

The ordeal, and the Saxon mode of trying the guilt or innocence of persons, was at length abolished in this reign.

---

(1) Bract. 116. (2) Ibid, 143. (3) Ibid, 137.

SECTION IV.—LAWS UNDER EDWARD I., A. D. 1272 TO 1307.

I. Introduction. II. List of the Statutes. III. Law of Entail. IV. Estates in Tail. V. Ecclesiastical Property Protected. VI. Warranty. VII. Fines. VIII. Administration of Justice. IX. Judicature in Council and in Parliament. X. Justices of Assize and Nisi Prius. XI. Justices of Oyer and Terminer. XII. Justices of Gaol Delivery. XIII. Ecclesiastical Jurisdiction. XIV. Benefit of Clergy. XV. Writ of Dower.

I.—Introduction.

Edward I. has been frequently styled the English Justinian, on account of the great improvements which he made in English jurisprudence. Sir William Herle, chief justice of the court of common pleas, said of this prince, "Fuit le pluis sage Roy que unques fuit"—(he was the wisest king that ever existed). Sir Matthew Hale was of opinion, that the whole scheme of English law, such as it now is, may, date its existence from this king's reign.(1)

II.—List of the Statutes.

As the alterations in the law were principally made by parliamentary enactment, they will be the best explained by considering the statutes which were passed in his reign; first giving a list of them in chronological order, and then treating of their contents.

The statute of Westminster, which was the first public act of this king, was passed in the third year of his reign, and received the name of Westm. I. to distinguish it from other statutes of the same name. In the next year, three statutes were passed, namely, the *Statutum de Extenta Manebii; De officio Coronatoris;* and *De Bigamis.* In the sixth year was passed the Statute *de Religiosis,* or the statute of Mortmain, and a statute prohibiting going armed to parliament. In the tenth year the Statute of Ruthland; in the eleventh year the *Statutum de Mercatoribus,* or the Statute of Acton Burnell; and in the twelfth year, the *Statutum Walliæ.*

In the thirteenth year were passed six statutes, namely, the Statute of Westminster, called Westm. 2; the Statute of Winton, or Winchester; the Statute of Merchants; the Statute of *Circumspecte agatis;* the *Statutum Civitatis Londini,* regulating the policy of the city of London; and the *Forma Concessionis et Confirmationis et Exemplificationis Chartarum.*

The *Statutum Exoniæ* was passed in the fourteenth year; the *Ordinatio pro Statu Hiberniæ,* in the seventeenth year; and in the eighteenth year, five statutes,

---

(1) Co. 2 Inst. 156; Hale's Hist. Com. Law, c. 7.

namely, the Stat. *Quia Emptores*, or Westm. 3; the *Statut. de Judaismo;* two statutes, named *Quo Warranto;* and the Statute of *Modus levandi Fines.* In the twentieth year six statutes, namely, the Statute of Vouchers; the Statute of Waste; the Statute *de Defensione Juris*; the Statute *de Moneta*, and the *Articuli de Moneta.* In the twenty-first year, the Statute *de iis qui ponendi sunt in Assisis*, and the Statute *de Malefactoribus in Parcis.* In the twenty-fourth, the Writ of Consultation. In the twenty-fifth year, the Statute *Confirmationis Chartarum*, and the *Sententia Domini R. Archiepiscopi super Præmissis.* In the twenty-seventh, the Statute *de Finibus levatis*, the *Ordinatio de Libertatibus perquirendis*, and the Statute *de falsa Moneta.* In the twenty-eighth year, the Statute of Wards and Reliefs, the Statute of Persons appealed, and the Statute *Articuli super Chartas.* In the twenty-ninth year, the Statute *Amoveas manum.* In the thirty-third year, six statutes, namely, the Statute *de Protectionibus;* the Statute of the Definition of Conspirators; the Statute of Champerty; the ordination of Inquests; the *Ordinatio Forestæ;* and the Statute for measuring of Lands.

In the thirty-fourth year were passed five statutes, namely, the Statute *de Conjunctione Feoffatis;* a statute one the Statute of Winchester, the Statute of amortizing Lands; the Statute *de Tallagio concedendo*, and the *Ordinatio Forestæ.* In the thirty-fifth year, were the Statute *de Asportatis Religiosorum*, and the Statute *Ne Rector prosternet Arbores in Cœmeterio.*

III.—Law of Entail.

The most important statutes which affected private rights, were those which imposed restrictions on the alienation of land. The first of these was the celebrated provision of the stat. Westm. 2, *de Donis conditionalibus*, (concerning conditional grants), which required that the will of the donor, according to the form of the deed of gift, manifestly expressed, was to be observed; so that they to whom the land was given under certain conditions, were to have no power to alien it, but it was *remanere*, to remain; or, as it is now termed, to descend to their issue after their death, or to revert to the doner or his heir, in failure of issue.(1)

IV.—Estates in Tail.

The estate created by this statute, being but a limited one, was called *feudum talliatum*, or an estate in fee-tail, from the French *tailler*, to cut; because this estate was, as it were, cut out of the whole.

V.—Ecclesiastical Property Protected.

To prevent the alienation of by abbots, friars, &c., of lands, granted to religious houses, it was enacted, that lands so alienated were, if they had been granted by the king, to be taken into the king's hands, and the purchaser to lose his purchase money. If granted by a common person, he was to have a writ called *contra formam collationis.*(2)

---

(1) Stat. de Donis. cond. Westm. 2, 13 Ed. 1, c. 1.
(2) Stat. West. 2, c. 41; Co. 2 Inst. 457.

Carrying ecclesiastical property out of the kingdom was prohibited by the statute *de Asportatis Religiosorum*, under pain of being punished grievously for such contempt of the king's injunction. This law was made to prevent the evil practice of the governors of religious houses levying tilliages and impositions on such houses, in order to send the amount to Rome. It was levelled against religious persons who were aliens, and laid the foundation of all the subsequent statutes of *præmunire*, as they were afterwards called.(1)

Trees planted in a churchyard were, by the statute *Ne Rector prosternet Arbores*, declared sacred property, which the rector was to preserve as such untouched.(2)

VI.—Warranty.

