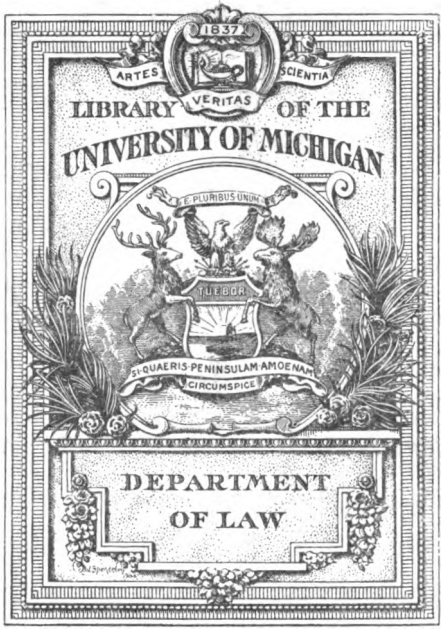
LEGAL HISTORY AND LAW REFORM

AMERICAN SCHOOL of CORRESPONDENCE
CHICAGO ILLINOIS



LEGAL HISTORY AND LAW REFORM

INSTRUCTION PAPER

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AMERICAN SCHOOL OF CORRESPONDENCE

CHICAGO ILLINOIS

U.S.A.

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LEGAL HISTORY AND LAW REFORM

CHAPTER I

BEFORE THE NORMAN CONQUEST (1066)

§ 1. Land Tenure. Before the Conquest, tenure of land was unknown. One could own land just the same as he could own chattels. Land was either *bocland,* that is, land given by the king to his thanes by a book or writing; or *folkland,* that is, land not specially granted by the king, but owned by those who squatted on it as the island was conquered. Bocland was subject to the obligation of service in war, the construction and maintenance of bridges, and of castles for the defense of the country. The great thanes who owned bocland let out their lands to their dependents who were *ceorls,* that is, freemen paying a fixed rent in money or kind, or *villeins,* that is, serfs bound to obey their master's will, and receiving from him land to cultivate for their sustenance. The difference between the services of the Saxon thane and the services of the later Norman baron was that the former were a duty to the state cast upon all landowners, while the latter consisted of services to be rendered to the king personally. Land was conveyed by a deed and the seal was used because writing was not common even among landowners. And deeds were written in duplicate on the same parchment and then cut with a knife so as to make two parts, each with an indented edge from which comes the modern word "indenture."

§ 2. The Courts. Before the Norman Conquest the courts of justice were local, the principal ones being the Shire moot, the Sheriff's tourn, the Hundred moot, and

the Tun moot. They had jurisdiction over all kinds of cases and were presided over by the reeves of the shire, hundred, and town, respectively, assisted, as to the shire, by the bishop; and the verdict and sentence were awarded by popular vote. Besides these there were others of a private nature held by the thanes (or lords) within their own land, with, it seems, an appeal to the king.

§ 3. **Frank Pledge.** A curious Saxon system was the *frank pledge,* established by Alfred, under which persons were compelled to band together as mutual pledges. Every ten men formed a tithing, mutually responsible to deliver up to justice any of the number charged with a crime; and ten of these tithings formed a hundred, under the same kind of responsibility. If a member of a hundred committed a crime, and his fellow-members could not produce him to take his trial at the shire court, the whole hundred were fined.

§ 4. **Trials and Penalties.** The Saxon modes of trial were compurgation and the ordeal. Compurgation meant that any one sued in a civil action, or accused of crime, could bring eleven men of the hundred to swear on his behalf that they believed his denial to be true and this released him from the process. Wager of law, which was the same as compurgation, continued through Norman, Tudor and Stuart times and survived in the action of debt until expressly abolished by Parliament in 1834. Ordeal was an appeal to the supernatural. The accused after swearing to his innocence had to undergo one of three tests, the ordeal by fire, the ordeal by water, or the "accursed morsel". One put to the fire ordeal had either to grasp with his hand a red-hot iron, or to walk barefoot over burning ploughshares. The scarred and blistered members were bound up by a priest with some ointment consecrated for the purpose; and if the scars were healed at the end of three days, the sufferer was innocent; if not, he was guilty. There were also two forms of the water ordeal: hot water, when the accused plunged his arm into boiling water, and was treated in the same manner as in the ordeal by fire;

and cold water, when he was tied hand and foot and thrown into a pond or river. If he floated, he was guilty; if he sank, he was innocent. The "accursed morsel" was a piece of concentrated dry bread which the accused, having first called to the Deity to make it stick in his throat if he were guilty, placed in his mouth. If he swallowed it easily, he was innocent, but if it stuck in his throat, he was guilty.

The Saxons at first punished crime by outlawry, the criminal was declared to be outside the protection of the law, and anyone could kill him with impunity; then came the *blood-feud,* where the offender could be killed by one who had suffered by his misdeed, but not by anybody; and later came the *bot,* that is, compensation in money to the sufferer or his family for the wrong done. Here every wound and every life had its price, according to the rank of the victim.

§ 5. Domestic Relations—Dower and Curtesy. Dower was a Saxon institution. Later, it is the right of inheritance of the wife in her husband's estates after his death; but under the Saxons it was an express gift by the husband to the wife immediately before or after marriage. If the husband did not do so, his wife took one-third. Curtesy, or the interest of a widower in his deceased wife's lands, seems of Saxon origin also.

CHAPTER II

WILLIAM THE CONQUEROR TO ELIZABETH (1066-1558)

§ 6. Land Tenure. With the conquest of England by William I., the feudal system was introduced from the continent, but with increased rights in the crown. While the great barons of France and Germany held their land from the sovereign and owed him allegiance and service, their vassals owed allegiance to them only, and not to the king. But William the Conqueror, when he granted lands to his barons in return for allegiance and service, demanded that if they let the land to tenants, the latter should owe allegiance to him first and to their landlords after. The foundation principle of this system which obtains in England to this day, so far as land tenure is concerned, is that all land is held directly or indirectly of the crown. All land belongs to the king, no subject can own any, he can only hold of the king, that is, be a tenant. The king grants land to his tenants and they owe him services in return; his tenants may convey to other tenants who hold of them on similar terms, but who also owe allegiance and services to the lord paramount—the king.

