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AN ESSAY
ON THE
BRITISH CONSTITUTION,
BLENDED WITH THE
LAWS RELATING TO LANDED PROPERTY
AND THE PERSONAL LIBERTY
OF THE SUBJECT,
FROM THE TIME OF THE ROMANS TO
THE LATEST PERIOD;
And concluding with a few general Remarks on the foregoing
and other interesting Subjects, and particularly touching
Elections.

TO WHICH IS SUBJOINED
A LETTER WRITTEN TO A MEMBER OF PARLIAMENT
On the Subject of a General Inclosure.

BY AGRICOLA.

"Major hereditas venit unicumque nostrum a jure et legibus
quam a parentibus."
   Cicero.

TAUNTON:
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1812.
TO

SIR JOHN SINCLAIR,
BARONET.

Sir John:

Being deeply impressed with a respect for your public character and actions as a statesman, which shine so conspicuous upon all occasions and subjects that involve the prosperity of the nation (particularly in domestic economy and internal resources) which appear of the utmost importance at this critical juncture of political affairs; the substance of this juvenile Essay is inscribed by

Sir John,

Your obedient and humble Servant,

AGRICOLA.

TAUNTON,
1812.
PREFACE.

The following Essay, the substance of which is abstracted from legal authors of repute, "Floriferis ut apes in saltibus omnia limant."

The Author, conscious of his insufficiency, wishes it to be understood that he was by no means actuated by a "cacoethes scribendi" or by the vanity of becoming "author" to compose the following pages, but merely under the idea of self-improvement, and to pass away the ennui of a leisure interval, being an invalid; but when he had nearly completed his intention, he was induced to shew it to an intelligent professional friend; through his and other's persuasions this imperfect Essay is humbly submitted to the generous public.

To the "unprofessional reader and attorneys' clerks" it is only recommended, the Author sensible of his inability to instruct practical gentlemen of the law, who must necessarily have furnished their libraries with Blackstone and other such like valuable books, and who perhaps might be impelled by latent jealousy to hold this publication in derision and contempt.
This humble compilation is divided into four parts, beginning with the Roman Era, and is continued to the Revolution in 1688. The Author has refrained from going into the minutiae of laws enacted since this period touching the proposed subject, but has confined himself only to the most essential of them, for if he did he would deviate from his original design and the meaning of the word "concise." The reader must not expect much original or new matter in these sheets, as it is not in the power of any individual in this happy country to make new laws, however great his inventive genius might be. It is much hoped that sufficient matter and principles will be found in this little book for the reader to form sufficient ideas of the excellence of our free laws and superior constitution, as altered and improved by the wisdom of successive ages, to compensate for the time necessary for its perusal.

As the subject of the four divisions of this Essay is rather abstruse to an unprofessional reader, it is recommended him to begin with perusing the Remarks, &c.
ESSAY
ON THE
BRITISH CONSTITUTION.

PART I.

FROM THE TIME OF THE ROMANS TO THE
NORMAN CONQUEST;—BEING A SHORT HISTORY
OF THE ANTIQUITY OF OUR CONSTITUTION.

It may be observed, that at the time of the
Roman invasion under Julius Cæsar, and to a
much later period, the Britons were a hardy race
of people, bordering on ferocity; (the Antipodes
it might be said of the enlightened and perhaps
too refined moderns) they gained their livelihood
by the sports of the field, viz. by hunting, shoot-
ing, and fishing, were naturally fond of inde-
pendence. And as in those times the soldiers
were followed to the camp by their wives and
children, (so that in the event of their losing a
battle the vanquished party was involved in the
greatest possible misery) and their religious sen-
timents impressing them with an idea: that if a
free-born man fell by the sword, he would be
admitted to the Hall of Odin, the seat of the Blessed;*—being incited by those motives of dark superstition which then generally clouded the minds of the people through the nation, they contracted a contempt for death: therefore often performed astonishing acts of valour in the field. They greatly harrassed the Romans for a long series of years. And Lucan, in Book II. speaking in order of the Roman generals Julius Cæsar, and of his successors Claudius Cæsar and Domitian, says—

"Territa quesitis ostendit terga Britannis."

And Virgil, in representing them a fierce people, says—

"Et penitus toto devisos orbis Britannos feros hospitibus."

But, at length, when the Britons were subdued by the Romans, remarkable to relate they began to emulate their conquerors in luxury, effeminacy, and voluptuousness. When the Roman states were threatened with invasion by neighbouring nations, their troops then in Britain were withdrawn to the protection of their mother country, after being masters of this island about four hundred years.

* It was no uncommon act in those times for a slave who survived his master in battle to kill himself, in order to accompany him thither (to Odin), and no act was esteemed more glorious.
Upon the abandonment of this island by the Romans, the Picts and Scots made inroads by breaking over the Roman walls, and devastating the fields of the Britons, they filled every place where they came with carnage and destruction. The Britons being an undisciplined people were unable to repel them; therefore they invited the Saxons to their assistance: Hengist and Horsa arrived with troops, and marched against the Picts and Scots, and obtained an easy victory over them: but these commanders perceiving the extreme supineness and degeneracy of the Britons, and allured by the richness of the soil, entertained thoughts of settling in this island, were re-inforced by their countrymen in great bodies, and joining with the Picts and Scots, commenced hostilities against the Britons: and the wars that ensued ended almost in the total extirpation of the Britons,* and in the erection of the Saxon heptarchy, viz. the kingdoms of Kent, South Saxons, West Saxons, East Angles, East Saxony, Mercia, and Northumberland. Britain was first called England by the Saxons. Egbert, king of Wessex, conquered the whole heptarchy, and became the first king of all England. The Saxons established their customs,

* Those Britons who survived the carnage of their countrymen, took refuge in Wales, where their descendants and language remain to this day:—hence called the Ancient Britons.
language, and civil institutions: their property was either allodial and descended to all their male children and collaterals equally, and was partible by them, both lands and goods, which lands they called bockland, and which were held by deeds or charters, and was originally invented by the clergy in securing lands to their monasteries—or else folkland or gafolkland, which were estates of a copyhold nature for life at most, and were held by vassals at the will of the lords, subject to certain services—or else were earldoms of counties which were held of the king without special charter, for the gathering in of his profits, and administration of justice; and were generally for life, unless forfeited by misdemeanors, and were often granted to children where the ancestor was meritorious.—Allodium or folkland, in which the original grants did not forbid it, seem to have been devisable and alienable. (Vide Somner on Gavelkind, p. 88 and 89.)

The feudal system was partially introduced about this period, and also villienage tenures, of which rellicts are retained to this day in most copyhold tenures.*

The Druids who lived in those days, from long observation and communicated reflection, were

* Villiens were formerly abject slaves, and were transferable by deed from one owner to another; and if they ran away, or were purloined from the lord, they were to be recovered by action, like beast or other chattels.
instructed in many branches of science, particularly in astronomy and physic. By the former they foretold the revolution of heavenly bodies, and by the latter cured diseases; on which account the ignorant vulgar ascribed these effects to their communication with the gods. The Druids and the Monks were allowed many privileges: they neither contributed to the expenses of government, nor served in the wars; and oftentimes the spoils of an enemy were devoted to their idols or gods by the deluded soldier.

The first charter regarding lands and privileges was made by Withredus, king of Kent: it was kept in Christ Church, at Canterbury, for posterity to imitate, and was written in the Saxon tongue. (Vide Spelman, p. 8.)

The Monks had not the power of alienating their possessions; therefore that order of men were perpetually accumulating riches. (Vide Mezarays, Abi. Chry. tom. 1, p. 180.) They were a crafty designing set of men, and supported their influence and dominion by the gross superstition they disseminated. As they were ambitious of power in state affairs, they were not contented with the management of ecclesiastical affairs alone, but sat and arrogated to themselves great authority in all the temporal courts throughout the kingdom.*

* To this ancient practice we may reasonably infer that "lords spiritual" have a voice in the legislature to this present day.
In the time of the Saxons, courts-barons are the most ancient we read of. Afterwards the hundred-court was instituted or erected by way of appeal: this latter court had cognizance both of criminal and civil matters; but after a time it was found also insufficient for the purposes of justice. Then next the county-court was instituted, and was considered the chief fountain of justice both in Germany and in England: soon after its institution, the hundred-court fell almost into total disuse. An earl always presided in this court, which was originally ambulatory, and assembled only twice a year, unless the exigency of business required it oftener. Every freetholder in the county was obliged to attend there, or he subjected himself to great penalties. No judge after dinner was allowed to exercise his office, on account of the propensity of our ancestors to an excess in diet: hence our jurymen to this day are not to eat or drink, or leave the court until they have become unanimous in their verdict.

The earl and bishop who presided in this court, when their office became difficult and burdensome (as the civil code swelled in bulk), used to delegate their authority. Sheriffs therefore were frequently appointed to transact their business; though they were at first under some subordination to the earls, at length grew entirely independent of them, and became the sole and su-
prime officers of county courts, and continue so to be at this day. It may be seen that the county-court was formerly a court of great dignity, but is now fallen into disrepute.

When the county-courts were found inadequate to the furtherance of public justice, the princes and nobility assembled for the purpose of administering justice, making new laws, and hearing appeals. This assemblage of nobility formed a supreme court of judicature, and the king or his chief justiciary presided over their deliberations. King Alfred presided in this court, and is said to have condemned many judges to be put to death for abuses in their office. Upon the extinction of this court, which continued long after the Norman Conquest, four other courts viz. the Court of Chancery, King's Bench, Common Pleas, and Exchequer (of which more hereafter), arose from its ruins, and manage and adjudge at this day the business it comprehended. The House of Peers, on its abolition, was also established the supreme court of appeal from the common law courts. (Vide Dalrymple on Feudal Property, c. 7.)

Alfred was a great promoter of learning, and invited many distinguished learned foreigners to take up their residence in England; and is said

* Called wittena-gemote, in Latin, styled the "commune consilium regni." These meetings took place twice a year at least, viz. at Easter and Michaelmas.
to have founded the University of Oxford. He compiled a body of laws, and arranged the execution of justice: he divided hundreds into tithings. A tithing consisted of ten families, and were pledges or sureties for each others good and orderly behaviour: and if any person offended against the law, they were obliged to procure him or give satisfaction for his crime. A borsholder was an ancient officer who presided over the business of the tithing. Every household in those days was answerable for his own family, and even for a guest; and every person was enrolled in some tithing, or was otherwise subject to be outlawed. No one could change his place of residence without a legal warrant for that purpose. When this excellent system of polity prevailed, robberies were scarcely ever heard of. Hence Alfred is justly styled, "Rex Angliae et Conditor Legum Anglicanaram," or King of England and Founder of the English Laws; and Edward the Confessor, the Restitutor.

In the Anglo-Saxon period, twelve jurors sat and were sworn to judge of matters of fact at all trials, according to reason and good conscience; and every man had the privilege of being tried by his peers or equals; so that justice might be more impartially administered: which inestimable

* Alfred is said to have first formed a militia in this country for the national defence.
blessing, the birth-right of Englishmen, exists at this day, and was fully established and provided for by Magna Charta, as pointed out hereafter in Part II.

The history of the Danes in this country is a dark and obscure period of time; and none of the laws or customs that at present exist seem to owe their origin to this race of people, except heriot custom, which seems to be introduced by them: it consists of a render of the best beast or other good or chattel (as the custom may be) to the lord of the manor, on the death of the tenant. This custom is incident to most copyhold tenures of inheritance. As this is the only innovation in our customs introduced by the Danes that occurs to me at present, I shall now conclude the first part of this Essay, referring the reader for more modern alterations in our laws and constitution, on this subject, to the subsequent part of this work.
PART II.

BEING A SHORT HISTORY OF OUR LAWS, FROM THE NORMAN CONQUEST TO THEIR PRESENT ESTABLISHMENT; AND OF THE CONSTITUTION AS BEGUN BY EDWARD THE FIRST.