As the effect of warranty was to bar the heir from ever claiming land against the deed of his own ancestor, it was found necessary, by a particular enactment in the statute of Gloucester, to protect the interest of the heir in regard to the inheritance of his mother; so that, in case of alienation with warranty, by a person holding *per legem Angliæ*, (by the curtesy), the heir was not to be barred by the warranty from demanding and recovering, by a writ of *mort d'ancestor*, the land of the seisin of his mother. In like manner, the heir was protected from the alienation of his father's property by his mother.(5)

VII.—Fines.

Fines, or final concords, which are supposed to have been real suits, as before observed, were now become a mode of conveyance; preserving, at the same time, all the forms of a real suit. From the statute, *Modus levandi Fines*, we learn the mode of levying fines, which was as follows:—When the original was delivered in the presence of the parties, a countor or sergeant was to say, "Sir Justice, *Congé d'accorder*," (liberty to accord), that was praying the *licentia concordandi*, on which a fine was due to the king. Then the justice inquired, "*Que donera?*" (to whom will he grant). "Sire Robert," was the reply, naming one of the parties. When they had agreed upon the sum to be paid to the king, then the justice was to say, "*Criez la peez*," that is, rehearse the concord, upon which the sergeant said, "The peace, with your leave is such, that William, and Alice his wife, who are here present, do acknowledge the manor of B, with its appurtenances contained in the writ, to be the right of Robert, *come cell' que il ad de lour done*, as that which he hath of their gift, to have and to hold to him and his heirs of William, and the heirs of Alice, as in demesnes, rents, seigniories, courts, pleas, &c.(1)

No fine was to be levied without an original writ, returnable before four justices on the bench, or elsewhere, and in the presence of the parties, who were to be of full age, of sound memory, and out of prison. If a *feme covert* (married woman)

---

(1) Stat. of Carlisle de Asportat. Religiosorum, 35 Ed. I. st. 1; Co. Inst. 129, 1.
(2) Stat. Ne Rector prosternet Arbores.
(3) Stat. Gloucester, 6 Ed. I. c. 3.
(4) Ante, p. 94; Stat. Modus levondi Fines, 18 Ed. I. st. 4.

was one of the parties, she was first to be confessed of the justices, and if she assented not to the fine, it was not to be levied. The reason of such a solemnity was, because in the language of the statute itself, a fine is so high a bar, of such great force, and of so binding a nature, that it concludes not only parties and privies, and their heirs, but also all other people in the world. By this statute is regulated the modern practice of levying fines, by way of conveying lands and tenements.

Attempts having been made in the preceding reign to invalidate fines, and to render them a less valuable security, the statutes *de Finibus levatis* (of levying fines) was passed, to put a stop to this practice. Exceptions to fines were not to be acknowledged in the courts; and the notes of all fines were henceforth to be openly and solemnly in the king's court, on certain days of the week, at the discretion of the justices.(1)

VIII.—Administration of Justice.

The administration of justice engaged the attention of this king as much as any other subject, in regard to the proceedings of courts, the duties of officers, and the remedies of civil injuries.

IX.—Judicature in Council and in Parliament.

It appears from a cotemporary writer, that the king administered justice, not only in his own council, but also in parliament, which was erected into a court of judicature; besides which, this king had a court *coram auditoribus specialiter à latere regis destinatis*—(before commissioners specially delegated for that purpose from near his person)—whose office was not to determine, but to report to the king what they had heard, that he might afford a suitable remedy to the parties applying for redress.

For the better ordering of the business of the courts, the justices of the king's bench and common pleas were directed by the statute Westm. 1 to decide all pleas that stood for determination at one day, before a new matter was arraigned, or any new plea entertained. The regular return of writs was directed by the statute Westm. 2, in consequence of an evil practice having sprung up, of receiving writs after the regular day of return, and in the absence of the parties, whereby they lost their lands by default.

X.—Justices of Assize and Nisi Prius.

The institution of justices of Assize and Nisi Prius, commenced by Magna Charta, was now so far perfected, that its establishment is usually dated from this reign. The statute of Westm. 2, since distinguished by the appellation of the statute of Nisi Prius, ordained, that two justices sworn should be assigned, before whom, and no others, should be taken all assizes and novel disseisin, *mort d'ancestor*, and attaints; and that these justices were to associate to themselves one or

(1) Stat. de Finibus levatis, 27 Ed. I.

two of the discreetest knights of the country into which they came. The assizes were to be taken three times in the year, instead of once, as heretofore was the practice.(1)

XI.—Justices of Oyer and Terminer.

Besides the institutions of justices of Assize and Nisi Prieus, we also read now, for the first time, of justices *ad audiendum et terminandum*, (to hear and determine) that is, of *oyer et terminer*, as it was afterwards called.

XII.—Justices of Gaol Delivery.

As further improvement on the judicial proceedings of these, and justices of assize were constituted justices of gaol delivery, so that prisoners might have a speedy trial, and not be detained in prison longer than was needful.(2)

XIII.—Ecclesiastical Jurisdiction.

The bounds of ecclesiastical jurisdiction, which had been hitherto a subject of contest, were defined by the statute *Circumspecte agatis*, in conformity with the regulations and practices of former reigns. Also the matter of prohibitions, regulated by the statute of the Writ of Consultation.

XIV.—Benefit of Clergy.