§ 7. Tenures. The services required by the king of the lord were military and the tenures were called *knight service, grand serjeanty,* and *petit serjeanty,* and they meant that the holder of the land was bound to serve his king or lord in war a certain number of days a year. But though William the Conqueror portioned out among his chiefs the lands of the Saxons who had fought against him at Hastings, and such grants were in chivalry, as we have seen, yet the Saxon landowners who had taken no part against him were allowed to retain their lands and to hold them as they had held them before *in socage* and not in chivalry.

Here begins our modern idea of tenancy which is founded on a certain service—a rent. This was in the form at first of labor, and because the labor was done with the plough, the tenants were called tenants *in socage*. And later, says Littleton, these services were changed into an annual rent by the consent of the tenant and the desire of the lord. From this kind of certain tenure was descended the more modern copyhold. For a long time the tenant in villenage, that is, the tenant who held of the lord by a certain service as ploughing or manuring his land for so many days a year, held purely at the will of the lord, but in the reign of Henry IV. (1400), the tenant in villenage had become a tenant by a copy of the court roll, which was called copyhold, and according to Coke:

"Copyholders need not now weigh their lord's displeasure, they shake not at every blast of the wind, they eat, drink, and sleep securely, only having a special care to perform carefully what duties and services their tenure doth exact."

§ 8. **Tenants in Capite.** The great landholders held directly of the crown, and they in their turn granted out land to their various tenants. The lord was called mesne lord, and the whole of his holding, including wild lands, his authority over his tenants, his right to appoint the priests or vicars within his parish (known as the right of advowson), was included in the term "manor" of which he was lord.

§ 9. **Alienation of Land.** It is said that at this early period land could not be conveyed in fee, the rights of the eldest son were regarded as sacred and the Magna Charta (1217) expressly restrained it. But in Littleton's time (1400), a copyholder had come to have an alienable interest in the land—the form being for the vendor to surrender the land to his lord for the use of the purchaser, whom the lord was bound to admit and if he did not he would be compelled to do so by the chancellor.

§ 10. **Statute De Donis.** In the reign of Edward I.

(1285), an important alteration in the law of real property was made by the statute of Westminster II, called the statute *De donis,* which created what are known as estates tail by providing that where the donor conveyed to another, called the donee, and the heirs of his body, the donee could not alienate it to whom he pleased, but it must go to the heirs of his body, no one of whom could alienate it, and on failure of such issue the land should revert to the donor or his heirs.

§ 11. **Fines and Recoveries.** These were fictitious actions whose object was to get title to land recorded on the court rolls and to alienate land in evasion of the statute *De donis.* In a common recovery an imaginary plaintiff, or friend of the tenant in tail, brought a collusive action against the tenant for the recovery of land. The latter pleaded that he had bought the land from a certain person, indicating one John Doe, or some crier, or bailiff, or other person of straw around the court; that the latter had warranted the title and asked that the latter be vouched to warrant. The man of straw being called upon, admitted the warranty and subsequently made default in appearance. Thereupon, judgment was given that the land be surrendered to the plaintiff and that the man of straw should convey to the defendant land of equal value in tail under the warranty. This could not be done and it was never intended that he should do it. But it answered the purpose, and the lands now awarded to the plaintiff, were back in the hands of a person who conveyed them according to the intention of the parties—the tenant in tail and the would-be purchasers.

§ 12. **Statute Quia Emptores.** Another important statute of this period was the statute *Quia emptores,* passed in 1290, so called because it begins with those two Latin words, meaning "whereas purchasers". We have seen that a freeholder holding of the king or of any other lord might subinfeudate, that is, enfeoff another freehold tenant to hold the land of him, and thus in his turn become lord. It has also been seen that the right of alienation was doubtful and was

condemned by the Magna Charta. The statute *Quia emptores* said that it should be lawful to every freeman to sell at his pleasure his own lands or tenements, or any part thereof, provided that the purchaser should hold of the same lord and by the same service as the freeholder held before.

§ 13. Statute of Mortmain. Even in Norman times we find great hostility to gifts of lands to religious persons and to corporations, whether ecclesiastical or not; Magna Charta (1217) prohibited the giving of land to any religious house. The reason was that these bodies were not liable for services due to the lord of the fee and, therefore, in the reign of Edward I. (1272), was passed the statute of *Mortmain* (dead hand) which prohibited the holding of lands by religious persons, who were dead in law, and by all corporations. But even these were evaded by the common recovery until by the statute of Westminster II. (1285), whenever religious men and other ecclesiastical persons claimed land and the defendant did not appear to defend the suit, a jury was to try whether the religious men really had the title which they set up or whether it was only a friendly and collusive suit. This was effectual until another method of evasion was invented.

§ 14. Uses. The statute of *Mortmain* prohibiting lands from being given to religious bodies, a new species of estate, unknown previously, sprang up within a century (1377). This was the taking of grants to third persons to the use of religious houses and, in time, of persons generally. In law, the person, and he only, to whom a gift of lands was made and seisin delivered, was considered the owner of the land. In equity, however, the chancellor held that the mere delivery of the possession was not conclusive of the right to enjoy the lands, and while it could not take from him the title which he possessed at law, it would compel him to use his legal title for the benefit of the persons who were entitled to the benefit thereof. If *A* conveyed land to *B* to the use of *C*, and *B* refused to account to his *cestui que* trust, that is, *C*, equity would require him to do so; and though

it exercised no control over the land, it made the *cestui que* trust really the owner, for it gave him all the benefits. By this device of *uses* the statutes of *Mortmain* were practically defeated, and the clergy who were prohibited by law from acquiring land could, notwithstanding, acquire all the benefit thereof. Likewise, the baron might vest his estate-at-law in friends, and afterwards commit treason with impunity; and the ordinary proprietor, adopting the same precaution, might enjoy and also dispose of the beneficial interest, regardless of his lord and regardless also of the common law.