William the First, or William the Conqueror, of Normandy, from whose reign we date the hereditary succession of our kings reigns, fought the famous battle of Hastings, in Sussex, October the 14th, 1066, in which Harold was slain, and the Normans were victorious: this led to the total subjection of this country. As soon as William was seated on the throne, he caused a great revolution in landed tenures and interests of this country, by generally diffusing over this kingdom the feudal system, instead of the allodial bockland and folkland tenures (except gavelkind and borough English); and by stripping all the English that were found in arms against him of their estates and property, and parcelling or apportioning out the same to his Norman followers, subject to certain conditions, viz. the taking of an oath of fealty,* and performing military services in time of war, and in time of peace to do

* This oath is continued to this day in most copyholds.
suit and service in the lord's court. Those Englishmen who were not found in arms against him, he compelled to take out patents of their land, to hold it of himself: in order to effect which, he caused a general survey of the whole kingdom to be made, which was called the Domesday Book;—thus causing all lands to be held mediatly or immediately of the Crown,* excepting in Kent and the Cinque Ports, where the old English tenure or the custom of gavelkind was and is preserved. The men of Kent, by the grant of William the Norman, were allowed many other privileges. Whether through the great opposition they made to the Normans these privileges were granted and made an article of their submission, or whether it was an act of grace obtained by Lanfranc, Archbishop of Canterbury, and Odo, Bishop of Bayeux, who were settled in Kent, is rather uncertain: for my own part I am inclined to ascribe them to the former cause. Many vestiges of this rigorous feudal tenure and copyhold in a great measure still continue, but in a more qualified or independent state: for as the tillers of the land naturally contracted an attachment for the spots of

* For more on this subject, vide Stat. Westmr. 3d, or Quia Emptores and 17th Edward II. and 34th Edward IV. Even to this day, through this custom, (by a fiction of law) the king is considered as the original proprietor of all lands in the kingdom.
ground they had cultivated, in the course of time they gradually infringed on and enervated the lord's interests, and thereby, by immemorial custom, (which is the life of copyholds) gained to themselves a more permanent interest in their property, i. e. in some manors a life interest, and in others an interest of inheritance. It may be observed, that before the Norman Conquest, the feudal tenure was but very partially felt in this country, scarcely a scintilla of that custom existed:—hence, as observed, before our laws experienced a great innovation at this period.

Where a township had lands that subsisted before with a provost or mayor, as the City of London and Cinque Ports, there the Conqueror gave to such and their successors permission to hold them by the old tenure, upon condition of contributing a reasonable tribute towards the wars.

Those that held lands immediately from the king, were called his head tenants, or in tenants in capite, as holding from the head of the government, and they subgranted out the same by charters to their vassals. And the Magna Charta of Henry III. gave an unqualified power of this kind, where sufficient was left to answer the services of the lord paramount. And they took fealty, and had the feudal fruits of their vassals, but still they were under subjection to the king: and upon any treason committed, the feuds were
forfeited to the king, and not to the lords, because they ought not to receive any tenants into their lands, but such as were faithful to the king.

In the courts of law he altered the style and manner of proceeding; as he ordained all proceedings in the king's court should be carried on in the Norman instead of the English language, which was evidently a badge of slavery imposed upon a conquered people.

In the Saxon times, in the wittena-gemote all matters both civil and criminal were then debated, as likewise the revenue; but for civil matters and criminal, in the first instance for facts arising within the county where they sat; but by way of appeal from the injustice of other law officers or courts, they heard causes from all the counties. But William the Conqueror only caused the states to recognize him, and dispensed with these annual parliaments, fearing that as they were composed of all English, they might prove dangerous to the throne. In lieu of those parliaments he tyrannically established a constant court in his own hall, called by Bracton Aula Regis.* This court was composed of the king's great officers of state, resident in his palace, such as the lord high constable, lord mareschal, lord high steward, lord chamberlain, lord chancellor, and others who

* Query.—If this court and the court of star chamber (which was finally abolished by Stat. 16th Charles I.) be not one and the same court.
transacted the business both civil and criminal, and likewise the matters of the revenue: and as they sat in the hall they were a court criminal, and when up stairs a court of revenue. The civil pleas they heard in either court. Over these courts presided the chiefjusticiar, called 'capitalis justicarius Angliae,' who was also the principal minister of state, the second man in the kingdom, and, by virtue of his office, guardian of the realm in the king's absence.

No cause of consequence was determined without the king's writ; for even in the county-courts, if the debt was above forty shillings, there was issued (as is the present practice) a justicies to the sheriff to enable him to hold such plea where the suitors are judges of the law and fact. So likewise the writ of right* was sued out to enable the lord to hold plea of the land within his jurisdiction; for it grew a maxim among the Normans that none could hold lands without the king's patent, nor plea above forty shillings without the king's writ. These writs were tested by the justiciar, and generally returnable in the king's court, and wherever the court sat, (the usual words of the return were "ubicumque fuerimus in Anglia," or "wheresoever we shall be in England") either in Aula Regis, where they sat

* This antiquated writ will lie for sixty years only, by Stat. 32d Hen. VIII. but at present is almost entirely disused. An ejectment lies for twenty years only.
on the criminal side, or in the revenue, which was above stairs. If the writ was returnable at either of these sittings, as the party appeared they proceeded to hear the cause and give their judgment; and the civil proceedings were minuted by the officers either attending in the criminal court or in the revenue; so that civil pleas were formed in the sovereign eyre of the King, and in the exchequer.

Though both the civil and criminal business was dispatched by these officers, yet they had some business which was peculiar to each of them. The justiciar presided in the court, and therefore called capitalis, as the head. All patents were formed by the chancellor, and the seal put to them, and he had the custody of the seal of the court both for writs and patents. All manner of accounts were chiefly audited by the treasurer, and therefore in his office the great roll (now called the pipe roll) was made up, and was a rent roll of the king's whole estate, from whence they sent extracts, since called summonses of the pipe, to each sheriff, who was his bailiff in each county to gather his revenue; and the sheriff came in and accounted at Michaelmas and Easter, and brought in the money from each bailiwick. The sheriff let the king's demesnes, and likewise gathered his rents and fines, all but the wardship and escheats, which belonged to the escheator, a proper officer appointed for that purpose in every
county; the sheriff likewise accounted for the profits of his torn, and sometimes they farmed them at a certain rent from the crown.

To the constable and marshal chiefly belonged the care of matters of honor, war, and peace, and therefore all foreign acts committed by the king's subjects were referred to them, to determine according to the law of nations and of arms.

The marshal was also to keep the prisoners, and take care that no indecency was committed in the king's house.

The chamberlains were to count the king's money, as it came in and issued out of the treasury.

The king's sovereign eyre or court removed with the king wherever he went, and wherever he did go the torn in that county ceased. On coming into any county, all matters depending in the torn were brought into the eyre, and when there the record was never afterwards parted with; but because the eyre was only ambulatory in the county where the king removed, they found it necessary that there should be justices in eyre to go the circuits through the several counties in England; and those in their circuits superseded the torn wherever they came, and transacted all manner of civil and criminal business. They went the circuits from seven years to seven years, and thus so long did the justice of the nation stand still, till about the time of the baron wars.
When the court received any plea, if it were a matter of fact it was tried by a jury of the county impannelled before the justiciar, or by the law of wager in debts upon a simple contract; for they thought that if the plaintiff trusted to the honesty of the defendant in lending him his money without specialty, he ought to trust his conscience in the discharge; but if it were denied, then the witnesses were joined with the jury to attest the truth of the deed. This was according to the feudal institution. The pares curtis signed the investiture, and whenever it was questioned attested it; and therefore in all pleas of land the method was to produce the investiture, signed by the pares curtis, but where the investiture could not be found, they joined issue by battle, but because the battle was of uncertain event, the assizes were afterwards invented.

The battle seems to be a very uncertain way of trying property, as it was in the defendant’s choice who was in possession whether he would try it in that manner or not; and if he could produce his investiture he was sure to prevail “coram paribus.” And if any person got into possession by forcible disseisins, they removed such trespass in the torn by an inquisition, and so he who had just possession is might defend his title in the action; but because the trial was per pares, the sovereign eyre never took cognizance of causes out of the counties, and therefore it was necessary to send
justices in eyre, that the causes in each county might be tried; but if they did take cognizance of causes out of the county where the court sat, they were forced to send inquisitions to sheriffs, and afterwards to justices in eyre to try the facts, and afterwards to send the record into the king’s court. On the criminal side crimes were presented upon articles of enquiry, as in the Saxon times; but they did not on such presentments put them to their ordeal, but introduced a petit jury in the stead to try the prisoner; and therefore the prisoners did not use to produce their evidence to the first jury, as they had formerly done when they were put to their ordeals. From thence they only gave the grand jury such evidence as was sufficient to accuse: this was considered as a great reformation of the law; for in the Saxon times the greater crimes were tried by ordeal,* and the less by compurgators, both of which were

* This barbarous and superstitious custom by which offenders against the laws were formerly tried was abolished in the reign of Henry III. And also the trial wager of battle and that of compurgators has been long since disused. The former trial was a direct impious appeal to the miraculous intercession of providence: for it compelled the offender to walk on hot ploughshares, or to plunge some part of the body into boiling hot water, and if the supposed offender escaped unhurt he was declared innocent. By the latter custom of compurgation the offender might clear himself of any charge or offence, by his own oath and eleven of his neighbours as to his innocence.
insufficient methods of determining causes, and therefore the changing this into a petit jury was of great advantage. When the judges in eyre itinerant returned, they lodged their records in the king's court of exchequer, many of which still remain. And for the fines and amerciaments which were in such courts process went from the exchequer; and therefore on the division of the courts, the records of the fines and amerciaments were kept in the several and respective courts, and only extracts out of them were transmitted into the exchequer. But the justices in eyre had a larger authority than any of the other courts; for when the cause concerned the king's revenue, they could give day into the king's sovereign courts, so that the justicii itinerantes were supposed to communicate with the justiciarii residentes, and to supply their places in all counties where the sovereign eyre was not.

As the torn was ambulatory through the whole county, so the king's court originally perambulated through the whole kingdom: and after the Conquest, when the king discontinued making the circuits through the whole kingdom, they then appointed justices in eyre, who went in their stead, with a delegated power, but were always esteemed part of the king's court, exercising their jurisdiction within the counties, but being no more than a delegated power, there was still a writ of error from them before the king himself.
And in the palace of Westminster, where was the chief seat of his residence, there were residentiary justices that heard and determined in the king's absence; but there were often commands given to bring such plea before the king.

The justices in eyre had several articles which they gave in charge and proceeded upon, and all lords of liberties came in the first day and made their claims, that they might hold pleas within their franchise at the same time, and that the jurisdiction of the eyre might appear; and when the charters were lost, these claims were allowed as evidence of their franchise. The marshal (as has been said) being to take care of the prisoners, did attend the king's court, but when the justices became stationary, there was likewise a stationary prison called the Fleet.

The judges of assize came into use in the room of the ancient justices in eyre, justiciarii in intimate, who were regularly established at the parliament of Northampton, A. D. 1176, 22d Henry II.* and were then delegated with a power from the king's court, or aula regis: they afterwards made a circuit once in seven years for the purpose of trying causes. They were afterwards directed by Magna Charta, c. 12, to be sent in every county once a year to take or hold assizes.

The power of the present justices of assize and

* By this king's reign the Saxon line was restored.
nisi prius are more immediately derived from the Statute of Westminster 2d, 13th Edward I. c. 30, and by the 14th Edward III. c. 16. Inquests of nisi prius may be taken before any justice of either bench, though the plea be not depending in his own court, or before the chief baron of the exchequer, or otherwise before the chief justices of assize, so that one of such justices be a judge of the court of king's bench or common pleas, or the king's serjeant sworn. They usually make their circuits twice a year (except in the four Northern counties), in the vacation after Hilary and Trinity Terms. The assizes are allowed to be taken in the time of Lent by the supposed consent of the bishops, at the king's request, as expressed in Statute of Westminster 1st, and 3d Edward I.