There was one privilege which the church had long enjoyed, under the name of the *privilegium clericale*, or benefit of clergy ; whereby they were so far exempted from the secular jurisdiction, that if a clerk was arrested for homicide, or any other crime, he was delivered, on demand, to the ordinary, without making any inquisition, that he might be dealt with according to the laws of the church. But this privilege appears to have been abused, and clerical offenders were dealt with more leniently than was consistent with the ends of justice : wherefore the king enjoined the prelates, upon the faith they owed him, that those who had been indicted of such offences, by good and lawful men should in no wise be delivered without due purgation, so that the king might have no need to provide otherwise. As a consequence of this statute, it should seem that clerks were not delivered to the ordinary, as they had been heretofore, until inquisition had been made ; and if the accused was found innocent, he was to be discharged ; but if guilty, his lands and goods were forfeited to the king, and his body given, upon demand, to the ordinary, who was to answer for any misconduct in this matter.(3)

XV.—Writ of Dower.

A writ of dower was given by the statute Westm. 2, c. 4, in favour of a widow, where it was objected to her that her husband lost the land by judgment. If, on inquiry, it was found that he lost by default, and that he had a right to the land, then the widow might recover her dower.

---

(1) Stat. West. 2, 13 Ed. I. c. 30.
(2) Stat. 27 Ed. I. st. 1, c. 3.
(3) Bract. 123 ; Stat. West. I. c. 2.

SECTION V.—STATUTE LAW UNDER EDWARD II., A.D. 1307, 1327.

I. Statute de Militibus. II. Statute de Prerogativa Regis. III. Wreck. IV. Treasure-trove. V. Decisions of Courts. VI. Descents. VII. New Writs. VIII. Action of Debt. IX. Actions of Covenant. X. Action of Trespass. XI. Records. XII. Year Books.

Notwithstanding the troubles of this reign, Edward II. was not unmindful of the subject which had so much engaged the attention of his father. Of this we have memorials, not only in the statutes which were passed, but also in the reports of judicial proceedings, and the decision of courts.

I.—Statute de Militibus.

The first public act of this reign is said to have been a writ granted by the king in parliament, which being entered, by his direction, on the record, acquired the force of a law, and is now placed among the statutes, under the title of the *Statu-de Militibus*, (statute concerning knights), the object of which was to abate that part of the feudal system which required every one possessed of a *feudum Militare* (knight's fee) that he should *suscipere arma*, that is, take upon him the order of knighthood. In the second year of this king was passed an act for enforcing the statute *Art. sup. Chartas*, and in the year following, another, entitled *Literæ Patentes*, &c., in order to enforce the observance of the statute *De Asportatis Religiosorum*, passed in the last reign. In the ninth was passed the famous statute of Lincoln, called the *Stat. Articuli Cleri*, the object of which was to adjust the long-disputed claims of ecclesiastical jurisdiction. In the reign of Henry III., Boniface, younger sounger son of Thomas, earl of Savoy, archbishop of Canterbury, and uncle to Queen Eleanor, aimed at enlarging the boundaries of ecclesiastical jurisdiction, and made several canons and constitutions, which tended to encroach on matters belonging to the common law, as the trial of the limits and bounds of parishes, the right of patronage, trial of right of tithes by *indicavit*, and other things of a similar nature.(1)

II.—Statute de Prerogativa.

Of the three statutes passed in the 17th year of this king, that entitled *Prærogativa Regis*, is the most important. Prærogativa, from *præ* before or first, and *rogo*, to ask, was applied by the Romans to such tribes as were first asked, that is, their votes taken in the choice of consuls, whence it came to signify generally pre-eminence or superior authority.

(1) Stat. 2 Ed. II.; Stat. 9 Ed. II.; Co. 2 Inst.

III.—Wreck.

The ancient prerogative of wreck was now confirmed by this statute. Wreck, in the Saxon *wraec*, is like English rack and break, derived from the Greek *regnumi*, in Latin *frango*, and signifies a vessel tossed on the shore in a broken and shattered condition; but, in a legal sense, the right to the vessel and the goods therein contained.(1)

IV.—Treasure-trove.

Treasure-trove, *thesaurus inventus*, from the French *trouver*, to find, was, at one time, a no considerable source of the king's revenue. Under treasure-trove was comprehended money or coin, gold, silver, plate or bullion, which was hidden in the earth, or any other private place, which Bracton, in the language of the civil law, calls "vetus depositio pecuniæ"—(an ancient concealment of money). If the owner were not known, this belonged to the king, but if he were discovered, he might lay claim to it; and if the thing were found in the sea or upon the earth, it appears that it belonged to the owner. By a law of Edward the Confessor, *thesaurus inventus* belonged to the king, unless it was found in church lands, when the whole of the gold and half the silver belonged to the king, and half to the church.(2)

V.—Decisions of Courts.

The common law had necessarily undergone some alterations and modifications, not only from the statutes passed in the two preceding reigns, but also from the decisions of courts, where every point of law was more nicely defined and clearly elucidated than formerly.

VI.—Descents.

The law of descents had undergone some alteration or modification since the time of Glanville. The doctrine of primogeniture, which was then established in knight's service, was afterwards extended to other tenures. Bracton lays it down as a general rule in law, that "jus descendit ad promigenitum." It was also then held, as it has been ever since, that all descendants *in infinitum*, (to an indefinite extent), from any person who would have been heir, if living, were it to inherit *jure representationis*, (by right of representation). Thus the eldest son dying in the lifetime of his father, and leaving issue, that issue was to be preferred in inheriting to the grandfather, before any younger brother of the father; which settled the doubt that existed in Glanville's time, respecting the law of succession in this particular.(3)

Males were preferred to females so strictly, that by a rule of law the right should never come to a woman so long as there was a male, or one descended from a male, whether from the same father or not.

---

(1) Stat. Prærog. c. 11. (2) Bract. 120; LL. Edw. Conf. c. 14.
(3) Bract. 64, Reeves' Hist. Law, i. 310; Bract. 65, a.; Ante, p. 89.

VII.—New Writs.