§ 15. The Statute of Uses (1535). To stop this evasion, Parliament, in the reign of Henry VIII., passed the famous statute of uses. By this statute it was enacted, that where any person or persons stood seized of any lands or other hereditaments to the use, confidence, or trust of any other person or persons, the persons that have any such use, confidence, or trust, (by which were meant the persons beneficially entitled), should be deemed in lawful seizin and possession of the same lands and hereditaments for such estates as they have the use, trust, or confidence. In other words the use became converted into the land so that if land was granted to *A* for the use of *B*, *B* became the actual and beneficial owner and *A* was regarded as a mere conduit pipe to pass the estate to *B*. But within a very few years the common-law judges in Tyrrels Case (1559) practically overthrew the statute by decreeing that there could be no use upon a use. The effect of this decision was that if *X* conveyed to the use of *B* to the use of *C*, the statute would carry the legal title to *B* and no farther; and if the common-law judges refused to take notice of any use except the first, the chancellor took all the others under his protection and enforced the ultimate use in the same manner as before the statute. Thus, *X* enfeoffed *A* to use of *B*, to the use of *C*, the common-law courts took only notice of the first use, which carried the legal estate to *B*. *C* went to the chancellor, who compelled *B* to hold merely as *C's* trustee, *C* taking the benefit. The use so enforced by the court of

chancery soon became known as a trust, and the jurisdiction of chancery over trusts became in time very important.

§ 16. **Conveyance of Land—Livery of Seizin.** The early method of conveying land was by what was called "livery of seizin", which was a ceremony in the presence of witnesses. The feoffer or conveyer put into the hand of the feoffee or conveyee a clod of earth or a twig, and said words to this effect: "I deliver this to you in the name of seizin of (describing the land) to have and to hold to you and your heirs for ever." The statute of uses (1535) enabled land to be conveyed without this formality and modern conveyancing is said to date from that statute.

§ 17. **Lease and Release.** A method after the statute of uses of making conveyances without livery of seizin was the lease and release. The vendor made a bargain and sale of the land for one year to the purchaser. This by the statute of uses immediately vested the legal possession in the purchaser, and the vendor thereupon by another deed released to him.

§ 18. **Dower and Curtesy.** Under most of the Norman kings (1066-1272) dower continued as under the Saxons, but in the reign of Henry III. (1216) a widow had come to have a right in one-third of her husband's lands of which he was seized during coverture, unless he had provided for her by jointure, and Magna Charta expressly secured her this right. Under the Normans curtesy was effectually established practically as it exists in England at the present day.

§ 19. **Wills and Descent — Primogeniture.** Before the Conquest, wills of land were not recognized, the inheritance being divided among all the children of the deceased owner. William I. (1066) declared that all lands were held by hereditary right and, therefore, an owner could not defeat the right of his heirs by alienation either during his life or by will. For some time it was customary as in Saxon times for the land to be divided equally among the children, but about the time of Henry II. (1154) it became the settled law that feudal lands should go to the eldest son.

Thus, arose the law of primogeniture. Uses[1] were sometimes taken advantage of to avoid the law and to give the land to a person selected by the owner, but the statute of uses largely destroyed the *will of uses* as it was called. It was not long before it was found necessary to permit the devise of freeholds, and in 1540 the first English statute of wills was passed. It allowed all owners of socage lands to dispose of them "by last will, or testament, or otherwise by any act or acts lawfully executed during life". No particular form of will was required, and wills of copyholds were not allowed until 1815. The statute of frauds (29 Chas. II. 76) provided that all wills of land should be in writing and signed by the testator and witnessed in his presence. Until 1837 wills of personalty were valid by word of mouth, but the Wills Act of that year enacted that all wills should be in writing and should speak from the testator's death.

By the charter of Henry I. (1100), the personalty of an intestate was ordered to be divided among his wife or children, or kin; and Magna Charta contains a similar provision.

§ 20. The Courts. Under William the Conqueror the administration of justice was centralized, for while the Saxon local courts were left, the king gave to his *curia regis*, or council, original civil and criminal jurisdiction over all matters. In the reign of Henry II. (1178), the councilors who heard causes were separated from those who were advisers of the king, and a little later it was found necessary to form a separate court to deal with financial matters and with all disputes arising out of the collection of the king's revenues—this was called the court of Exchequer and its judges were called barons. In time, by a curious fiction,[2] it assumed jurisdiction over all kinds of cases, both legal and equitable. In the reign of Henry III. (1216), another court was created from the *curia*—the Common Pleas, or Common Bench, having jurisdiction over common pleas as distinguished from pleas of the crown. This court was intended to try all civil cases between subject and sub-

[1] See *Ante*, § 14.

[2] See *post*, § 21.

ject; it had exclusive jurisdiction over real actions and by Magna Charta it was provided "that common pleas shall not follow the King's court, but shall be held in some certain place," and the place fixed upon was Westminster Hall in London. The judges were called justices. Previous to this, suitors were frequently obliged to follow the king on his tours of the kingdom to obtain judgment. In the same reign (Henry III.), *bancus regis* (King's Bench) was set off from the curia as a separate court with jurisdiction in all criminal matters and in all cases of a civil nature where a breach of the peace or tort *vi et armis* was present; but it had no right to hear actions for mere debt or breach of contract or the like—these belonged exclusively to the common pleas. But by a fiction, it afterwards took jurisdiction over these cases. The King's Bench was the highest court in the land for the king was supposed to sit in it, though he did not really do so except in one noted case.[3]

§ 21. **Jurisdiction of Courts Extended by Fictions.** As we have seen,[4] the three great courts of the common law were the King's Bench, the Common Pleas, and the Exchequer. The court of Common Pleas, the oldest of the three, was the only one in which ordinary actions could be brought. The King's Bench dealt only with matters in which there was an allegation that some usurpation of authority or some violation of the king's peace had taken place. The court of Exchequer dealt only with matters appertaining to the king's revenue. But although the Common Pleas was the proper tribunal for settling disputes between private persons, it became overrun with business; and as the judges of the other two courts were paid by fees, they encouraged suitors to come to them, and took jurisdiction under cover of legal fictions. If *A* came to the King's Bench to recover £100 which he alleged that *B* owed him, he chose a writ declaring that *B* had broken his close with force and arms and to the breach of the king's peace, and also that he owed him £100. When the case came before the court he made no mention of the breaking of the close with

[3] James I., Case of Prohibition, 1607. [4] See ante, § 20.

force and arms, all he asked for was the £100. If *B* concluded to sue in the court of Exchequer, he alleged that he owed the king £100; that the defendant would not pay *B* and, therefore, *B* could not pay the king. At the trial *B* did not prove, and the defendant could not deny, that *B* owed the king £100, and the jury tried only the issue as to the money alleged to be due from the defendant to *B*. In this way, by virtue of legal fictions, both the King's Bench and the court of Exchequer acquired jurisdiction over all kinds of common-law actions.