The jealousy and precaution of our ancestors ordained that no lawyer should be a judge of assize in the county wherein he was born or doth inhabit; but as this restriction was found very inconvenient, the 12th of George II. c. 27, was enacted for the express purpose of authorising the commissioners of oyer and terminer and of gaol delivery to execute their commissions on the crown side or in the criminal courts within any county in England. The said Statutes, Westminster 2d and 13th Edward I. c. 30, empowers the judges of assize (who sit by virtue of five several authorities, as pointed out in Blackstone's
Commentaries, vol. 3, p. 59) to try all questions of fact issuing out of the courts of Westminster that are then ripe for trial by jury in the county. These are by course of the courts appointed to be tried at Westminster in some Easter or Michaelmas term by a jury returned from the county wherein the cause of action arose, but with this proviso, "nisi prius," unless before the day prefixed the judges of assize come into the county where the litigant parties reside, or cause of action arose: this they are always sure to do in the vacations preceding each Easter and Michaelmas term, and this saves the party much expence and trouble, by exempting them and their witnesses from attending on the courts at Westminster.

And in order to facilitate justice, in case any one or more who may be nominated in the commission of assize should be prevented from executing the same, there is a writ issuing of course, technically called "si non omnis," which directs that if all cannot be present, any two of them (a justice and a serjeant being one) may proceed to its execution; and if the verdict of the jury should be contrary to adduced evidence or the opinion of the court, or if they should assess excessive damages, or if the judge might by possibility be mistaken in a point of law, there are two courts of judicature open to the litigant party for an appeal, and the party under
such circumstances as just related might be entitled to a new trial.

There are twelve judges, and this kingdom is divided into six circuits.

King Henry II. revived the right of progeniture, as introduced by William the Norman, which custom had been considerably altered by Henry I.

It is to be remarked that two very peculiar customs obtain to this day, namely, the custom of gavelkind in Kent, where lands descend to all the male issue equally, and the custom of borough English,* whereby lands descend to the youngest son or brother, in preference to and in exclusion of the elder, as in the case of succession to real estates generally. These are the only two customs which occur to me at present where the right of primogeniture in the male line does not obtain at this day in all freehold property of inheritance.

Henry I. by charters greatly softened the rigours of the feudal system in the year 1100, as

* This tenure seems to be copyhold of inheritance. This custom some have thus accounted for; that as the lords formerly reserved the first right of concubinage with the wives of their tenants, it was presumed the first child was very likely to be a bastard; hence this custom of borough English. Others attributed this custom of preference on account of the youngest son being supposed the most helpless and least enabled to provide for himself.
he allowed by charter every man to dispose of such lands which he himself had acquired by purchase, over which he was supposed to have a more extensive power than that which came to him by a regular course of descent from his ancestors; which charter, with several other charters granted by Henry II. to many towns by which the citizens claimed their freedom and privileges, independent of any superior but himself, Sir Edward Coke expresses himself to be of opinion partly gave rise to Magna Charta; but there cannot be a doubt but that they were the groundwork of English liberty. (Vide Dr. Goldsmith's Abridgment of the History of England.)

In the reigns of King John and Henry III. the justiciar's power in England (as delegated by the Conqueror) became obnoxious to the people, as did the feudal tenures and the forest laws, which occasioned the insurrection of the barons or principal feudatories, which at last had this effect, that first King John consented to and afterwards his son Henry III. confirmed the two charters of English liberties, viz. Magna Charta and Charta de Foresta. The language of these charters passed and confirmed A. D. 1224 by Henry III.* is as follows: "Nullus liber homo capiatur vel imprisonetur aut disseizietur de libero tenemenio suo aut aliquo modo destruatur

* Henry III.'s reign is the longest recorded in the History of England,
BRITISH CONSTITUTION.

nisi per legale judicium parium suorum vel per legem terrae."* "No free man may be deprived of his liberty, or imprisoned or disseised of his tenement, or in any wise injured in life or limb, unless by the lawful judgment of his peers,† or the law of the land.''

By the above great charters of King John and Henry III. the court of common pleas, (which formed a part of the aula regis) and which before was ambulatory, was fixed and established at Westminster Hall, the place where the aula regis originally sat when the king resided in the city. The language of the charter is, that "Communia placita non sequantur curiam regis sed teneantur in aliquo loco certo." (Vide chap. 2.) "Nulli negabimus nulli differemus justitiam." "We shall not refuse or delay the justice due to any man." These articles form a conspicuous part of the said charters, which constitute the basis of Englishmens' liberties.

In the reign of Henry III. was found the first record of any writ for summoning knights, ei-

* This did not extend to villiens, but only to freeholders or "free men;" and lord Coke tells us the lord might beat or misuse his villien even without a cause, and he had no remedy whatever.

† The mode of trial by jury seems coeval with the first institution of civil government; and it might be justly called the palladium of liberty. Special juries were now allowed at the option of either party.
tizens, and burgesses to parliament. (See Blackstone, vol. 4, p. 424.)

In the 49th year of Henry III. the commons are supposed to be first represented in parliament: but some authors of great repute date the origin of the representation of the people to a much more remote period. As the Germans were no strangers to this mode of legislation, it is reasonable to infer that they introduced this free custom in this country much earlier, and that it existed during the Saxon heptarchy; and as the basis of the constitution tended to the perfection of freedom, (as the freemen or possessors of land presided as suitors in all the inferior courts) we cannot suppose that its immediate superstructure was the most defective part, that is, in the representation of the people at large in the commune concilium regni; or grand council of the nation, now properly called the parliament of the united kingdom.
Edward I. is justly styled the English Justinian, for in his time the laws came to great perfection, as it were per saltem; and Sir Matthew Hale says more was done in the first thirteen years of his reign to ameliorate the laws of this country, than in all the ages since that period. The justiciar's court broke out into three, namely, the exchequer, for which he appointed certain barons without a chief, for the justiciar was supposed not to be created, according to Dugdall, 31st Edward I. but according to Spelman, tempore Edwardi Secundi, as likewise were justiciars who had all a co-ordinate power: first, the one was to do the business of the chamber, which was a court of revenue; second, the other transacted the business of the hall, which was an entire court both civil and criminal, and which is the reason why criminal pleas are found among the records of the chief pleas, they receiving till Edward I.'s reign all pleas as well criminal as civil, but then there was an exact division; there was likewise a third court, which was that of the verge, held before the seneschal and
marshal; therefore Fleta mentions the senechal as holding the place of the justiciar, "qui tam tenet locum capitalis justiciarii regis," and the proceedings were without plaint and without writ, which was the way the justiciar used to proceed, issuing out precepts in his own name and tested by himself. The reason why the verge continued was that it might be privileged from the arrests of all other courts, that none of the king's officers might be taken up, and that privilege continued before and after the king's bench was settled.

The court of the verge continued with great jurisdiction before the division of the criminal and civil pleas in the two benches, and Fleta, secundo libro, 3 cap. described the jurisdiction of that court before the bench; for it mentions that all the assizes were adjourned into this court, and they might be adjourned from day to day or out of the court, if it removed to the next assizes, which is contrary to the nature of the king's bench, which never parts with a record of which it is once possessed.

This court took cognizance even of robberies and trespasses committed within the verge, and those committed in foreign kingdoms, which was the reason of continuing this court at the erection of the king's bench, because such jurisdiction had been allowed in France, namely, in Normandy; on the settlement of the courts in King Edward I.'s time they took out all pleas out of
the bench, which was "coram ipse regi ubicunque fuerimus in Angliae." The reason of taking them out of the king's bench was that Magna Charta had only made the common pleas residentiary, and therefore they would not extend it further; but the common pleas were removed there by writ of error, because justice flowing from the king, his justices errors were rectified by himself.

And it is said that Edward I. and many other kings sat in this court in person, which seems to have been designed to give countenance to that new erection. Nothing was so much commended as for the king to see justice done in his own presence. The chief justice gave the judgment though the king was present, that so the king might not decide in his own cause. From henceforth the king's bench became the sovereign eyre in the county where it resided, and in that respect had the same power as the justiciarius Angliae; and the assizes in the county where the king's bench was, were from that time adjourned into the king's bench, and not coram marshall, as it had sometimes been, from the laying aside the justiciar to the erecting this court.

But amongst these alterations the court of exchequer retained the greatest similitude of the aula regis, for in this court there were all the officers of the king's court continued in the same employments, though not with the same splen-
dour, for the court was composed of the several barons, who supplied the place of the justiciar, though they were much lower in degree. The treasurer had the whole custody of the revenue: the constable and marshal held the foreign treaties, and the marshal likewise was to keep the prisoners: the chamberlains were to receive and disburse the monies: and the steward disposed of such sums as related to the household. A few other of the most prominent and important alterations in the laws and courts of law that took place it might be proper to enumerate. First, King Edward established, confirmed, and settled the great charter and the charter of forests. He curtailed the encroachments of the pope, and limited the bounds of ecclesiastical jurisdiction, by obliging the ordinary to discharge the debts of all who died intestate, provided there was sufficient estate and effects. He prescribed the jurisdiction of the temporal courts of king's bench common pleas, and exchequer. He established the high court of admiralty, for the decision of all causes civil and maritime, according to the civil law and maritime customs. He settled the boundaries of all inferior courts; and the forms and effect of fines levied within the court of common pleas, for the purpose of transferring landed property by feme coverts, tenants in tail, and others who could not otherwise transfer their property. He settled and reformed many abuses incident
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...to tenures, and removed some restraints on the alienation of landed property; and by the Statute of Quia Emptores, it is enacted that upon all sales of land the feoffee shall hold the same, not of the immediate feoffor, but of the chief lord of the fee, of whom such feoffor himself held; hence none may alien or grant lands or tenements in fee simple to hold of himself, so that now none can hold in frankalmoigne, unless it is by title of prescription or by force of a grant made to a person, some or one of his predecessors before the Statute of 18th Edward I. (called the Statute de Donis) was made; but the king may give lands or tenements in fee simple to hold in frankalmoigne or by other service, for he is out of the case of the Statute. But as the said Statute did not extend to the king's own tenants in capite, the law concerning them is declared by the Statutes of prerogativa regis, Edward II. and by 34th Edward III. c. 15. Hence it is clear that all manors existing at this day must have existed as early as the reign of Edward I. and therefore no copyhold tenure can be created at this day, as immemorial custom is the life of this tenure. Edward instituted a speedy way for the recovery of small debts, by granting executions by writ of elegit,* not only upon all

* Vide Statute Westminster 2d, 13 Edward I. c. 18, which gave this judicial writ. Till this statute, by the ancient common law lands were not liable to be charged with or seized for debts.
goods and chattels, but upon a moiety of all freehold lands and tenements which the defendant or any person or persons in trust for him was or were seized or possessed of at or after the time to which the judgment relates: and he allowed the charging of lands in a statute merchant and staple to pay debts contracted in trade. He passed many mortmain statutes in order to guard against perpetuities, and the ecclesiastical invention of uses. He finally reduced Wales to subjection to the English crown, and in some degree to the laws of England. He perfected the forms of writs and pleadings consequent thereon, which are even now considered as models for imitation.

The statute de donis or entails was obtained by the nobility of this kingdom in the 13th year of the reign of Edward, A. D. 1285, in parliament assembled; which said statute, as before stated, tended to promote their private interests, and to perpetuate their overgrown landed possessions in their families to successive generations; but in the process of time the mode and operation of entails was found very inconvenient, by cramping the immediate possessor too much, and by making the first son independent of his parents, children became headstrong and disobedient, and by this means also property entailed was not forfeitable to the crown for any offence whatsoever; and it tended also to defraud creditors and injure trade, as the heir was not legally bound to pay or discharge.
the debts of his ancestor. Therefore the legislature wisely interposed in order to facilitate the modes of assurance for the conveyance of this species of property, and the statutes 18th and 27th Edward I. and the 4th Hen. VII. and 32d Hen. VIII. called the statutes of fines were enacted, and were so high a bâr, (as their language is,) "that they foreclose not only parties and privies and their heirs, but all other people who are of full age, out of prison, of good memory, and within the four seas, the day of the fine levied, if they put not in their claim to the record of the action, (or on the foot of the fine, &c.) within a year and a day."