Among the writs of *contra formam feoffamenti* grounded upon the statute of Marlebridge, chap. ix. was one not mentioned before this reign, called a *monstravit*, and in aftertimes more frequently *monstraverunt*. This writ, also, lay at common law for tenants in ancient demesne, who had been burdened with more services than were originally in the tenure. Questions of this sort were generally determined by application to doomsday-book in the Exchequer.

There are several other actions, now mentioned for the first time, which were grounded on the statutes of the two preceding reigns: as the writ *de contributione*, on the statute of Marlebridge, to compel coparceners to aid the eldest sister in performing the services; also the writ of office called *diem clausit extremum*, grounded on the same statute, chap. xvi. for taking into the king's hands the lands of one who died seized *in capite;* a writ of entry for the reversioner, founded on the statute Westm. 2, c. 3; a writ *contra formam collationis*, on statute Westm. 2, c. 41; and the writ *in consa provisa*, grounded on the statute of Gloucester, chap. vii.(1)

VIII.—Action of Debt.

An action of debt, which, in the reign of Henry II., lay for the recovery of money or chattels, had now acquired sufficient importance to be nicely considered in the courts. In the preceding reign it was split into two, namely, a writ of *debet* for the recovery of money, and a writ of *detinet* for the recovery of chattels, which distinction was now regularly observed. A writ of *debet* was usually grounded on a deed of obligation to pay money, which, for the most part, was a writing sealed; but sometimes, according to the ancient usage, it was grounded upon a mere bargain of buying and selling. In the first case, the plaintiff would state his demand, and produce a deed testifying the transaction. The common plea to a deed, was *nient le fait*, that it is not the defendant's deed; sometimes *diens age*, that is, not of age when the deed was made. A plea was held to be good to say that it was made in Berwick, because the place was out of the jurisdiction of the court. The same objection held good against a deed made at Chester and Durham. If the transaction passed without writing, then the plaintiff after stating his demand, would offer to produce his *secta*, according to the old usage.(2)

Actions of detinue, were most usually brought for deeds and charters, which, when a feoffment of lands was made, were frequently deposited in the hands of a third person; and sometimes were demanded in an action of detainer, whereby the merits of the detainer were brought under discussion. By an act of detinue, were also tried the merits of the question respecting the *rationabilis pars*, (reasonable portion), but the decisions of the courts were invariably against such claim.(3)

IX.—Actions of Covenant.

The writ *de conventione*, or an action of covenant, which is mentioned by Bracton, lay sometimes for the recovery of moveables and immovables, for the most part

(1) Mayna. 67. 91, &c.
(2) Flet. 138. Mayn. 589; Reeves' Hist. ii. 330; Mayn. 24.
(3) Reeves' Hist. ii. 332.

for land or for some profit, or casually issuing out of land, as for not doing homage and services, and the like. A writ of annuity was most frequent between ecclesiastics, in which cases it was no uncommon plea to allege, that it was a matter of a spiritual nature, but this plea was always overruled.(1)

X.—Action of Trespass.

Trespass, in Latin *transgressio*, signified literally the unlawful passing of any bounds, whence it came to be used in the sense of any injury done with force, either to the person or the property of another. In the reign of Henry III. actions of trespass appear to have been but little in use; civil injuries being, for the most part, determinable by the assize, and, personal injuries prosecuted as criminal offences, by appeal or indictment. Trespasses are reckoned by Bracton among the *placita coronæ*, (pleas of the crown), particularly in cases of unlawfully distraining; and he held that the writ *quare vi et armis*, (for that he entered with force and arms), a man entering land, was bad, because it brought the mode of trespass into question, rather than the trespass itself, although there were, in his time, trespasses respecting land, which were determined by the assize, or more frequently by the jurata; as if any one made use of another's land against the will of the owner, or appropriated any thing to himself which was common. In the next reign, actions of trespass became very frequent, in cases when the assize had been heretofore resorted to; as, for breaking and entering houses and lands, beating down a mound, cutting trees, and the like; in which cases it was held to be a good plea, if the defendant said it was his own freehold, so that titles to land might in this manner be tried.(2)

XI.—Records.

As to the records, it is a remarkable circumstance, that notwithstanding the inability of that prince, and the troubles of the times, he was the first to make provision for their better custody. In the 14th year of his reign, he, by writ of privy seal directed to the treasurer, barons, and chambers, of the Exchequer, commanded them forthwith to employ proper persons to superintend, methodise, and digest, all the rolls, books, and other writings, of the times of his progenitors, kings of England, then remaining in the treasuries of his Exchequer, and in the Tower of London; all which, as it is there stated, were not disposed, in such manner as they ought to be, for the end of the public goood.

In his 16th year, he gave similar directions respecting the bulls, charters, and other muniments, touching his state and liberties within England, Ireland, Wales, Scotland, and Ponthieu; and a few months after he appointed Robert de Hoton, and Thomas de Sibthorp, to examine and methodise all such charters, writings, and other national muniments, as at that time, were deposited in the castle of Pontefract, Tuttebury, and Tunbridge, also such as had been newly brought into the Tower of London, and all those which where kept in the house of the Black-Friars preachers.

---

(1) Mayn. 603: Reeves' Hist. ii. 336.
(2) Bract. fol. 155; Ibid. c. 413; Ibid. 218; Mayn. 458.

XII.—Year Books.