§ 22. **Justices in Eyre—Circuits.** Traveling justices—justices in eyre (*in itinere*) as they were called—were established by William I. They went through the country at first at regular and afterwards at stated times, and they had on the circuits the same jurisdiction as the three Common-Law courts that sat at Westminster. By the statute of Westminster II., these justices were given power to try civil cases under the write *nisi prius* (unless before). And then criminal jurisdiction was under a royal commission of gaol delivery, *oyer et terminer, assize,* and *nisi prius.* This gave them power to deliver all the gaols by trying all those who had been imprisoned on a charge of crime; to hear and determine (*oyer et terminer*) all things affecting the crown, and all writs of assize (*mort d'ancestor, novel disseisin, nusance,* and the like); and to try cases brought before them on a writ of *nisi prius.* The latter writ arose from the old law requiring the sheriff to summon a jury to Westminster to try the case. But as the jury (witnesses) must frequently come from a distant county at great expense, it became the practice to continue the case until a justice went on circuit to that county and transfer the case to him. The Statute of Westminster II. required the writ to the sheriff, *venire facias* (cause to come), to summon the jury to Westminster unless before (*nisi prius*) a judge went there on circuit to try the case. This is the origin of the court of *Nisi Prius.*

§ 23. **The Justices of the Peace.** In Norman times the conservators of the peace were the king's constables and

bailiffs. But, about 1325, a number of good and lawful men were appointed by the king to preserve the peace. A little later they were given jurisdiction not only to cause arrests but to hear and commit for trial to the assizes. Later (1461) they were given power to hear and determine in certain cases even on indictment. This is the origin of the Quarter Sessions which took the place of the old Sheriff's court, and from the beginning there was an appeal to the King's Bench. In the first year of the reign of Edward IV. (1461), the Sheriff's town or court was abolished and Quarter Sessions took its place.

§ 24. **Ecclesiastical Courts.** Before the Conquest there were no separate Ecclesiastical courts, the bishop sat with the lord and sheriffs in the Shire or County courts. But William I. made the separation and gave to the Ecclesiastical courts all church controversies including marriage and legitimacy. Under Henry II. (1154), they were given the right to decide as to wills of real estate and before this they had acquired jurisdiction to decide questions of intestacy and to grant letters of administration. They also took to themselves exclusive jurisdiction of all cases, civil and criminal, in which one of the parties was a clerk, that is, originally a clergyman but later any layman that could write, as writing was one of the distinguishing accomplishments of a person in orders. It is from this early ecclesiastical jurisdiction that the law of England as to wills, marriage, and divorce remained for so long canon law. The ecclesiastical courts still exist in England but they are now of small importance for their chief jurisdiction, that is, in matrimonial and testamentary causes, was taken away in 1857.

§ 25. **The Court of Chancery.** The jurisdiction of the chancellor arose from a want of power of the Common-Law courts to do justice in particular cases. The Common-Law courts could grant relief of only three kinds: (1) they could order the sheriff to place the plaintiff in possession of lands; (2) they could order the defendant to return to the plaintiff his chattel or to pay its value; and (3) they

could order the defendant to pay so much money to the plaintiff as debt or damages. They could not order a contract to be performed; grant an injunction to restrain an injury; declare a person's right; order one to make an account; appoint a receiver to look after property, or to receive and collect rents; compel the plaintiff or defendant to answer questions before trial; or to disclose what documents he had in his possession that were material to the matters in dispute. Here arose the court of Chancery—at first an appeal to the king "to the foot of the throne," as it was said, to do justice, to grant what Common-Law courts, on account of their deficient machinery, could not grant (1377). The king first turned the appeal over to his chancellor, who, in time (1485), constituted himself a court of equity, which was supposed to administer a code of morals rather than law, and to give redress beyond what courts of law could give. The chancellor had the assistance of a body of clerks who, in the time of Edward III. (1326), were and still are called masters in chancery, and who heard applications as to procedure, took evidence, and reported to the chancellor. The chief of these was the Master of the Rolls (*custos rotulorum*) whose primary duty was to take care of the documents of the court and record its judgments. The office of Master has always been one of dignity; at first he was not a lawyer but a church dignitary, sometimes a bishop (1377), but later he was required to be a lawyer.

§ 26. **The Star Chamber.** A committee of the king's council, called the Star Chamber, was established in the reign of Edward VII. (1485). It had both civil and criminal jurisdiction and wielded great power under the Tudors and Stuarts. Its procedure was inquisitorial and it became a mere tool of the crown until it was abolished in 1640.

§ 27. **Other Courts.** The court of Wards and Liveries was established by Henry VIII. It managed the property of wards and was the guardian of their persons where the wards held *in capite* of the crown. When tenure in chivalry was abolished in the reign of Charles II., this court came to an end. In Elizabeth's reign (1558), the court of High

Commission was created. It was to deal with ecclesiastical matters but its abuses caused it to be abolished by the Long Parliament of Cromwell (1649-1660). The English Admiralty court for centuries was the court of the lord high admiral who delegated his power to a judge or judges. It dates from Edward III. (1326). It had jurisdiction of all contracts and transactions at sea and questions of wages of marines, also salvage, and to try criminals such as pirates. The criminal jurisdiction was taken away in 1844 and by the Judicature Act (1873) the court was merged in the probate, divorce, and admiralty division of the High Court of Justice.[5] The County court was of Saxon origin, with unlimited jurisdiction, but in the reign of Edward I. (1272) it was enacted that no one should be entitled to a writ in the superior courts unless the debt or damages amounted to forty shillings, and the jurisdiction of the County court was reduced to claims under that sum. The sheriff presided, but the freeholders of the county were the judges. It was abolished in 1846 and a new system of County courts was established.[6]

§ 28. **Appellate Courts.** Because of the supposed presence of the king, the court of King's Bench had a right to review the judgments of the Common Pleas by means of writs of error. There was no writ of error at common law to call in question the decisions of the King's Bench; and this for the reason that the King's Bench was the highest court in the land. But there was an appeal to the *Magnum Concilium,* and afterwards to the House of Lords.