It might be remarked that by the force and effect of the above statutes of fines in aid and furtherance of the common law, the subject gained an indisputable right to dispose of his estate, as well manors, messuages, lands, rents, &c. and of other things in possession, as also of remainders, reversions, or things in futuro.

It may be observed also that about two hundred years intervened after passing the statute of Westminster, 13th Edward I. (called the statute de donis,) and the application of another mode of assurance called common recoveries, adopted by the courts of law. This mode of assurance is a thing of subtle and refined fiction, and owes its origin to the finesse of the clergy: it received the royal sanction in the twelfth year of the reign of Edward IV. A. D. 1472, and subsequent acts of
parliament have countenanced this fiction or action at law. And at this day this mode of assurance of record is the best and safest in use in all cases of entails where property is very considerable, as it has a more extensive effect than a fine in barring remote limitations and entails, and is therefore in such cases undoubtedly preferable to a fine.

In the reign of Edward III. two statutes were passed to preserve the ineflimable liberty of the subject, viz. the statute 5th, c. 9, declares "that no man shall be forejudged of life or limb contrary to the great charter and the laws of the land."

And by statute 28th, c. 3, same reign, "no man shall be put out of his land or franchises, nor taken or imprisoned without being brought to answer by due process of law."

In order further to secure the justice and prudence of our English jurisprudence, another act was passed in the reign of Edward III. and Richard II.; and by the statute 1st William and Mary; and it is declared "that the pretended power of suspending of dispensing with the laws or the execution of the laws by regal authority without the consent of parliament is illegal."

The statute of Henry IV. enacts, "that all the king's liege subjects may in safe protection of the king go and come to his courts, and full justice

*This King was of the line of Lancaster.*
and rights shall be done as well to the poor as to the rich in the said courts."

In the reign of Edward III.* the parliament is supposed most probably to have assumed its present form, by a separation of the commons from the lords. (See Blackstone, p. 428.) Much was done in this prince's reign for establishing our domestic manufactories, by prohibiting the exportation of English wool and the importation or wear of foreign cloths or furs, and by encouraging cloth workers from other countries to settle here. Nor was the legislature inattentive to many other branches of commerce, for it enlarged the credit of the merchant by introducing the statute staple, whereby he might the more readily pledge his lands for the security of his mercantile debts. Justices of the peace were established instead of conservators. Few alterations more took place in our law from this period to the reign of Henry VIII. for the civil wars of York and Lancaster afforded no opportunity for the improvement of our jurisprudence. "Nam silent leges inter arma."

* In this prince's reign the famous battle of Cressy was fought; Edward's eldest son, the Black Prince, gave many instances of great personal valour. A story prevails that the Countess of Salisbury dropped her garter at a ball; the king took it up, and presented it to her in these words, "Honi soit qui mal y pense," Evil to him who evil thinks. Mortimer was the queen's paramour. This king reigned fifty years.
But to those very disputes we owe the method of barring entails by the fiction of common recoveries, the invention of the clergy to evade the statute of mortmain, though they were introduced by Edward IV. * for the purposes of unfettering estates, and making them more liable to forfeiture for certain offences; while on the other hand the owners endeavoured to protect them by the establishment of uses, another of the clerical inventions.

In the reign of Henry VII. ministers did everything in their power (knowing the king's avarice) to amass riches in the king's coffers. To this end the unconstitutional court of star chamber was new modelled and armed with power destructive to the liberty and property of the subject.

Prosecutions were commenced upon antiquated penal acts of parliament, in order to extort money from the subject: informations were received at the assizes and sessions in lieu of indictments: the statute of fines for landed property was craftily contrived to facilitate the destruction of entails, and to make the owners of real estates more subject to forfeiture to the crown, and also to promote alienation or transfer of property.

In this reign † a writ of capias was permitted

* The line of York.
† In this Prince's reign the Houses of York and Lancaster were united.
in all actions on the case, and the defendant might in consequence be outlawed; and upon such outlawry his goods became forfeited to the crown.

Thus we may perceive all laws, however salutary in themselves, passed in this prince’s reign, had a tendency to aggrandize the revenue.
PART IV.

FROM THE REFORMATION AS BEGUN BY HENRY VIII. TO THE REVOLUTION A. D. 1688, AND THENCEFORTH TO THE PRESENT.

Henry VIII. and his descendants completely abolished popery in this kingdom, an event of the greatest moment, and a source of secret pleasure to every good and enlightened subject. Devises to superstitious uses avoided by statute 23d Hen. VIII. c. 210. With respect to our jurisprudence two important statutes passed in this king's reign, viz. the statute of wills and the statute of uses: by the former statute, viz. the statute of wills, 32d Henry VIII. (explained by 34th same reign) it was enacted "that all persons being seized in fee simple (except feme coverts, infants, idiots, and persons of insane memory) might by will and testament in writing devise to any person (except to bodies corporate) two thirds* of their lands, tenements, and hereditaments, held in chivalry," &c.; and the whole of those lands held in socage, which, after the abolition of the feudal tenures, amounted to the whole of the

* One third not devisable, knights service land.
Subjects landed property (except copyholds) and to guard against frauds and perjuries it directs, "that all devises of lands and tenements shall not only be in writing, but signed by the testator or some other person in his presence at his request and in the presence of three or four "credible" witnesses.* This opened a door to quibble and chicane as to the word "credible," some thinking legatees might be witnesses, others vice versa, therefore statute 25th George II. c. 6, declared all legacies given to witnesses void. This removed all possibility of interest or bias affecting their testimony, and consequently admitted of the competency of legatees or creditors to be witnesses to the execution of wills. From the above principles it is obvious our laws have established a rational and just system for the disposition or transmission of property from one generation to another.

The law of limitations with respect to the possession of landed property was precisely established by the above statute in the year 1540, which declared that uninterrupted possession of lands of inheritance for the space of sixty years should constitute and be a sufficient title† against all the

* By a subsequent bank act, wills in which bequests of bank stock are made must be attested by three witnesses, the same as for the disposal of estates in land.

† A writ of right lies for the recovery of lands for sixty years, an ejectionment for twenty years only.
world. Now was also passed the statute of uses, and these two statutes made a great alteration in the transfer of landed property: the former allowed every man who did not labour under disabilities, such as derangement and other dures; to devise estates of the nature of freehold by will (as just pointed out) which till this period was unlawful; the latter tended to destroy the intricate niceties of uses, though the narrow construction of the courts of common law would not admit of this statute having those beneficial effects which was intended by the legislature: therefore the courts of equity laudably assumed a jurisdiction consonant both to justice and reason, and those principles and uniform system of sound equity were after a time also adopted by the courts of law.

In this prince's reign the establishment of recognizances in the nature of the statute fiaple, for the purpose of raising money upon landed security, and the introduction of salutary and provident bankrupt laws, were great innovations in our civil polity, but excellently well adapted to a mercantile nation. These improvements in our laws certainly makes this a distinguished era in our civil code.

As no laws of much national consequence in the short reigns of Edward VI. and William and Mary appear to have been enacted affecting the landed interest, or in any wise materially to alter
the constitution, I have passed these two reigns over in silence.

The next succeeding reign is Queen Elizabeth's, who was a woman possessed of much wisdom and penetration, therefore knew well how to choose her ministry. She kept her parliament at much distance and established the religious liberties of this nation on a basis not likely to be easily shaken by political laws, though rather of too sanguinary a complexion against papists and non-conformists. The statute of 3d Elizabeth is a very important and beneficial statute for providing for the maintenance of the poor, and appointing overseers and pointing out their duty; and by 43d Eliz. c. 4, devises to charitable uses were established. At this period the grievances and oppressions introduced at the Norman Conquest ceased to exist; (except military tenures and the court of star chamber,) which court armed the crown with a very dangerous and oppressive power over the liberty and property of the subjects. The proceedings of this court were carried on against the subject in a summary way under penal statutes without a jury. Although Elizabeth was armed with this power, she had wisdom enough to abstain from the persecution of the subject. In her reign trade flourished, the laws were impartially administered, and the nation respected abroad by sea and land. Until the close of the civil wars between the houses of York and Lancaster, it might be worthy
of remark that the parliamentary power of this nation was divided between the king, nobility, and clergy, those of a lower degree being in a state of ignorance and abject dependance upon the feudal lords. But as now arts and sciences began to be more generally diffused, and to approach to some perfection, and as trade was extended by the use of the mariner's compass and the discovery of the Indies, the merchants became sensible of the dignity and common rights of mankind and asserted them; and becoming suddenly rich and powerful assumed to themselves a share in the legislation of the kingdom. The clergy being now detected in their frauds and abuses were stripped of their lands. The nobles enervated by luxury and refinement, finding themselves rivalled in splendour and pomp by the wealthy citizens, launched into a greater profusion of their wealth than ever; by the policy of the times they were indulged or permitted to alienate their hereditary property; by this means a greater equality of the power of property was produced between them and the commons. Elizabeth by the assistance of a well-chosen ministry governed the affairs of the nation with so much prudence and economy that the commons were happy to grant her such supplies as she was disposed from time to time to request; perhaps never a prince or princess reigned more in the affections of the people than Elizabeth did.
We are now come to the reign of James VI. of Scotland and I. of England,* the lineal descendant of Egbert the Saxon king and the lineal heir of William the Conqueror, whose disposition was excessively arbitrary, perhaps owing to his indisputable hereditary right both to the crown of England as well as Scotland, his principles were wholly subversive of liberty in its most significant point of view. James by endeavouring to increase royal prerogative became odious to his subjects, and as they were tenacious to preserve the purity and equilibrium of the constitution, they naturally resisted all his attempts to make innovations on this sacred edifice, and thereby gained some victories, viz. in the case of concealments, monopolies, and in the dispensing prerogative power. (Vide Blackstone, vol. iv. p. 436.) Many years therefore of this prince's reign were spent in disputes with the people, and no laws of any importance were passed in this reign except those for the abolition of sanctuary, the extension of the bankrupt laws, the limitation of suits or actions, and for the regulating of informations upon penal statutes. King James is laid to have conceived a plan for alleviating military tenures held under the crown, in consideration of a proper equivalent to the crown for the lois thereof; this was designed.

* The union of the two crowns of Scotland and England were united in this prince, and also the two common stocks, viz. the Saxon and Norman.
to be an annual fee farm rent, which consisted of about a fourth of its real annual value.

Charles I. succeeded to the crown of his father, and as soon as this ill-judging prince came to the throne he began to wield the instrument of oppression, which clouded the dawn of his reign, and his vital spark sat in bloody night. In the third year of the reign of this prince an act passed called the petition of right by the subject to curb the arrogance of regal prerogative, and protect the sacred and tender liberties of Englishmen; by which established right our constitution received great alteration and improvement: the language of this act is, "that no freeman shall be imprisoned or detained without cause shewn, to which he shall make answer according to law." And by 16th Charles I. it is declared "that if any person be restrained of his liberty by order or decree of any illegal court, or by command of the king's majesty in person, or by warrant of the privy council board, or any of the privy council, he shall without delay upon demand of his counsel on motion, have a writ of Habeas Corpus to bring his body before the court of king's bench or common pleas, which court shall determine whether the cause of commitment be just, and therefore do as justice shall appertain, delivering, bailing, or remanding such prisoner." At this late period the latent power of the forest laws and the jurisdiction of the court of star chamber were
very great, till these oppressions were abolished by the king in parliament by the last mentioned statute.