To Edward II. we are also indebted for the commencement of the judicial reports, which have since acquired so much importance in the study of the law. We have, from the beginning of this king's reign, year-books, or books of the years and terms, containing the reports of adjudged cases, which were so called, because they were published annually, from the notes of certain persons, who were stipened by the crown for this employment. By comparing these reports, as given in Maynard's year-books, *temp.* Ed. II. with those of modern times, it will appear, that although they were much more concise, yet they are often much more pointed and argumentative, than those of the present day.(1)

SECTION VI.—STATUTE LAW UNDER EDWARD III., A.D. 1327, 1377

I. King's Councils. II. Privy Council. III. Magnum Concilium Regis. IV. National Councils. V. Names of the National Councils. VI. Parliament. VII. Constitution of Parliament. VIII. Attendance in Parliament. IX. Frequency of Parliaments. X. Manner of Assembling Parliaments. XI. Sessions of Parliament. XII. Opening of Parliament. XIII. Humble Address of the Speaker. XIV. Petitions of the Commons. XV. Subsidies. XVI. Question of General Polity brought before Parliament. XVII. House of Lords a Court of Judicature. XVIII. Criminal Jurisdiction. XIX. Impeachment by the Commons. XX. Liberty of Speech. XXI. Law of Landed Property. XXII. Commission of Nisi Prius. XXIII. Justices of the Peace. XXIV. Quarter Sessions. XXV. Pleadings in English. XXVI. Limitations and Remainders. XXVII. Devises. XXVIII. Warranty. XXIX. Action of Covenant. XXX. De Ejectione Firmæ. XXXI. Action of Trespass and on the Case. XXXII. Replevin. XXXIII. Trial per Pais or by Jury. XXXIV. Challenging. XXXV. Treason. XXXVI. Petit Treason. XXXVII. Homicide. XXXVIII. Chance Medley. XXXIX. Murdrum. XL. Arson. XLI. Theft. XLII. Burglary. XLIII. Larceny. XLIV. Rape. XLV. Mayhem. XLVI. Striking a Clerk. XLVII. Striking in Courts. XLVIII. Usury. XLIX. Forestalling. L. Felony. LI. Standing Mute. LII. Perjury. LIII. Accessories. LIV. Indictments. LV. Hue and Cry. LVI. Pleas of autrefois Acquit and autrefois Attaint. LVII. Privileges of Married Women.

(1) Bridgeman's Leg. Bibl.

At this period, the English jurisprudence was fast approaching to the form which it has since assumed, it is most convenient to take a general review of some things, which, in order not to destroy the thread of the narrative too much, have not hitherto been touched upon. The first of these points is, what regards the constitution, which, by the use of parliamentary power, and the alterations in the jurisdiction of courts, and other circumstances, had undergone some changes.

I.—King's Councils.

The king had different councils, by whose advice and assistance he governed the realm. The first was that which consisted of his own immediate counsellors, as the treasurer, chancellor, justices, barons, and such other persons, learned in the laws and judicial matters, as he thought proper to call to himself.(1)

II.—Privy Council.

This was called the *Magnum privatum Concilium Regis*, also *Concilium Regis privatum*, *Concilium continuum*, and *Concilium secretum Regis*—(the king's great privy council—the king's privy council—perpetual council, and the king's secret council)—and in aftertimes, the council board and the privy council. With these counsellors the king sat at pleasure; their number was also at the king's pleasure; but at this time they were about twelve.

III.—Magnum Concilium Regis.

There was also another council, called *Magnum Concilium Regis*—(the king's great council)—which appears to have consisted of the peers of the realm, or as many of the barons as the king thought proper to consult occasionally, of which there are several examples in the course of this reign. To this might be added a third council, who were sworn to give advice to the king, namely, his judges and law officers, whom he consulted in all judicial matters. These councils of the king used to sit in different chambers that were about the palace, sometimes *en la chambre blanche*, or *en la chambre peincte*—(in the white chamber or in the painted chamber)—and sometimes, as is said, *en la chambre des etoiles*, or the star chamber, as this council was afterwards called; whence we learn, from the parliament rolls, that the returns of some writs in this reign were said to be either *coram nobis*, or *coram nobis in camera*, or *coram nobis in cancellaria*—(before ourself, or before ourself in our chamber, or before ourself in chancery). At the same period these chambers existed in France.(2)

IV.—National Councils.

The fourth kind of councils were the national councils, which being essentially different from all the rest, are entitled to particular notice.

National councils are of such remote antiquity, that we find them existing among the ancient Germans: "De minoribus rebus," says Tacitus, "principes

(1) Co. Inst. 110. See Crabb's Hist. Eng. Law, c. 15.
(2) Dugd. Summons to Parl. p. 129 et seq.; Co. Inst. ubi. supra; Co. 4 Inst. 60; Reeves' Hist. ii.; ii. 413.

consultant, de majoribus omnes"—(the chiefs consulted concerning minor affairs, but the whole populace concerning more important ones)—vestiges of which are, under various modifications and forms, to be met with in the diets of Poland, Germany, and Sweden, and the assembly of the states formerly in France, having been brought into Europe by the northern tribes, who, on the decline of the empire, established themselves in different countries. Among those rude people such assemblies were only irregular meetings, brought together on the exigency of the occasion, to determine, for the most part, questions of peace or war. Their decisions were made by acclamations, and immediately followed by action, &c. As civilization advanced, and questions of civil polity became more numerous and complicated, such assemblies assumed a form and order suited to the temper and circumstances of different nations. In England they have retained more of their original popular character than in any other.(1)

V.—Names of the National Councils.

The national councils of the Saxons were called, for the most part, *synoth*, or *michel-synoth*, the great synod, because they were of a religious character; frequently *michel-gemoth*, the great assembly, and frequently the *witenagemoth*, that is, the assembly of the wise men. They were designated, after the conquest, by the Latin names of "commune concilium regni, magnum concilium regis, curia magna, conventus magnatum vel procerum, assisa generalis, communitas regni Angliæ, et parliamentum"—(the common council of the realm, the king's great council, the great court, the assemblage of the great men or peers, the general assize, the commonwealth of the realm of England, and parliament)—the name finally adopted, from the French *parler*, to speak, because it was a deliberative assembly.(2)

VI.—Parliament.