In the reign of Edward III. (1337), the court of Exchequer Chamber was instituted as a court of appeal from the common-law side of the Exchequer. The Exchequer Chamber consisted of the lord high chancellor and the lord treasurer, together with the two chief justices and all the other judges of the King's Bench and Common Pleas. By a statute of 1585, the judges of the Common Pleas and the barons of the Exchequer were empowered to sit in the Exchequer Chamber to try appeals by writ of error from

[5] See post, § 75.

[6] See post, § 76.

the King's Bench in certain actions. By an act of 1830, on a writ of error from one of the three courts, the court was to be composed only of judges from the other two.

§ 29. **The King's Peace.** The Saxon idea of the king's peace, that is, that he who broke anyone's peace also broke the peace of the head of society who, in theory, was everywhere present in his kingdom, was adopted and extended by the Conqueror, and thus was established the doctrine that it became an offense against the crown for any one to commit an act of violence within the realm. And in such cases, the king being the prosecutor, the offender could not claim the right of combat. This caused the abolition of the *bot* or money compensation of the Saxons for crimes,[7] because the distinction between a tort and a crime now became recognized. The tort was the wrong against and limited to the individual; and if it was a crime also, then it was a breach of the king's peace and was prosecuted in the name of the crown—hence, called pleas or complaints of the crown—though at the instance of a private prosecutor; and any penalty imposed for the crime was in addition to any liability to pay compensation to the sufferer, which might be enforced by a civil action against the wrongdoer.

At first there was required to be some violence to constitute a breach of peace, but later every indictment for a public offense averred that it was "against the peace and dignity of the king," and the prisoner was not allowed to deny this, so that in time it became established that every prosecution could be brought in the name of the crown. And thus was the old rule of private vengeance displaced by public justice. And so today indictments in this country conclude against the peace of the state which in America has taken the place of the crown.

§ 30. **Criminal Procedure.** *Arrest and Bail.* In Norman times the detention and arrest of an offender was generally by private persons who took him to the sheriff. There were special writs to prevent the offender being kept in prison without trial. They antedated the great writ of

[7] See ante, § 4.

habeas corpus of which no instance is to be found prior to Edward I. (1272). Bail in those days seems to have been seldom granted and there was no prohibition of unreasonable or excessive bail.

Indictment. In the early period the prisoner was presented in court orally, the prosecutor swearing that he was guilty of a crime. But under Edward I. (1272), indictments began to be put in writing and until the time of Edward III. (1350) they were in very vague and general form, that is, that a man was a thief or a trespasser. Edward III. prohibited one being put on trial unless the indictment specially stated the acts which were charged to be criminal. This is the beginning of that particularity in criminal pleading which reached most absurd limits in England in the eighteenth century and which is still practiced in the United States.

The Trial. The Saxon trials by compurgation and ordeal continued in the Norman period, but in 1218 ordeal was abolished, having three years previously been condemned by the Lateran Council of the Church of Rome.

Wager of battle was introduced from Normandy with the Conquest. It was trial by duel between the accused and the accuser. In case of murder or manslaughter, the blood relatives of the slain man had an appeal against the slayer's acquittal. The slayer had a right to a combat and unless the relative took up the challenge, the accused went free. This curious method continued for centuries and in 1817 was claimed by an accused. The courts sustained his claim and the relative not being willing to fight, the prisoner went free. Two years later appeal of felony was abolished by statute. Down to the end of the reign of Henry III. (1216), wager of battle was used in civil cases, the difference being that the parties themselves did not fight, but the contest was between their champions or next friends. Trial by jury took its place, each side calling in a number of witnesses to swear they believed in the truth of what the one or the other said.

The coroner's inquest of the present day, dates from the

inquest established by William I. And it was in the Norman period that trial by jury began, after the Lateran Council had abolished the ordeal. But the jury and persons of the vicinity who were supposed to know something of the matter were the witnesses; and sometimes two juries passed on the case, like the grand and petit juries of modern times. As a man could not be compelled to go to trial by a jury, he suffered the *peine fort et dure* (punishment strong and hard), which was that a weight was put on his body and he was pressed to death if he continued to refuse to plead.

Punishments and Penalties. Under the Normans, capital crimes were not as numerous as at a later period. Every offense against the sovereign was treason, as, for example, to kill the king's deer, and it remained thus until the Statutes of Treason (1352) declared that the following, only, should be treason: compassing or imagining the death of the king, queen, or their eldest son; violating the queen, the king's eldest unmarried daughter, or his eldest son's wife; levying war against the king in his realm or adhering to his foes; counterfeiting the king's coin or seal; and slaying the chancellor, treasurer, or judges while in the discharge of their duty.

§ 31. Civil Procedure. The action was begun by a writ or *breve* (short) and was a document issued from the office of the chancellor containing a brief statement of the facts and calling upon the sheriff to summon the defendant to appear before the king's judges and answer the complaint. In the time of Edward I. (1272), no suit for trespass to goods would lie in the King's Bench for less than forty shillings. The writ of *subpœna* appears first in the reign of Richard II. (1377).

§ 32. Real Actions. Real actions had their rise in Norman times (1066-1216), that is, those where the plaintiff claimed the *res* or thing itself and not merely damages. These actions were: (1) Writ of right; (2) writ of entry; (3) assize of *mort d'ancestor*; (4) assize of *novel disseisin;* and (5) assize of *darrein presentment.* The writ of right

was issued to try title to freeholds and the writ of entry to try right of possession merely. The assize of *mort d'ancestor* (1176) was to try the right of one who claimed as heir to the land; that of *novel disseisin,* to try an issue of recent dispossession; the *darrein presentment,* to try the right to present to an ecclesiastical living.

The term real property was applied to such property as could be recovered by a real action, that is, freeholds. Hence, a leasehold, no matter for what term, was not real property as the tenant had not a freehold, because leases in that day were usually only for a year or two and it was considered not worth while to give a man so great a remedy for so small a thing; and this is said to be the reason for the distinction which has continued in the common law to this day. Had long leases been then in vogue, they would probably have been included under the real action and would have become real property. The leaseholder's only remedy then was an action for damages. But about 1265 an action in form personal, called forcible ejectment, was allowed, in which action the court could compel the trespasser to give up the land.