During the nine years interregnum and the protectorship of Oliver Cromwell, no laws had been enacted binding on posterity. I am now come therefore to the era of the restoration of Charles II. to the regal power of England, which happened on the 29th of May, 1660. And immediately upon his restoration, happy for this country, the rigour of military tenures were by a statute totally abolished* (except in the instance of the corruption of blood upon attainder of treason and felony), after having existed in this country upwards of six centuries.

Now also was obtained for the security and liberty of the subject the great bulwark of our constitution the Habeas Corpus act, 31st Charles II. which enacted that on complaint made by or on behalf of any person committed and charged with any crime (except for treason and felony), the lord chancellor or any one of the twelve judges in vacation, upon a view of the copy of the warrant or affidavit that a copy is denied, shall award a Habeas Corpus, returnable immediately before himself or any of the twelve judges, and upon the return shall discharge the party if

* Stat. 12th Charles II. chap. 21. This statute turns other tenures in socage, and extends the testamentary power to lands in general.
bailed, upon security to appear and answer the accusation in the proper court for further explanation. (Vide said Act, *31st Charles II.)

From this period we may date the complete restitution of English liberty for the first time since the Norman Conquest. Although the subject may have enjoyed great personal liberty before this period by the suspension of the sword of oppression, yet it might have been exercised at the nod of every arbitrary prince.

Mr. Justice Blackstone says these two last enumerated statutes with regard to our property and persons form a second Magna Charta, and are of as much moment and consequence as that gained from King John at Runnymead. That only pruned the luxuriances of the feudal system, but the Statute of Charles II. † extirpated all its flaveries except in copyholds tenure, and there they have been much enervated by gradual custom and the interposition of courts of equity. Magna Charta, the learned judge goes on to say in general terms, declared that no man should be imprisoned contrary to law. The Habeas Corpus Act points out to the subject effectual means to release himself, though committed by the king

* A writ of Habeas Corpus can be obtained in either of the four courts. The apprehension of an obscure individual gave birth to this famous writ for the protection of personal liberty.

† New trials upon affidavit first awarded in the reign of Charles II.
in council, and to punish all who shall misuse him.

To the above statutes passed in this reign may be added the abolition of the prerogative of purveyance and pre-emption, the statute for holding triennial parliaments, the test and corporation acts, and also some toleration acts, which secure both civil and religious liberties, the statute of frauds and perjuries, a great and necessary security to private property, the statute of distribution of intestates effects, and that of jeofails.

"Now our constitution had arrived to its full vigour, the true balance between liberty and prerogative was happily established in the reign of King Charles II."

In furtherance of liberty, to the Habeas Corpus act succeeded the statute of William and Mary, which declared "that excessive bail ought not to be required." The protection of personal liberty and property by our laws were very indefinite, and some have thought that they only extended to freemen and freeholders, until recognized and explained by the "bill of rights," which was delivered by the lords and commons to the Prince and Princess of Orange on the 13th of February, 1688, and afterwards enacted as a

* The introduction of bail in this country shows how much our laws tended to protect the liberty of the subject.
statute in parliament, which declaration concludes in these words: "And they do claim and insist upon all and singular the premises as their undisputed rights and liberties, asserted and claimed in the said declaration to be the true, ancient, and indubitable rights of the people of this kingdom." To this act succeeded the toleration act.

These liberties of Englishmen were again reasserted on the accession of the house of Hanover, when the act of settlement was made to consolidate the hereditary interests of the present family, whereby the crown of England was limited to his present Majesty's ancestors. And some new provisions were added for securing the religion, laws, and liberties of the subject, and the inherent birth-rights of Englishmen. And lastly for the preservation of personal liberty for defence, by statute William and Mary, chap. 2d, the subject has a right "to carry arms."

Now commences the reign of Queen Anne, in which the union of the two kingdoms of England and Scotland took place, by statute 6th Anne, 1707. Ireland became united to these two kingdoms in January, 1801.

And for the relief of insolvent debtors against imprisonment, it is enacted by statute 92d George II. (which originating in the use of lords is called the lords' act) "if any person shall be charged in execution for any sum of money not
exceeding £100. (since extended to £200. by 26th George III. and to £300. by 33d George III. which is made perpetual by 39th George III.) and shall be minded to deliver up to his creditors all his estate and effects in satisfaction of his debts, he may, by conforming to the said acts, be discharged out of custody."

And in order to prevent vexatious arrests and suits, it is enacted by statute 43d George III. that "in all actions to be brought in England or Ireland, wherein the defendant shall be arrested and held to special bail, and wherein the plaintiff shall not recover the amount of the sum for which the defendant in such action shall have been so arrested and held to special bail, such defendant shall be entitled to costs of suit," &c.

By statute 51st, George III. in order to prevent vexations arrests, it is enacted that no English subject shall be arrested and held to special bail for any debt or sum of money under £15.
A FEW GENERAL REMARKS ON THE FOREGOING AND OTHER INTERESTING SUBJECTS, AND PARTICULARLY RESPECTING ELECTIONS, &c.

First, of the feudal system.—It may be observed that this tenure or custom was originally a plan of simplicity equally beneficial to landlord and tenant, prudently and politically calculated for their mutual defence and protection as individuals composing a part of a state. Its politic military origin was greatly perverted by the tyranny and oppression of the Conqueror and the immediate succeeding arbitrary princes. Its incidents were very grievous, such as reliefs, optionary fines, wardships, escheats, and oath of fealty upon the acceptance of a feud, and such like. But perhaps the most grievous incident of any was that attached to the marriages of heiresses of the immediate vassals of the crown: the sovereign (who was by the feudal law their guardian, and without whose consent they could not marry) took either of the husband or the heiress a large sum
of money as a "valor maritagi." This arbitrary incident was made a subterfuge for the, most scandalous exactions.

As learned antiquarians have differed as to the time when the feudal system was introduced, it would be presumption in me to give my opinion on that subject; but certain it is that William the Conqueror generally diffused it all over the whole kingdom, except as before pointed out.

The most striking alteration in our laws next succeeding is the statute of Magna Charta, which forms the basis of Englishmen's rights and liberties; and, as already pointed out, it has expressly established and declared that "no man shall be hurt in his person or property unless by the lawful judgment of his peers," which provision it is impossible for any individual too highly to appreciate. This trial by jury* (by the aid of the writ of subpœna) is well adapted for the investigation of truth and for dispensing justice; and it has been considered by all our first lawyers as the glory of the English law and the best preservative of our liberty, as thereby the balance of our constitution is maintained, as it forms a barrier between the liberty of the subject and the prerogative of the crown.

* A petit jury must consist of twelve men at least, and a special or an extraordinary jury must consist of twenty-four jurors.
The next remarkable period of change in our laws is in the reign of Edward I. when they came to a sudden pitch of perfection, as hereinbefore is pointed out. It is to be observed the writ of elegit was introduced in this prince's reign for the benefit of trade and creditors, by which not only the goods and chattels of the debtor might be taken in execution, but a moiety of all his freehold lands and tenements, whether they were in his immediate possession or held in trust for him. It is singular that copyhold property should be exempt to this day from being taken in execution upon a judgment, as the military or feudal tenures have been for near a century and half totally abolished.

In the reign of Henry VIII., the era of reformation, two important statutes passed, viz. the statute of wills and the statute of uses: by the former the subject is entitled to devise real estates by will (which he could not do before from the introduction of the feudal system), and the latter statute is the life spring of conveying or alienating property. The advantages the subject derives from the said statutes calls for his warmest gratitude and esteem for the laws under which he lives.

Some people have thought that the legislature ought to limit or prevent the possibility of any testator devising his property in a palpable, unjust, and unreasonable manner.
The restoration of Charles II. * 29th May, 1660, is another remarkable era or event in the page of history. The rigour of the feudal or military tenures introduced by the Normans were abolished in this reign, viz. by statute 12th Charles II. chap. 24, and by it most feudal tenures were turned into socage, consequently the subject had a full testamentary power over all his land for the first time subsequent to the feudal introduction by the Normans.

The great Habeas Corpus act was passed, which tends so much to the perfection of the liberty of the subject as before stated; and it is perhaps in every respect as important as King John's Magna Charta.

The toleration acts which passed in this reign, and from time to time, in favor of different sectaries, are no doubt productive of much unanimity and content amongst the English subjects, by not constraining men's consciences to fixed or certain tenets. And in my humble opinion indulgencies of this kind can do no harm; for if peoples' hearts be well disposed and inclined through the influence of scripture, it makes but little difference to what sect of religion they belong: and certainly but few generous and enlightened men are bigots. Montesquieu says in

* This reign was remarkable for pretty women and witty men; it is called the era of reformation of the English language.
his Spirit of Laws—"As every man is a free agent, liberty consists partly in the free exercise of our will and freedom of conscience."

The statute 39th of this reign (commonly called the statute of frauds and perjuries) enacts that all conveyances of property to be put in writing upon paper or parchment; and 3d William and Mary that all fraudulent devises against creditors to be void.

The memorable revolution attempted to be produced by the arbitrary and bigotted Prince James II. * in the year 1668 was cheating in design but happy in its consequences, therefore called the glorious revolution. He abdicated the throne in order to produce anarchy and a revolution throughout the kingdom, and left it at the above epoch.

On the 7th of February, 1668, the day of the king's departure, the lords and commons (in order to supply the executive part of the legislature) met in full convention and wisely resolved "that King James II. having endeavoured to subvert the constitution of the kingdom by breaking the original contract between king and

* James had an indisputable right to the throne by a lineal successive descent of almost nine hundred years, viz. from Egbert the Saxon king, and six hundred from the Norman conquest; this perhaps might account for his arbitrary conduct in some degree.
people, &c. and having withdrawn himself out of this kingdom, had abdicated the government, and that the throne is thereby become vacant."

Hereupon the "bill of rights," as before pointed out, was acknowledged by William and Mary, and was re-asserted on the accession of the house of Hanover in the act of settlement.

OF ELECTIONS.

As before observed, knights of the shire were certainly returned to parliament by the people as long ago as in the reign of Henry III. By some statutes passed in the reign of Henry VI. the qualification of electors for knights of the shire or county members was settled at the sum of forty shillings per annum of freehold landed property, which was even in those days by many considered too little. This qualification has by no means kept pace with the rise of times; as the same amount of property qualifies now as then. Forty shillings in these days is equal value perhaps to thirty pounds at this present day. By this long unaltered privilege many poor people

* It is to be remarked that fifty times the property at least is required to qualify a person to kill game as to vote for a knight of the shire. The importance of these two qualifications will not admit of a comparison.
have votes who have no will of their own, consequently this opens a door to a tide of corruption at contested county elections.

If this qualification were raised to a much greater amount, I humbly conceive no class of society would be injured by it; for the riots and excesses that prevail (through elections) do not ultimately benefit the lower orders of the community who revel in them, but on the contrary greatly tend to their prejudice and corruption of morals, and therefore makes them disorderly members of society, which many of this class will not deny.

And further, the more effectually to expunge from the minds of the people the idea of the prevalence of corruption in the representation of the people (if it really does exist), and to restore the constitution to its pristine vigour, triennial elections would much facilitate this desirable object.

This democratical part of the government has been greatly augmented since the above period by royal grants or charters to cities and large populous towns and boroughs, in order to promote or represent the political and commercial interest of the nation.