Lord Coke supposes this word to be composed of the word *parler la ment*, to speak one's mind; but Mr. Barrington observes, "Lord Coke's etymology of the word parliament, from speaking one's mind, has been long exploded. If one might presume," he adds, "to substitute another in its room, after so many guesses, by others, I should suppose it was a compound of the two Celtic words *parley* and *ment*, or *mend*. Both these are to be found in Bullet's Celtic Dictionary, published at Besançon, in 1754, 3 vols. folio. He renders *parley*, by the French infinitive *parler*, and *ment*, or *mend* by the words *quantité, abondance*. The word parliament, therefore, being resolved into its constituent syllables, may not improperly be said to signify what our Indians of North America call a great Talk."(3)

VII.—Constitution of Parliament.

The constitution of parliaments has been subject to several changes since their first commencement in England. Among the Saxons the king elected whom he

(1) De Mor. Germ. c. 11; 1 Comm. 147.
(2) Chron. Sax. passim.; Co. 1 Inst. 110 a.; 2 Inst. 156; 4 Inst. 2; 1 Com. 147.
(3) Barring. Obs. Anc. Stat. 48.

wished to compose his council, sometimes choosing only the prelates, when the matter of deliberation was purely ecclesiastical, sometimes his thanes or nobles, when the matter was of a political nature, and sometimes both, when the matter was of general interest. These were chosen to be his advisers on account of their dignity, rank, or office; besides which, there is also frequent mention of the *witan*, or wise men, who from their knowledge and experience, were regularly called to his councils, and were, probably, for the most part, officers of the crown. The people are also occasionally alluded to, as taking part in these assemblies. They are expressly named in the council held by Ethelwolf, in the year 855, when a tenth was given to the church by the king, *cum baronibus, thanis et populo*"—(together with the barons, thanes, and commonality)—so likewise in the laws of Edward the Confessor, we find them mentioned in this manner. "Hoc enim factum fuit per commune concilium et assensum omnium Episcoporum, Principum, Procerum, Comitum et omnium Sapientum Seniorum et populorum totius regni"—(this was enacted by the common council and assent of all the bishops, peers, and all the sages, elders and commonality of the whole realm). Dugdale argues, that the commons had a share in the legislature, from the circumstance that several old and decayed boroughs send members to parliament, though it cannot be shown that those boroughs have been of any reputation since the conquest, much less that they have obtained the privilege by the grant of any succeeding king; on the contrary, those of ancient demesne do prescribe, in not sending burgesses to parliament, which prescription proves that there were some boroughs before the conquest. Sir Edward Coke uses the same argument.(1)

On the introduction of the feudal system by the Conqueror, both the obligation and the right of attendance in parliament became clearly defined. All who held lands of the king, *per baroniam*, were called tenants *in capite*, or *barones*, and were bound, by their tenure, to attend the king in parliament.

These *barones*, or lords of parliament, as they were otherwise called, were distinguished into spiritual and temporal. The lords spiritual included archbishops, bishops, abbots, and priors, who held the king, by barony, and were called by writ to parliament. In the time of the Saxons, the bishops and abbots held their lands free from all secular service, but being charged by William I. with the same obligations as the laity, they became tenants *in capite*, and were bound to attend the Curia Regis, and afterwards the parliament.

VIII.—Attendance in Parliament.

Attendance in parliament was indeed, at this period, a thing less sought for by the commons than by the kings, who were well pleased to give the people a voice in the legislature, as a check upon the domineering temper of the nobility. The commons, on the other hand, feeling how little weight they had in the deliberations of the parliament, considered the burden of attendance to be greater than the honour.(2)

---

(1) LL. Ed, Conf. c. 8; Dugd. Orig. Jur.; 9 Co. Pref.
(2) Crabb's Hist. Eng. Law, c. 16.

IX.—Frequency of Parliaments.

As to the frequency of parliaments it is difficult to determine precisely what was the practice among the Saxons. The Mirror(1) says, it was ordained by Alfred, that there should be a meeting of these councils twice a year, or oftener if needful, to treat of the government of God's people, how they should keep themselves from sin, should live in quiet and receive right; but it may more reasonably be inferred from the records of these times, that the Saxon kings assembled councils as often as the exigency of the times required, particularly when the defence of the country against invaders called for the united efforts of all subjects.(2)

X.—Manner of Assembling Parliament.

The manner of assembling parliaments was, as before observed, by means of the king's writ or summons. Whenever the king *de advisamento concilii sui*, that is, by the advice of his privy council, resolved to have a parliament, writs of summons were sent out of Chancery for the purpose of convening this assembly. On the introduction of special writs, their style was varied, according to the quality of the persons summoned. Before the reign of Edward III. the temporal lords of parliament were commanded by the king's writ to appear in *fide et homagio quibus nobis tenemini*—(upon the faith and homage whereby you are bound to us);—but in this reign they were sometimes commanded *in fide et homagto*—(upon faith and homage)—and sometimes *in fide et ligeancia*—(upon fealty and allegiance)—according as they were barons by tenure or otherwise; since that period they have been constantly commanded *in fide et ligeancia*, because, as Lord Coke observes, there are no feudal baronies in respect whereof homage is to be done. Ecclesiastical barons were commanded by the king's writ to be present *in fide et dilectione quibus nobis tenemini*—(upon the fealty and love whereby you are bound to us). The writs of the law officers, who were called to give their assistance in the upper house, but had no voice, had the words "ut intersitis nobiscum et cum cæteris de concilio nostro"—(that you be present with us and others of our council)—and sometimes, "nobiscum super præmissis tractaturi vestrumque consilium impensuri"—(to treat with us and give your council upon the premises);—but the writ to the barons of the Exchequer ran thus, "quod intersitis cum prælatis, magnatibus et proceribus super dictis negotiis tracturi vestrumque consilium impensuri"—(that you be present with the prelates and peers, to treat and give counsel concerning the matters aforesaid)—a difference which still continues.(3)

XI.—Sessions of Parliament.