§ 33. **Personal Actions.** The most important personal actions in the early common law were debt, *detinue,* covenant, account, and trespass. Debt lay for a certain liquidated amount in money. An action in *detinue* lay when the defendant wrongfully detained a chattel belonging to plaintiff and refused to give it up after lawful demand. Covenant lay on any promise or obligation under seal. Account lay against agents, to make them account for goods or money received by them on the principal's behalf in the course of the agency. These were all *ex contractu* (arising out of a contract) actions. Trespass was the action *ex delicto* (arising out of a wrong), and was the remedy for a great number of wrongs such as wrongfully going on lands of another, wrongfully taking goods, assault, battery, false imprisonment, and the like.

§ 34. **Progress in Remedies Ceased.** These were the main actions, real and personal, and for each there was an

appropriate writ. In course of time, as each case must have its own writ, the clerks in chancery were kept busy inventing new writs, and there soon became such an abundance of them in the time of Henry III. (1258), that it was ordered that they should stop inventing new ones and issue only such as had already been known. This was a prohibition of any remedy for any new wrong. Very soon the statute of Westminster II. (1325) declared that

"Whenever it shall happen in the chancery that in one case a writ is found and in a like case, shown under the same law and requiring a like remedy, no writ is found, the clerks of the chancery shall agree in framing a writ or adjourn the complaint to the next Parliament, where a writ shall be framed with the consent of the learned in the law, lest it happen that a court of the Lord, our King, be deficient in doing justice to the suitors."

From this came the action on the case, that is, the writ was for a like case to one already known and had the Common-Law courts taken advantage of this wide power, the court of chancery need not have come into existence. But the clerks and the next Parliament did not act, and very soon, English procedure settled down into a hard and fast form. For a time the situation was relieved to some extent: *first,* by the court of Equity;[8] *second,* by the fictions of law—a curious example of an attempt to avoid unreasonable conditions.

§ 35. Fictions of Law. Fictions of law are inferences designed to conceal the fact that rules of law are being altered.

Trover and Conversion. The writ of trespass on the case of trover and conversion was for the recovery of damages from one who had found another's goods and converted them to his own use. It could not be applied to one who had taken another's goods without his consent or had refused to deliver them, or had sold them and used the proceeds or in any way misused property which had been confided to him; but all this could be done provided he

[8] See *ante,* § 25.

pretended he had lost the goods and pretended that the defendant had found them, and had used or sold them, or refused to deliver them up. Thus, if *A* had undertaken to carry for *C* a thousand tons of coal and deliver it to *B*, and *A* had delivered it to *D*, the plaintiff could recover only on alleging that he had lost the coal and *D* had found and converted it.

Lost Grant. Easements could be gained by long user alone, if such user was traced back to the first year of the reign of Richard I. But as time went on and it became impossible to trace it so far, the courts would direct the jury to presume a lost grant where a twenty years' user was shown, and the jury would find a lost grant, though they knew that no such grant had ever been made.

Ejectment. The real action for the recovery of land was technical and expensive. So the common-law writ of trespass, *vi et armis*, to recover damages for breaking the plaintiff's close and ejecting him, took its place as the method of trying title to real estate—a clear fiction. The real owner and plaintiff was *A*, and the one who was occupying the land and whom he sought to put out was *B*. But the action was brought by John Doe who avers that *A*, the owner of the land, had given him a lease on a certain tenement which had not yet expired, and that on a certain day came Richard Roe, and with force and arms, that is to say, with swords, staves, and knives, entered into the said tenement and did other wrongs to him. But Roe (who has no existence at all) is supposed to hunt up *B*, who is in possession and say to him:

"I have been sued by John Doe, who claims he is entitled to the possession of this farm. I have no interest in this matter. I can't very conveniently come into court, because I do not exist, but if I don't appear, the judgment will go by default, and the sheriff will put John Doe in possession and will put you out."

Accordingly, *B* comes into court and asks leave of the judge that he be made defendant in the place of his ficti-

tious friend. And this leave is granted, but only on the condition that he will not deny the existence of the lease to Doe or the forcible entry of Roe and the ouster of Doe. If the petition prevails, the sheriff puts *B* out and Doe in possession. In all the proceedings *A* is never seen, though he is sometimes referred to as the lessor of the plaintiff. This absurd fiction was necessary to the recovery of land in England, down to the year 1852.

The Constructive or Quasi-Contract. This was a fictitious contract adopted to enforce legal duties in actions *ex contractu.* The common law knew of only two classes of wrongs: (1) Those arising out of a breach of a contract; and (2) those arising out of tort. But to make a man perform what duty and justice required if he obtained more than he was entitled to from another through mistake of fact or fraud or duress, the sufferer could sue in *assumpsit* and allege a promise to repay the money, which, of course, had no foundation in fact.

Common Bail. One sued in an action of debt had to give bond, called common bail; but this was really no bail at all as the sureties were John Doe and Richard Roe. If the plaintiff made a certain affidavit as to the debt, the defendant could be arrested and imprisoned until he gave special bail, that is, substantial surety for his appearance at the trial.

Common Recovery: Lease and Release. These were other legal fictions.

Jurisdiction of Courts. How the courts of King's Bench and Exchequer obtained jurisdiction in ordinary actions has been shown.[9] The same courts in order to get jurisdiction over contracts made at sea, which belonged to the Admiral's court,[10] allowed the plaintiff to feign that a contract really made at sea was made in London, and since in personal actions the locality of the matter was not essential to the merits, the fiction was not traversable.

§ 36. The Action on Contract—Assumpsit. Up to the time of Edward III. there were no contractual actions ex-

[9] See *ante*, § 21.

[10] See *ante*, § 27.

cept debt and covenant and hence there could be no recovery for the breach of an executory agreement not under seal. But in 1367 the judges determined that the remedy could be by action on the case—a very roundabout way. This action later developed into *assumpsit.*

§ 37. The Law Merchant. The customs of merchants came to be recognized early by Parliament and the courts, and became the foundation of mercantile law. By the statute of Merchants (1283), a method was given of enforcing mercantile debts in the Mayor's court.