It seems a peculiar hardship that copyholders (however great their property might be of this nature only) are excluded from the privilege of being electors or votes for knights of the shire, although on the other hand a freehold or a
copyhold estate of the clear annual value of £600, is the chief qualification for the elected representatives of counties or knights of the shire, and £300. per annum of the like property for every citizen or burgess. Formerly also they were disqualified to serve on juries, but now by a certain act of parliament, viz. 4th and 5th William and Mary, chap. 24, every man in point of property is qualified to serve on juries in all legal matters (except high treason) who has freehold or copyhold lands to the amount of £10. a year in England and £6. in Wales. This is the first statute that empowered copyholders to serve on juries in the superior courts of law. But since by the statute 3d George III. the above qualification is extended to any leaseholder for five hundred years absolute, or for any term determinable upon life or lives of the clear value of £20. per annum over and above the rent reserved. If in one instance the copyholder's disability be removed with respect to his qualification to serve on juries, why should it not be (by the like parity of reason and upon the same broad principle) be removed in the other with respect to his being a vote for the knights of the shire? Thus, as the law now stands, copyhold property will qualify the elected but not the elector. This is an hypothesis unintelligible, as it makes the elector a more important character than the elected. On
the other hand clergymen may be electors for members of parliament, but cannot be elected.

I have further to remark that by the statute Westminster 2d of Edward I. it was enacted and declared that all elections should be free, and this accords with the genius and temper of Englishmen: and it has been acknowledged by many eminent men, pillars of our English jurisprudence, that the greatest bulwark of English liberty is the purity and freedom of elections. But certain it is that many charters still exist that were granted to corporations and boroughs by arbitrary princes, viz. the James's and the Charles's, which do not appear to be congenial to the constitution; nor indeed could it be expected they should, as those very princes possessed principles totally subversive of liberty, and therefore to our constitution.

I believe no one will doubt this assertion. In some close ministerial boroughs I could mention twenty-four men, chiefly composed of esquires, parsons, and lawyers arrogantly exercise the exclusive prerogative or privilege of returning two members to parliament as often as occasion requires; and I believe I may venture to affirm not four out of the twenty-four are merchants, and that three-fourths of this motley crew have through their political interests places under government, or children or relatives largely and
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amply provided for.* And true is the assertion of Laberius,—"Beneficium accipere libertatem vindere est:"—"To receive a benefit is to sell your liberty."

If boroughs and votes are bought, they are most likely to sell again, as it is fair to presume there must be a quid pro quo; and, as Baron Montesquieu observes, "it is impossible to give a great deal to the people without getting much more out of them; but to compass this the state must be subverted." It is obvious therefore to plain sense that where such charters exist, the freedom and purity of elections must be far lost indeed.

It may be here observed (amongst other remedies) the Lord Chancellor may cancel such royal charters or letters patent, independent of the crown, when granted contrary to law and the tender liberties of Englishmen, as it is presumed the king was deceived in his grant or charter.

In some borough or corporate town I could mention there is an absurd custom of exacting from all who are strangers who come to reside in them, such as mechanics and practical professional gentlemen, &c. a stipulated sum of money for their freedom, which answers no purpose whatever.

* In some of those instances pointed out more fault is to be found with the mode of electing than with the elected representative.
but to glut the mayor's table with inordinate luxuries. It is to be implied that the original intent of such a custom must have been for the purpose of having a free vote for the election of burgesses to parliament, or for some other derivative benefit or privilege: but where there is no benefit attached to such freedom, I have an idea that such a custom (where it is not immemorial*) must be bad de novo, and, as Mr. Justice Blackstone says, "malus usus abolendus est," or "an unreasonable or a bad custom is to be abolished." And therefore I am rather positive that no magistrate or body corporate can be authorised to make such exactions on the subject, as every Englishman has the undoubted right of loco-motion; and therefore if he or they obstinately persist in such proceedings, I believe the court of king's bench would take cognizance of them, by severely reprehending or cenfuring such magistrate or body corporate: and it is to my knowledge that many representatives of boroughs have no property and do not reside within two hundred miles of the town they represent, which was formerly indispensibly requisite, but by a late statute, viz. the statute 14th George III. this necessity of residence, &c. is dispensed with.

*Time of memory relates to the first day of the reign of King Richard I; consequently such charters cannot constitute immemorial usage or custom.
I think every impartial person who has witnessed the scenes, practices, and proceedings at our elections both for counties and boroughs, must admit and acknowledge that they are truly disgusting and degrading, and that they reflect a national disgrace, and consequently it is no credit or honor for a member to be returned to parliament by such means as are too often resorted to.

I think in this venal age members of parliament are selected and chosen like wives, not for their amiable talents, virtues, and qualities, but for the property they possess: and the first question that is asked by the commonalty on those occasions is what has he, or what has she to lavish? and when the golden bait is withheld, the wonted extortioner is the first to clamour and excite odium and distrust through the country towards the legislature.

See more on this subject hereafter.

COMMON ASSURANCES.

Deeds or conveyances are either these at common law or such as receive their force and efficacy by virtue of the statute of uses. Of conveyances by the common law some may be called original or primary conveyances, which are those by means whereof the benefit or estate is created or first arises; others are derivative or
secondary, whereby the benefit or estate originally created is enlarged, restrained, transferred, or extinguished. Original conveyances are the following: 1. feoffment, 2. gift, 3. grant, 4. lease, 5. exchange, 6. partition; derivative are 7. release, 8. confirmation, 9. surrender, 10. assignment, 11. defeazance.

The statute 32d Henry VIII. ch. 28, enables and empowers, first, a tenant in tail, secondly, a husband seised in right of his wife, and thirdly, all persons seised in fee simple of an estate in right of their churches, to make leases for three lives or twenty-one years: and such leases will respectively bind the issue in tail, the wife and her heirs, if the wife joins in such lease, and in the third instance will bind successors.

It has been before observed that intails may be barred or destroyed by fine and also by recovery: but now by the refinements of the doctrine of the appointment of trustees "to preserve contingent remainders," &c. the statute of entail has been nearly restored to its primitive efficacy. And by a subtle arrangement and construction, estates in futuro can be limited to certain and particular heirs, and the line of inheritance by the deed or will of the donor or testator can be exactly chalked out by the creation of remainders in the former instance, and by executory devises in the latter. By this mode of assurance personal as well as real property might in effect be entailed.
The deed of feoffment with a clause of warranty was formerly the most common mode of assurance, and it was and still is the most natural and simple, as witnesses were and are required of the delivery of the property, which made the transfer notorious; and certainly this deed to an unprofessional man is more intelligible than the modern conveyance by lease and release which supersedes it; as the doctrine and efficacy of the latter is founded on intricate legal niceties contained in the statute 27th Henry VIII. called the statute of uses for transferring real property into possession.

With respect to legal precedents there certainly are a great many superfluous words used, I may say tautology in the extreme; and I think its insipidity of language and dull phraseology must sicken a refined classical scholar, a limine of his profession, unless he be strongly tainted with an acumen of getting money, unless the "amor habendi urget;" and if a modern conveyancer were asked why he used such a multiplicity of words, the answer most likely would be that such forms have been established and settled by eminent men for ages ago, and consequently he deems it prudent not to deviate or depart from them, particularly as it is difficult to invent valid new forms or to draw a priori, not forgetting that a number of words or long deeds tend to augment fees. If I may venture an opinion on the profession of the law,
it strikes me a plodding character with even very moderate abilities, endowed with perseverance and sharp set with the love of fees, is more likely and better calculated to be a conveyancer or a common lawyer than a person of generous sentiments, even though possessing shining genius and splendid abilities, if the main qualities, viz. great industry and perseverance, be wanting.

REVIEW OF THE COURTS OF JUSTICE.

Our superior courts of justice, namely, the court of chancery, king's bench, common pleas, and exchequer have existed many centuries, viz. from the reign of Edward I. and to the honor of our jurisprudence it may be justly said that law and equity are more impartially administered therein than in any other courts in Europe, as our chancellors and judges are selected for their eminent wisdom, and are placed above corruption by liberal salaries or emoluments arising de officio, and these are very great attached to the chancellorship, to the grievance of the unfortunate bankrupt and others. And the statute George III. has constituted their judicial office to be uninterrupted "quamdiu bene se gesserint," notwithstanding any intervening demise of the crown. As has been before observed the laws of this country
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give a remedy for every possible injury a man can sustain touching life, liberty, or property.

In the king's bench preside four judges, the first of whom is styled the lord chief justice, the other three are called puisne justices.

The common pleas takes cognizance of all pleas and civil actions depending between subject and subject. The senior judge of this court is styled lord chief justice of the common pleas or common bench. None but sergeants at law are allowed to plead in this court.

There are two courts of equity, viz. the chancery and exchequer: the latter court was instituted for the purpose of managing the revenues of the crown, and it has the power of judging both according to law and equity. The four judges of this court are styled barons, and the senior judge lord chief baron. These courts over many questions have a concurrent jurisdiction with the common law and ecclesiastical courts, and most ecclesiastical matters of considerable consequence are now usually determined herein; such as questions, matters of tythes, moduses, and causes matrimonial, testamentary, and other things relative thereto, as appointing guardians, ordering executors and administrators, taking care of the interests of infants, payment of debts and legacies, and other similar things. Vid. Burn's Ecclesiastical Law. These courts will interfere as courts of
equity to abate the rigours and defects of the common law; the subject therefore is often therein relieved when destitute of remedy at common law.

In cases of appeal the house of lords is the dernier ressort of the subject from the decisions of the courts of common law and equity; but from the civil and ecclesiastical courts an appeal lies to the king in person, in chancery. Some people have thought our laws favour too much of a vindictive spirit, and that our criminal code of laws should be taught in our English schools after the manner of the Romans. We read that at Rome the very school-boys were obliged to learn the laws of the twelve tables (which were hung up in some conspicuous place in the Roman forums,) by heart, as a carmen necessare or an indispensable lesson.

In Ovid we read that the laws were wont to be engraved on durable brass—

"Ære legebantur."

And perhaps this might have this good effect, "Ut metus ad omnes, poena ad paucos perveniat," "That fear might come to all, punishment to a few."

The present practice of the four courts of common law is somewhat grovelling, as well as
circuitous and expensive; and in my humble opinion special pleading might be wholly dispensed with, and instead of pleading the special matter, the same might be given in evidence upon issue joined, which would be more intelligible to common sense, and perhaps more satisfactory to the client in a pecuniary point of view; and I think it might be compared to the fowler's net, as it seems a snare to catch the unwary; and even the practical professional man has often miscarried in actions at law, through not being acquainted with the niceties and the nature of special pleading. Country attorneys' bills have been compared to snipes', but it might be observed that out of the whole of the amount of the bill for the conduct of an action, more than one half of it the attorney has to pay his agent for his trouble and for other legal fees attached to different offices.

The proceedings in the court of chancery have been justly complained of as being prolix, tedious, and expensive. This might be attributed to the arduous official duty of the chancellor, who has the business of the whole kingdom (that falls under the cognizance of this court) resting on his shoulders, which has been thought too laborious and too burdensome for any one individual to dispatch.

A revision of the laws has been recommended as to what is the existing statute law antiquated,
suspended, or repealed, in order to prevent the confusion and intricacy an indigest ed mass of laws is likely to produce. This might be easily accomplished by the assistance and the reported observations of town and country attorneys. A periodical revision would be likely to be productive of a great and good effect; and the necessity of it cannot be doubted, particularly at this period, as our forefathers for centuries ago complained of the increasing bulk of our statute laws, and also on account of the wrangling and discordant opinions of eminent barristers on certain points of law. In some measure, therefore, the following quotation might be somewhat slightly applicable: "miserabilis est servitudo ubi jus est aut vagum aut incognitum,"—"miserable is the servitude where the law is either vague or unknown." The object of what is proposed would be "non tum ex fulgore sed ex tum dare lucem,"—"not to give smoke from light, but out of darkness to produce splendour." We read of Justinian and other Roman legislators having laudably devoted their time in this pursuit.