The sessions of parliaments were for many reasons short, at the early periods just referred to, particularly as the public business was despatched without much debating. In proportion as the two houses advanced towards independence, the proceedings in parliament became more orderly and also more multifarious. For some time after the *barones minores*, or commons, were summoned to parliament,

(1) Mir. des Just. c. 1, s. 3.
(2) Spelm. Concil. vol. i.; Chron. Sax. passim.
(3) Regist. 261; Co. 4 Inst. 3.

they continued to sit in the same house. But this was not uniformly the case, for in the reign of Edward I. the representatives of cities and burghs, who were summoned to the parliament at Shrewsbury, A. D. 1283, appear to have met at the village of Acton Burnell, while the rest of the parliament sat at Shrewsbury. It should seem, likewise, that in the same year, there were three parliaments sitting at the same time in three different cities, namely, York, Durham, and Northampton, to each of which the king sent commissioners to represent his person, while he was engaged in the conquest of Wales. But although sitting in the same place, yet these two estates of the realm gradually became more distinct, and, as early as the reign of Edward III., their deliberations were carried on apart.(1)

XII.—Opening of Parliament.

On the opening of parliament, the king, or those appointed to represent him, declared, in the presence of the lords and commons, the purpose of their meeting for the redress of matters touching the church, and the affairs of England. If a bishop was lord chancellor, he took a text in Latin, and discoursed upon it; but when a judge was lord chancellor, he recited the causes of parliament in the form of an oration, after which the commons were required, in the king's name, to make choice of their speaker, the king having previously nominated, as in the case of a *congé d'élire* of a bishop, some discreet and learned man whom the commons might elect.(2)

XIII.—Humble Address of the Speaker.

This being done, the person on whom the choice fell used, with great profession of his own inability, to entreat them to fix on some one of greater ability, to undertake so weighty a charge, and after being constrained to take the chair, he then prayed leave to disqualify himself before the king: wherefore, on being presented to the king, in the lord's house, he used to renew his protestations of inability to discharge the office. Sir John Cust was the last speaker who, in 1761, adopted this language of diffidence, since whose time the ceremony of addressing the throne by the speaker has been laid aside.(3)

XIV.—Petitions of the Commons.

But this tone of modesty and humility was not confined to the speaker of the lower house, for it was adopted by the commons in all their proceedings, both towards the king and the upper house. Their wishes and suggestions were conveyed in the shape of petitions, which usually began with "Vos poveres communes prient et supplient"—(your poor commons beg and pray)—and concluded with the conjuration "Pour Dieu et en œuvre de charité"—(for God's sake, as an act of charity). To the upper house they looked for guidance and instruction; and when any matter of difficulty came before them, they petitioned that certain prelates and barons might be allowed to come to them, and assist them with their advice.(4)

---

(1) Hody's Convocat. p. 153.
(2) Co. 4 Inst. (3) Ibid. Parl. Hist. i. 135.

OPINIONS OF THE PRESS ON THE FIRST NUMBER OF THIS WORK.

Fundamental Principles of the Laws of Canada, by N. B. DOUCET, Esq. No. 1. Montreal: John Lovell, St. Nicholas Street.

We have had the advantage of perusing with some care the first number of the above work, on the Fundamental Principles of the Laws of Canada. This number contains eighty pages, large octavo, and is divided into fourteen chapters, which are subdivided into sections.

We deem it our duty, upon receiving this commencement of what we doubt not will prove an important acquisition to our colonial literature, or, to speak more correctly, to our colonial jurisprudence, to express at some length our opinion of the work before us, so far as it has gone; and we do so with the more readiness, as we feel satisfied that our remarks will be acquiesced in by the intelligent and well educated in this and other communities, who may be fortunate enough to peruse a production so replete with a profound and varied learning, and exhibiting such a clear and comprehensive view of the elementary principles of all history and all science. Besides, we are, as members of what Mr. D. properly terms that sublime professsion, the law, and over which his great work is destined to shed such a glorious light, personally desirous of recording the humble testimony of an ardent admiration of Mr. D.'s commencement of this most useful work, and of our gratitude to the author for his arduous and enlightened efforts in behalf of the present and succeeding generations. Such a work as this was long and much wanted. Mr. D.'s has been expected for some time, and we rejoice at having it in our power to announce the publication of the first number to our readers.

We are zealous advocates of first principles. In looking over the diary of our school-boy days, we find that our teachers were perpetually attempting to hammer rudiments and fundamental principles of something into our impervious craniums;—we find, further, that the aforesaid hammerings were accompanied by the variations of *impositions* and the lash. Notwithstanding this rude treatment, we have always entertained a steady and profound attachment to first principles. We become excited by the mere contemplation of them. A fundamental principle is the delight of our souls.

Besides, it is indeed pleasant to have the moral and intellectual rubbish—the dark and disordered mass of human error and human villany, which after the lapse of ages, envelops the elementary principles of ancient sciences—removed by some kind hand. It enables you to walk up to them unobstructed, and as old acquaintances with your energies, unwearied by mental fatigue and confusion. This we say is most delectable to the inquiring soul. Therefore we cannot but feel grateful to Mr. Doucet for the ingenuity and profound research displayed in this firt number. So wide is his range, that he has with much labour, but with great skill prepared the way for introducing us to the elements of any and every science which his succeeding numbers may investigate. This, we conceive, is admirable. Mr. D.'s work comprehends the history of mankind, existing under innumerable and every varying systems of religion, political institutions, and morals. In this method, Mr. D. is sustained by the most eminent names. "Partout," says an immortal writer of the new French school, "les mœurs enfantent les lois, leur communiquent, dès l'origine, leur nature, leur caractère, leurs qualités les plus distinctives. Ce'a est si vrai, que les mœurs d'un peuple étant données, les lois se trouvent dessinées dans leur caractère général." M. D. seems to have been deeply impressed with these great truths.