§ 38. Pleadings. The alternate statements of the parties, which constitute the pleadings (*placita*) of the action, were originally expressed by the parties or their attorneys in open court before judges, minutes of which were entered by the clerk on the record. This method continued until the time of Henry VIII. when it became the universal practice to deliver the pleadings to the court in writing. The pleadings as entered never speak in the first person, a fact which seems to corroborate their oral origin, when the clerks made minutes of what the respective parties had said before the judges. When an issue was reached it was tried by the judge if it was one of law, and by wager of law or duel, or by jury if it was one of fact. But a man could not deny both the law and the facts; because of the different modes of trial, he had to choose one.

§ 39. Attorneys and Barristers. No one could appear for another in the courts except by special authority of the king, evidenced by writ or letters patent. Attorneys as a body or class were first expressly recognized by statute, in 1273, when the judges were required to select in each county the most learned and able attorneys and apprentices to do service in court. By a subsequent statute, persons were enabled to appear in court and to prosecute and defend by attorney. Soon these selected attorneys, designated as attorneys and barristers, came to be divided into the two well-defined classes, as they exist in England to this day. The attorney attends to the action out of court, the barrister has the exclusive right of audience before the

judges in open court, that is, before the bar of the court. The barrister is also a counsellor to the attorney, and important steps in a cause are not taken without his advice. The conduct of every action in a superior court requires the employment of a barrister as well as an attorney. By professional courtesy, the barrister is excluded from communications with his client, except through the intervention of an attorney; and the attorney from communication with the judges except through the intervention of a barrister. Serjeants-at-law were barristers of an advanced degree, and were called to the order at the pleasure of the king by writ issuing out of chancery. From the barristers and serjeants the king selected his attorney general and solicitor general, who took first rank at the bar. He also appointed a limited number of barristers and serjeants as king's counsel, which appointment conferred on them an honorary right of precedence over the ordinary barristers and serjeants. The serjeants were members of the Serjeant's Inn and until 1854 enjoyed a monopoly of business in the court of Common Pleas. It was then thrown open by act of Parliament to all barristers. In 1877 the Serjeant's Inn was disposed of by its members, and its proceeds distributed. No one has been called to the order since 1868.

§ 40. The Jury. The jury in civil as well as criminal cases,[11] decided the facts on their knowledge and not on the evidence of the witnesses, contrary to the rule of today.

§ 41. Execution—Limitations. In 1285, by the statute of Westminster II., creditors who obtained judgment were allowed to take the debtor's land to satisfy it. The writ was called *elegit* from the vital word in the Latin writ, that is, the creditor might elect to take the land. Imprisonment for debt was early allowed where the debtor had no goods by which the debt could be liquidated. By the statute of Westminster I. (1275), a statute of Limitations was passed as to real actions.

§ 42. Distress — Writ of Waste. By the statute of Gloucester (1278), owners of land not in possession were

[11] See *ante*, § 30, par. 2.

protected from waste or destruction of the property by tenants who had only a limited interest. This was the writ of Waste. The Saxons recognized a right to distrain the goods of a wrongdoer, but the Normans restricted it to goods of a tenant, and from the statute of Marlbridge (1267) dates the English law of distress for rent.

§ 43. **Fraud and Bankruptcy.** Statutes of Fraud and Bankruptcy were first passed under the Tudors. The celebrated statutes of 13 and 27 Elizabeth (1371, 1381) are practically in force to this day in both England and the United States. By the former all conveyances and dispositions of property made with intent to defraud creditors are utterly void and of no effect. By the latter, if a man fraudulently made a voluntary gift of land in order to defraud a subsequent purchaser, the gift was made void. By the statute of Bankruptcy of Henry VIII. (1544), all persons fleeing the realm or refusing to pay their debts might be declared bankrupt. Then their property was forfeited and sold, and the proceeds divided amongst creditors, the bankrupt being still liable for the balance of his debts and liable to imprisonment. A statute of Elizabeth constituted a court of Commissioners in Bankruptcy, but applied to traders only.

CHAPTER III

JAMES I.——GEORGE III. (1603-1620)

§ 44. Abolition of Knight Service: Conveyances. Under the Tudors the burdens of tenure in chivalry had been severely felt and still more grievously under the Stuarts. In the reign of James I., it was proposed to abolish knight service and its incidents, compounding with the king for his revenues arising out of it, but the negotiations broke down upon a question of the amount to be paid. During the whole of the reigns of the first two Stuarts, the royal landlord exacted the uttermost farthing from his tenants *in capite*. But in the reign of Charles II. (1660), tenure by knight service was abolished, and all land so held was turned into free and common socage, and by the celebrated statute of Frauds passed in the same reign, no conveyance of land made by livery of seizin was to be valid unless evidenced by a document signed by feoffer or his agent authorized in writing.

§ 45. Mortmain. A new statute of *Mortmain* was passed in 9 George II. (1736), which changed the old law very much. By the old law no conveyance of land could be made to a corporation, or to the use of a corporation, without the license of the crown or other immediate lord of the fee. By the statute of 1736, no land could be given to a charity by will, but gifts *inter vivos* (between the living) could be made if they were either for full and valuable consideration, or made at least twelve months before the donor died —the idea being to check deathbed donations.

§ 46. Succession to Personalty. For many years, as we have seen, the distribution of the personalty of an intestate was in the hands of the church, by whom the personal estate was to be distributed amongst the widow and next of kin of the deceased. The administration was by the ordinary

of every diocese, and by the judges of the Prerogative courts of the two archbishops. In time, conflicting rules came to be established in different jurisdictions and to remove this uncertainty the first statute of Distributions was passed in 1670. This statute has ever since been the basis of the law of England on this subject, having been altered only twice (1685 and 1890) since that time and then not materially.