The law concerning tithes and ecclesiastical affairs in general seems to demand the interference of legislative wisdom, so that ecclesiastical benefits might be more equally divided and enjoyed by the clergymen in general.
The number of shires or counties in England and Wales are 52, viz. 40 in England and 12 in Wales. A high sheriff or sheriff is appointed annually for every county by the king and privy council the lord chancellor and the twelve judges; except in Westmoreland, London, and Middlesex. The sheriff's office is both ministerial and judicial: in his ministerial capacity he is bound to execute all writs or process issuing out of the king's court, and to take bail and to see the judgment of the courts carried into execution, &c.; in his judicial capacity, he is to hear and determine all causes of or under forty shillings value in his county court. Ex officio he is the first man in his county, and superior in rank to any nobleman during his office: he is the keeper of the king's peace, and for this purpose when occasion requires he is bound to command all the people of his county to attend him, which is called the posse comitatus or power of the county.

CONSTITUTION.

Our legislature or form of government is a limited monarchy, partaking of three different forms of government, viz. monarchical, aristocratic, and democratical. The concurrence of these three estates is necessary to enact laws.
1st. The king or the supreme executive magistrate composes the monarchical part of government:

2d. The lords spiritual and temporal the aristocratical:

3d. The third and last estate is the commons, the representatives of the people, who form the democratical part of our government.

Time and the experience of more than five succeeding centuries have sufficiently proved the perfection and superior excellence of our constitution to any other in the known world.

In remote ages our mixed form of government only existed in idea; and the most part of the old Roman legislators were of opinion that however beautiful it might appear in theory it would be found chimerical and by no means permanent. The reasons pointed out were that whenever one branch became more corrupt than another in the exercise of their prerogatives, privileges, or functions, its symmetry or equilibrium would be destroyed, and consequently would fall to the ground: and Baron Montesquieu in his treatise called the Spirit of Laws, written in 1748, when speaking of the English constitution, expresses himself thus—"As all human things have an end, the state we are speaking of will lose its liberty, it will perish: have not Rome, Sparta, and Carthage perished? It will perish when the
legislative power shall be more corrupted than the executive."

Cicero amongst the ancients seems to stand solitary in his opinion that such a government as ours would be the best; I will now repeat his memorable idea: "Statuo esse optimam constitutionem publicam quae ex tribus generibus illis regali, optimo et populari, confusa modice," &c.: happily for England this idea has been verified.

The numbers of the spiritual lords are 26, viz. 2 archbishops and 24 bishops; the temporal lords somewhat about 338; the house of commons 513 English and 100 Irish representatives, Scotch 45. Thus the British senate, including the king, I believe amounts to the exact number of 1023 personages.

The king by our constitution is required to govern his people according to law, &c. as fully expressed by statute 13th William III.; and the king by his coronation oath is bound to observe three things, viz. to govern according to law; to execute judgment in mercy, and to maintain the established religion. This is commonly called the contract between king and people:—"nihil potest rex quod de jure potest;" "the king can do nothing but what he can do by law."

A female as well as male may succeed to the English throne, who is immediately upon a descent invested with the full prerogative of sovereign
power, as declared by an act of parliament upon the accession of Queen Mary. Even before the Conquest the crown of England was descensible, and has so continued ever since. But by the statute 18th Elizabeth it is enacted that "if any person shall hold, affirm, or maintain that the queen's majesty (with and by the authority of parliament) is not able to make laws and statutes of sufficient force and validity to limit and bind the crown of this realm, and the descent, government, and inheritance thereof, such person shall during the life of the queen be guilty of high treason, and after her decease be guilty of a misdemeanour, and forfeit his goods and chattels."

Thus it is indisputable that the legislature of this kingdom has a power to settle, alter, and limit the succession of the royal throne, which transcendent power has been heretofore exercised. A bill of this nature was brought in (but rejected) in the reign of Charles II. to exclude James Duke of York (afterwards James II.) who became obnoxious to the people and government by his professing with great zeal the Roman Catholic religion. The good policy of this bill cannot be doubted, as James's conduct afterwards evinced.

By our constitution the subject has a right of petitioning the king or either house of parliament for redress of grievances, as for the repeal of any
obnoxious laws (in cases where the courts of law are incompetent) under certain regulations as pointed out by act of parliament.

The King of England is enabled to support the dignity suitable to his exalted character by means of a vote of the two houses of parliament for his civil life, which amounted in the year 1777 to the limited sum of £900,000. per annum; but by the 44th George III. £60,000. per annum was granted in addition; and in the year 1812 to £70,000. per annum more.

In the eye of the law the king's personal responsibility is so transcendent, that no suit or action can be brought against him, as no tribunal on earth has power over him; but the subject for a just debt has a right to petition him in the high court of chancery: such regard do our laws pay to the tender spirit of liberty and justice.

Our laws take no cognizance of any illegal acts or ill-judged measures, nor for criminal offences committed or advised by Majesty, as “the king can do no wrong;” yet his ministers may be punished by means of indictments and parliamentary impeachments, being his counsellors or advisers.

The king is acknowledged to be the supreme head of the church, and he is the dernier ressort in all ecclesiastical causes, an appeal lying ultimately to him from the sentence of those courts, a right fully established in the reign of Henry VIII.
The king has the prerogative of making war* and peace, of creating peers by letters patent, of granting patents in general, and of pardoning condemned criminals, &c. He is the supreme magistrature of the kingdom, and therefore is considered the source from which all justice emanates. All indictments are preferred in the king's name: a consequence of the king's prerogative is his legal ubiquity. The commons who are the delegates of the people have the inherent and exclusive right to levy taxes and to frame all money bills which tend to affect the interest of the nation at large.

The advantages that result to the people of England from the above privilege of their delegates, must be obvious even to superficial readers.

Our political machine (though excellently adapted for domelic management and salutary laws) being of such magnitude as just pointed out, and as its several component parts must be correspondent before it be put in motion, too much delay seems always to succeed to promise success in any foreign measure of immediate exigence: "deliberat Roma, petit Saguntum;"—"whilst Rome deliberates Saguntum perishes;" and therefore to the above cause we may attribute the unsuccessfulness of some of our expeditions.

* Although the king alone can make war, yet he cannot maintain one without parliamentary subsidies.
The above remark is a mere cursory suggestion; and the writer of this book by no means wishes to detract in the least degree from the beauty of our constitution; and generally speaking of things it is in his opinion easier to point out ten defects than apply one remedy; and as Mr. Pope says—

"Who'er expects a faultless piece to see,
"Thinks what ne'er was, nor is, nor e'er shall be."

Some author of repute says the best definition of liberty or a free state is the impartial administration of the laws; and in this point of view the English laws and constitution are the best adapted to the preservation of this inestimable blessing even in the meanest subject; and to live therefore is to live under the British constitution.*

Montesquieu, when alluding to the British constitution, says, "one nation there is in the world that has for the direct end of its constitution political liberty." And again he says, "liberty in this country might be said to be in the highest perfection, as our criminal laws derive each punishment from the particular nature of the crime, and therefore punishment is not inflicted according to the caprice and arbitrary power of the legislature."

* To this cause we may assign the observation of foreigners, which perhaps is just, viz. that an English mob is the most insolent and refractory of any in the world.
The purity of our constitution many enlightened men have conceived has been contaminated, and therefore a radical reform should take place, first by a more equal representation of the people in the house of commons, and lastly by an immediate reform in the domestic economy, by the abolition of all sinecures and offices executed by deputy, &c. "Chaque nation doit se gouverner selon le besoin de ses affaires et la conservation du bien publique,"—"each nation ought to govern herself according to her finances and the conservation of the public good."

This idea also coincides with the popular sentiment that has prevailed many years past; and it has by some been deemed indispensable to our national welfare, and particularly as our taxes at this present time are necessarily otherwise very heavy. It is therefore hoped that the committees of the house of commons will be productive of much good; and certainly every candid person must admit that when ministers themselves acknowledge (by cert in newspapers) that the fate of seats in parliament has been the practice and..."
established custom of their predecessors, as well known, &c. as that the sun doth shine at noon day, it is time for such a subject to be again and again discussed (if necessary) by their delegates in parliament. And when an innovation of this dangerous complexion begins to foul the spring of purity, we know not to what extent the stream may be tainted with it in process of time if a remedy be not soon applied to the bleeding wound. Montesquieu says, "when once a republic is corrupted, there is no possibility of remedying any of the rising evils but by removing the corruption and restoring lost principles: every other correction is either useless or a new evil." And again he says, "when once the principles of government are corrupted, the very best laws become bad and turn against the state."

It must be recollected "moribus antiquis fiat Roma,"—"Rome stands by her ancient morals;" but when the renowned sallocated could not be drank without a vast profusion of roses and perfumes, which introduced corruption and civil wars, she fell by her own strength, "luis et ipsa Roma viribus fuit."

O! my country! the dying words of the true patriot, Mr. Pitt, certainly betoken something ominous to the future state of affairs of this country. This personage, whose schemes and measures were unsuccessful, yet as they were replete with wisdom and integrity, he deserves the gratitude
of a nation, and he may be justly styled "pater patriae," or "father of his country."

Whatever veneration the people of the present day might have for the practice and precedents of their ancestors, yet when the former is bad and the latter inapplicable, measures and resolutions founded on them cannot be justified. As to precedents, both statesmen and lawyers in my humble conception pay too much deference to them: and certain it is that it is rarely to be found that one precedent can be completely applicable to two cases at remote periods; therefore though precedents might assist and be useful, implicit deference ought not to be paid to them; for if we do (after a time) we shall become mere mechanics and be apt to adopt precedents for principles, and thereby never exercise our own judgment sufficiently, and common sense would be shouldered out of the question.

If a critical and important case of national moment come before our present ministers, I should hope and believe they are fully adequate to display as much wisdom in their measures or resolves as any of their predecessors: and why should we doubt it? I am not convinced that men of the present age (take them generally) are inferior in capacity to their forefathers: then certainly the exigencies of the times should be first considered before precedents.

By way of strengthening my argument, I will
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now take the liberty of quoting a sentiment from Sir Wm Turton's speech on the question of the regency; he said the absurdity of acting implicitly upon precedents brought to his recollection some lines he had learned at school:

"Here stands a precedent,
Who put it there?
A better man than you,
Touch it if you dare."

But to return to my position on the subject of reform. The cry of innovation and these are not the times, by the opponents of reform, seems absurd when the canker worm is supposed to be still consuming the very vitals of our constitution; and I believe no national consequence can arise by taking away certain privileges, the loaves and fishes, from a few close cringing ministerial boroughs and rich monopolizing corporations (with respect to returning members of parliament) and granting and distributing the same privileges and provisions to many distressed and indigent individuals.

Many gentlemen who choose to attach themselves to the cause of reform, are in my opinion unjustly stigmatized with the odious epithets of levellers and jacobins, who deservedly merit the names of firm patriots, and are indeed the very best friends and protectors of the constitution, and would be
in my opinion the first and foremost people to rally round and preserve the sacred edifice of our constitution inviolate from the shock of faction and the insidious attacks of lurking corruption.

The fear of a revolution in accomplishing this great end of reform at this juncture, is I presume groundless and imaginary, if the tide of popular faction be not encouraged and resorted to as a stimulus for its attainment:* but if we wait till there is a peace to begin about it, we may wait for ten years to come.

Lord Treasurer Burleigh knowing the revenue of England to be so immense, says, "England can never be ruined but by the corruption of her parliament."

I will now conclude with the exclamation of Horace,—"Quid leges fine moribus vanæ proficiunt?" and perhaps another such sentiment of this author will apply to the present degenerated age,—"Ætas parentum pejor avis tuli, nos nequiores mox datus progenium vitiosorem," "The age of our fathers, which was worse than that of our ancestors, produced us, who are shortly to raise a progeny even more vicious than ourselves." Some have gone so far as to say, "Quae fuerant vitia mores sunt,"—"what were once

* We have lately seen the pregnant danger of resorting to such measures, when a late public character stepped beyond the bounds of prudence, and encouraged the populace of the metropolis to riotous acts.
vices are now the common manners of the age;"* but certainly of all corruption the corruption of the great is the worst—"corruption optimi pessima." And it is a maxim ever held by the wise in all ages, "that when the morals of a prince are corrupt, the nobles and plebeians generally follow the same fatal propensities; and thus the nation gradually sinks into effeminacy and consequent decay."