Law is a sublime, moral, and practical science, being interwoven with the structure and the very being of civil society—blended with all its dearest interests—asserting a control over all the actions of men as members of the community—the protector of human infirmity, the avenger of human wrongs, it becomes necessary in entering upon such a work as Mr. D's purports to be, to take an extremely extended view of things—of men and systems—assuredly Mr. D. has accomplished this to the satisfaction of the wildest enthusiast for generalities, no person will complain, unless he pants for the political and religious histories of another universe—of other worlds and other systems of creation. His research has swept the entire annals of the world, and extracted its stores from all conditions of men—from the dungeons of the wretched and the lost, to the palaces of the mighty and the illustrious dead.

The introductory part is confined to the general definitions of law. From this we give the following—the opening paragraph:—

"There are books, instructive and easy to be understood, written upon all sciences, even upon some that are useless. There are none in Canada which present a familar manner to its inhabitants the rules they are to follow in the application of the laws under which they live, and what they are to do in the intercourse they have with their debtors, their creditors, their neighbours, and how they ought to act when unjust demands or insiduous accusations are made against them. Their ignorance in these matters compels them to commit their dearest interests into indifferent, mercenary, and sometimes deceitful hands, and to see by the eyes of others, things that they ought to see with their own. Although a blind man may have nothing to fear from the one who leads him, it is natural to suppose that he would derive somee advantage, at least some satisfaction, in seeing some of his road by himself."

This is quite true. We have ourselves frequently regretted the absence of some works which would furnish us in a familiar way with a thorough knowledge of the law of the country—and doubt not but that a larger class of men called "debtors and cre-

OPINIONS OF THE PRESS ON THE FIRST NUMBER OF THIS WO

ditors" have often lamented the same deficiency in our literature.

We come now to the first chapter, which treats of the origin of things, and of conflicting doctrines. In this chapter, Mr. Doucet has drawn some interesting parallels. We would refer our readers particularly to those between Noah and Saturn, Moses and Bacchus, Canaan and Mercury, &c., page 22 and 23. We do not pretend to affirm, that there is any thing strikingly new in these parallels, or in any part of the work; but, assuredly, Mr. Doucet must be permitted to receive the credit of considerable originality in the manner of arranging and discussing his subjects.

This chapter exhibits an unbounded erudition. Indeed we may remark once for all, that the work is throughout distinguished for its rare and most numerous references. In truth, there is, at times, a minuteness of quotation which distracts the attention. We will give one instance of this defect. Mr. D. cites the decalogue verbatim, and at the end of each of the divine commandments, he refers his readers specially to the book, the chapter, and verse, wherein it is contained.

The five succeeding chapters, taking up separately the five great ages of the ancient world, comprehend the history of the universe and every thing in it, from the creation to the sack and burning of Troy, and other great events in Western Asia and the opposite continent of Greece. We regret we cannot at present go hand in hand with our readers over this almost boundless range of historical events, these wide fiels of moral truth and moral experience, wherein the mind recreates its energies while it improves and elevates its intelligence.

From the fifth chapter to the end of the number, Mr. Doucet gives us, by a miraculous effort of condensation, the history of every thing down to the early part of the sixth century, when Justinian's code was published. We regret we have not space for quotations which would enable our readers to judge of the work much better than they can from any miserable observations which may fall from us. To be fully appreciated, this book should be read.

We shall conclude the present notice of the first number of Mr. Doucet's work by remarking that, according to us, he has traced with admirable precision and consciousness the separate histories of the material, political, and moral worlds from the reign of Chaos to the promulgation of Justinian's celebrated compilations.—*The Times, March* 27.

We have much pleasure in acknowledging the receipt of the first number of the "Fundamental Principles of the Laws of Canada," by N. B. Doucet, Esq., Notary Public, of this city; and have to congratulate the author, the learned profession, and the public in general, upon the progress that has thus been made in the publication of this most excellent and useful compilation. Having had the adva of perusing a large portion of this work in m script, we have had, on a former occasion, sat'sfaction in expressing a favourable opinion That opinion, in sa far as regards the contents first number, is most amply confirmed; and it remains for us to express a hope, that the whol ries of this most interesting work may experien most of all from the learned profession—that re tion and encouragement which its great meri richly deserve. It is, we must confess, a new to find a native French Canadian of this Pro devoting so much time and labour, as this worl quired, to the instruction of those who inten prosecute the study of our laws, and, throwing all native and national prejudices, giving it t public in the English language. This is, in opinion, a great merit of itself; but the object nature, the research, the candour and fidelity which the various and voluminous subjects tre of, are brought before the notice of the reader, stitute a still higher claim to both praise and pa nage, and justly entitle the author to the rare dist tion of being denominated a benefactor of his cour

We regret that our space will not admit of entering into a minute examination of the diffe subjects discussed in the first number of this pu cation. It will be sufficient merely to observe, the primary object of the labours of Mr. Douc to trace the fundamental principles of the law Canada, as they existed under the aboriginal nati as they were changed under the French kings, as they were modified and altered under the d nation of England. In doing so, the author ha the first instance, presented the law student wi succinct, but clear and interesting outline of origin and progress of religious and political in tutions amongst the principal nations of the wo from the most remote periods recognized by hist both written and traditional, to the present t By this judicious method, the foundations of civilization and policy will be exposed to the u of the student; and he will thus be able with difficulty, to comprehend the more abstruse intricate superstructure, which, in process of t and in the progress of mankind to a better ord things, were gradually reared upon such foundati In short, we feel it to be a duty which we ow the public, strongly to recommend Mr. Dou forthcoming work to every one interested in study of the civil law of nations, as well as of laws which now obtain in this country. They not find the work before us a dry or tedious tas be mastered only by constant labour and assid On the contrary, it is so judiciously arranged u different heads, and each topic of discussion clearly pointed out to the eye and the mind, th appears to us to be rather a pleasure than a tas refer to its pages.—*Montreal Gazette, March* 2