I have quoted this sentiment merely to shew the contagion of vice and the dangerous consequence of evil example; and in my humble opinion if a public character of rank and fortune falls and indulges himself in vice and felony, such a person sins doubly; for as I have just intimated vulgar minds are greatly influenced by the example of their superiors in rank. Much in vain is the gospel preached from pulpits to the poor, if men of literature and elevated situations in life treat all its precepts with insignificance and contempt.

I have further to remark, corruption engenders war, and war misery and poverty: but I think it might be proudly said, that in all the broils and campaigns that England has been so long conspicuously engaged, to the envy and admiration of the world, she has been invariably, justly, and

* The dissipation in the metropolis amongst titled gentlemen certainly confirmed me in this opinion.
honorably contending for the cause of liberty, self-preservation, and the rights and independence of nations; therefore the principle she has acted upon will justify her measures: and therefore whilst we have wise, faithful, and honest men at the helm of state affairs, it is not I think too presumptuous to expect that the just omniscient though mysterious Creator (who is the disposer of all human events, "at whose command nations and empires rise and fall, flourish and decay") will finally crown her enterprise with success; and that he will hurl and abase the Gallic usurper, the tyrant of Europe, the scoffer of all religion, (he who defies omnipotence and who ambitiously aims at universal dominion) from his throne of iron power, to the lowly abyss of his primeval insignificant station. And may this be the case, to the confusion of the usurper and for the happy deliverance of nations that now groan under the galling yoke of tyranny and oppression.

Although our national debt exceeds perhaps five hundred millions of pounds, yet by good husbandry of state affairs there is in my humble idea great hope and prospect that in a few years we may be a rich and prosperous nation, of which there cannot be a doubt could we but ensure an honourable and permanent peace.

Mr. Hume says, vol. ii. p. 145, that "either the nation must destroy public credit, or public credit will destroy the nation." However true
this assertion might prove by any possibility, it certainly in my opinion behoves every patriot to promote public credit.

It may not perhaps be here impertinent to remark Baron Montesquieu's observation on the character of the English nation: he says we are incapable of bearing the delays, the details, and the coolness of negociations: "in these they are more unlikely to succeed than any other nation; hence they are apt to lose by treaties what they obtain by their arms."

ON BILLS OF EXCHANGE AND PROMISSORY NOTES.

In closing a treatise of this nature, in which the aim to be useful will it is trusted extenuate whatever may appear faulty or irrelevant, I cannot perhaps render a more acceptable service than by offering a few cursory observations respecting those grand media of commercial intercourse called bills of exchange and promissory notes.

The various and perverted uses to which those instruments are applied imperiously demand the most serious attention of the tradesman and the public, who ought to view their obtrusion with the keenest eye of mercantile jealousy.
The origin of their introduction was to facilitate the honorable concerns of foreign adventure; and it was not until after a long elapse of time, during which these securities had become sanctioned by the universality of their use, that promissory notes were put on a footing with the former description of personal security; but like all beneficial interventions of life, these important and highly useful engagements soon became prostituted to fictitious uses, and have latterly, chiefly owing to our national calamities, grown on the public sanction with an alarming and relentless operation. Thus transactions from the negotiation of these securities are daily leading those who resign themselves to their adoption to the brink of ruin, and too frequently to the confines of a jail. The needy man avails himself in the absence of his friend's purse of his confidence, and his name becomes a source of temporary and too often a fatal relief. A dishonoured draft leads to new expedients, and new expedients to a postponed but ultimate ruin.

The engines of the law are set in motion against the unhappy defaulter, actions are brought against drawer, acceptor, and all the indorsers of a bill, and the acceptor must by law pay the whole expenses of such proceedings if he is able, or partake in that ruin which his interference as an acceptor has only temporarily suspended over the head of his unfortunate friend.
In the hands of a legal harpy the amount of expences in term time on a bill of ten pounds value have exceeded in five days a hundred pounds! The acceptor must in default of others pay all the expences however great: and against the practice of entering into these unfounded engagements I do most earnestly exhort the public to be on their guard, and not by the culpability of good nature, or the persuasions of temporary necessity, stake the happiness of themselves and family, on the dangerous reliance of a hollow, deceptive, and consequently dishonourable undertaking.
AN EPISTLE

TO A

MEMBER OF PARLIAMENT

ON THE SUBJECT

OF A

GENERAL INCLOSURE.

On lately perusing the *Morning Chronicle* I observed that the subject of a general inclosure was to be discussed in the House of Commons the next sessions of parliament, and I sincerely hope that it will meet with the attention and success that agricultural subjects preeminently merit.

It is with profound respect I now take the liberty of submitting to you the following observations. I have travelled through many counties of this kingdom, and particularly the western
part, and I have invariably observed that where inclosures have been made the land or soil has been greatly improved; and those very tracts of land which appeared nearly barren (before inclosed), are now in a high state of cultivation, and worth annually to rent upon an average £3. or £4. an acre: for every person finds it his advantage to improve that land which is his own, but lands held in common are commonly considered as every man's or no one's right, and consequently their cultivation is entirely neglected.

It gives me pleasure in reflecting that at a time when commerce is alarmingly straightened and our importations decreased, that internal resources derived from agriculture are not to be passed unnoticed or neglected by the legislature; and as husbandry is allowed to be the grand source of domestic riches, comforts, and conveniences, I am thoroughly convinced that no act of parliament (however wisely intended or matured) would prove of greater benefit to the kingdom than a general inclosure act; and I believe that the voice of country gentlemen will support me in this opinion.

"Civitas ea autem in libertate est posita quaefuis fiat viribus non ex alieno arbitrio pendet."—Livy.

"That state alone is fixed in liberty which exists by its own means and does not depend on foreign supplies."
Again,

"Le bonheur des peuples depend de la felicite dont ils jouissent au dedans et du respect qu'ils inspirent au dehors."

"The welfare of a nation depends upon the happiness that it enjoys within itself and the respect with which it inspires other countries."—Helvetius.

Consequently Britain independent of commerce would be a happy and desirable thing to effectuate; and many enlightened men think it feasible or possible to render it so, if government were to direct her attention to the attainment of this grand object: and Mr. Cobbett has told us that the duty on barley alone of our own production has increased the revenue more than all our exports and imports. And although by the passing of such an act many solicitors, clerks, and subordinates may be deprived of many fees and perquisites in which otherwise they would from time to time participate, yet in my opinion private interest should be rendered subservient to the public good.

Where the poor are interested in commons and moors, it is presumed that it would be advisable for certain provisions and exceptions to be introduced in such an act in their favor. A greater proportion of the population of this kingdom is employed in trade than in agriculture, therefore much land remains uncultivated that otherwise
would be rendered fertile. And it may be observed that on account of England having engrossed the principal part of the maritime trade, there is one dangerous national consequence somewhat to be apprehended, that whenever our trade becomes essentially curtailed, thousands will be thrown out of employ, and that then most of those mechanics who cannot work at husbandry may become riotous, dangerous to society, and refractory through a despair of gaining a subsistence.

It is presumed many foreign settlements are held very unprofitably, as they too often prove a mere fosse or grave for English subjects, and that all luxuries obtained from foreign or hostile nations may be dispensed with, particularly when we are drained of our specie to obtain them, and as they tend so much to immoralize the nation: although trade is the source of riches to the mercantile part of the nation, yet it has its concomitant disadvantages; for instance it is the means of introducing foreign vices and politics, the bane and influence of which tend to diminish our regard to the genuine interests of our country; and it may be observed and must be strongly imprinted in the minds of historical readers, that when Rome was poor (comparatively to her after-periods) and contented herself with cultivating the principles of virtuous poverty she was able to withstand all efforts to subdue her, and for a time to triumph over her
opposing enemies. To what are we in reason to ascribe this but to her inhabitants having individually an interest in her soil, that naturally strengthened the "amor patriae" which forms so conspicuous a feature in the Roman character. From an interest in the land, and procuring the means of subsistence chiefly by their own exertions, the impulse was sprung and invigorated that has wrought the events which were the admiration of succeeding times: hence sprung Camillus Cincinnatus and an illustrious train of worthies; they by the course of nature passed away, leaving noble examples for the imitation of their successors, who for a long period emulated their virtues. Then came corruption with gigantic strides paving the way for the gratification of inordinate passions and ambition. Commerce had acquainted them with luxury, and she (already pander to ambition) exerted her fascinating and dangerous influence at the ready beck of every rich, designing, and powerful man. By an easy figure the observations may apply nationally to us. Should an overruling providence permit our commerce totally to be destroyed, (which we all know is at present sufficiently cramped,) and compel us to live on our own resources, England might not I admit maintain the proud mercantile preeminence she has been accustomed to, but she would still be great and respectable within herself as a nation. By the simple practice of employing the refuse of
trade in agriculture, and by gradually weaning ourselves from foreign luxuries, for which we so dearly pay, and by depending on the bounty of providence for the conveniences of life, the zeal for foreign superfluities soon would relax and vanish.—Have we not "corn and oil," and the means of cultivating every useful comfort of life within ourselves? I could even go further and prove that we have many of the luxuries of life, which might thrive with proper cultivation, but as I am recommending simplicity and frugality, it would naturally be inconsistent with my purpose. The deficiency from the decay of foreign commerce would be greatly lessened by assiduously engaging the mercantile or trading part of the commonalty in agriculture, and our insular situation (depending upon the favour of heaven in a just cause) would insure us protection from any foreign enemies. I am aware that many will think I pay too little respect for commerce in these remarks; but they are not intended for mercantile but national purposes. I may be told of the defalcation it would produce in the public revenue, &c. to which I answer that we must shape our conduct, (nationally as well as individually) according to our circumstances. The man who would not cheerfully and cordially co-operate for so desirable an object as the promotion of his country's interest should (according to my ideas of justice) be denominated a traitor, and would deserve to suffer
the punishment of one. I am willing however to entertain that opinion of the good sense of the reflecting and sober part of the nation as to believe that they would readily aid and promote so desirable a purpose, finding a national and individual interest in so doing. I will now close these observations, which I trust the unprejudiced reader will perceive are prompted by a sincere desire for my country's benefit, and recommending the subject to the serious consideration of men of influence and liberal and enlightened minds, I subscribe myself with great respect,

Your obedient humble Servant,

Agricola.

No. 10, Cooks Court,
Cary Street, London.
27th September, 1811.

P. S. Non nobis solum, sed pro bono publico is the motto of a worthy Irish baronet, and if all people were to act up to the spirit of this sentiment happy would it be for the community.
N. B. The expence of obtaining a private or particular act of parliament is so great that small commons or moors will not pay or answer the public purpose for inclosing; and therefore much land in this country remains uncultivated and in an unimproved state.

America for some years past has been a thriving nation, in consequence of her attending solely to internal agricultural improvements; which employments being so healthful that it has been said the multiplies the number of her inhabitants in some of her back settlements doubly every fourteen years. And certain it is that the strength of a nation consists in the number of her inhabitants; and a hardy peasantry is better calculated for the defence of a state than an equal number of puny citizens. It might be also observed that the engrossing or monopoly of large farms is a great evil to any state, and the rapid conversion of tillage farms into dairy is pregnant with much public injury in this country. It might be also observed that the infranchising of copyhold property for lives, &c. for the redemption of land tax is of great good to the public; as most people who have only a life or term interest in landed property will not build on the same nor improve it as they otherwise would do if they had a freehold interest in such property.
The incumbent necessity of legislature directing her wisdom for the promotion of agricultural improvements in this kingdom; must be obvious to every person of common observation, and particularly so since the late alarming riots at Manchester, Bristol, Huddersfield, and in Cornwall, on account of the scarcity of the indispensable necessaries of life.

FINIS.

Norris, Printer, Fore-Street, Taunton.