§ 47. The Court of Chancery. During the Tudor period (1485-1603) the influence of the Court of Chancery had increased, but it is in the reign of James I. (1603-1625) that it began its great history as an English court. This was brought about by the appointment of great lawyers to the office of chancellor, who were able to sustain their ideas of equity and good conscience against the protests of the common-law judges. From the time of Edward III. to that of Henry VIII. (1326-1509), the chancellors were politicians and ecclesiastics, knowing little of any law but common law, and from 1509 to the reign of James I., there was only one great lawyer on the roll of chancellors, namely, Sir Thomas More. But the chancellor of James I. was a jurist, as his successors have ever been, and under him rules of procedure were established and fixed principles of equitable relief laid down. The result was that by the sixteenth century the court of Equity had become even more technical than the courts of common law, and its procedure had become even more rigid. By the end of the seventeenth century the chancery practice had outdone the common-law practice in expense, delay, and vexation. But at the same time its jurisprudence had triumphed over the common law as expounded in the law courts; and after a memorable struggle with Coke and other common-law judges, it had made the rules of equity prevail over the rules of law in case of conflict. It had vindicated its right to enjoin the collection of judgments of common-law courts, and it had assumed jurisdiction over the following important subjects: Trusts; relief against fraudulent bargains; relief against penalties and forfeiture; specific performance of contracts; alimony; injunctions to restrain nuisances; the guardianship of

infants, and the management of their estates, and had laid the foundations of a jurisdiction still maintained in our jurisprudence.

§ 48. **Other Courts.** It would be difficult to say how many courts were in England from the fourteenth to the beginning of the nineteenth century. There were, besides the courts already mentioned, courts of Leet, courts of Palestine, courts of Arches, courts Peculiar, courts of Passage, the Palace court, the court of Conscience, the court Baron, the Hundred court, the court of Piepoudre, and many others,

(1.) The courts of Arches and Peculiars were Ecclesiastical courts.

(2.) The court Baron was a court of a manor with the freeholders of the manor as judges and the steward as clerk. It heard all claims to land within the manor and petty personal actions.

(3.) The Hundred court had the same jurisdiction in the district called a "hundred" that the court Baron had in the manor.

(4.) The court Piepoudre was a court held at every fair and market, presided over by the steward of the proprietor of the market. Its jurisdiction extended to all commercial cases arising out of the transactions of the particular fair or market, and not of any preceding one, so that the cause of action arose, the complaint was made, and the cause tried on the same day, unless the market lasted longer. From the Piepoudre an appeal by writ of error would lie to the superior courts at Westminster. One authority derives the court's name from *curia pedis pulverisati*—the court of the dusty foot—either because of the dusty feet of the suitors, or because, as Coke puts it, "justice was done as quickly as dust can fall from the foot." Another author derives it from *pied poudre* (old French pedlar), and says the name was given because the court was the resort of the pedlars who traded at the fair or market.[1]

§ 49. **Procedure.** Some attempts to reform legal procedure were made in this period. In 1706 a statute was passed that judges might give judgment without regard to defects in the writ. Very soon after the Conquest the oral pleadings were conducted in Norman-French, while the record of them was written in Latin. This continued until 1348, when it was enacted that the pleadings (meaning oral pleadings) should be in English (an evidence that the Norman conquerors were being absorbed by the native population), but should be continued to be enrolled or entered in Latin. On the introduction of written pleadings in the

[1] Dean, Legal His. 192.

reign of Henry VIII.[2] the pleadings as written and delivered followed the language and style of the old oral and recorded pleadings in Latin. This practice continued till 1731, when it was enacted that both the pleadings and the record of them should thenceforth be framed in English. In like manner, for several centuries, reports of cases decided in court were taken and published by private parties in Norman-French. The statutes of Parliament since the reign of Richard III. are in English. Before that they were in Norman-French or Latin.

§ 50. Treason. Under the Plantagenets and Tudors the law of Treason was frequently invoked. During the Wars of the Roses (1455-1485) the man who supported the *de facto* king was executed for treason if he who claimed to be *de jure* king triumphed, and *vice versa*. Under the Stuarts, the law was administered even more harshly. The Bill of Rights (1689) and the statutes of William III. and Anne (1689-1702), put a period of limitation upon prosecutions for treason, allowed the prisoner a copy of the indictment and a list of the witnesses and jurors ten days before trial, gave him the right to compel the attendance of witnesses for himself and that they should be sworn, and required that two witnesses testifying to the same act should be necessary to convict. And by the Act of 1747, in trials for treason, the prisoner might be represented by counsel, a privilege not extended to other felons until nearly a century later.

§ 51. Punishments and Penalties. Up to the end of the Stuart dynasty, crimes were not many and executions except for treason and homicide, were not frequent; the privilege of benefit of clergy enabling any one who could read and write to claim the protection of the Ecclesiastical courts and to escape the jurisdiction of the Common-Law courts. But in 1691 benefit of clergy was partly, and some years later wholly, abolished, and in Blackstone's time (1743) it had come to pass that no fewer than one hundred and sixty crimes carried the death penalty. Until the year 1813, one convicted of a felony was not only punished capitally, but

[2] See *ante*, § 31.

he also suffered forfeiture and attainder, that is, his blood became tainted and all his property was forfeited to the crown and no one could inherit an estate from or through him. This was abolished by subsequent statutes.

§ 52. Patents and Copyrights. The modern patent has its rise in the grant of monopolies by the crown to court favorites or for money paid. By 1623 this had become such a burden on the people that the statute of Monopolies was passed, declaring nearly all existing monopolies and patents null and void. Future monopolies were only to be given for the "sole working or making of any manner of new manufactures within this realm, to the first and true inventor and inventors" for the term of fourteen years or under. The law of copyright dates from Queen Anne (1709), the first copyright act being passed in her reign.

§ 53. The Statute of Frauds. The best-known English statute and the one most often copied in the American States is the statute of Frauds, which was passed in the reign of Charles II. (1660-1685). It required a large number of agreements to be in writing, signed by the party or his agent, or in the instance of a sale of goods, writing, part payment, or delivery and receipt.

§ 54. The Law Merchant. The law merchant is the customs obtaining among traders and merchants as to bills of exchange, charter parties, contracts relating to shipping, marine insurance, brokerage, and the like. It bound merchants and traders only, and in the reign of the Tudors was enforced solely in local courts and in local markets. Later it was recognized and applied by the court of Common Pleas. But it remained for the great Chief Justice Mansfield to incorporate it into the English law and to lay upon this foundation the English mercantile law relating to negotiable instruments, bills of lading, pledges, and the like.

§ 55. Habeas Corpus. The great *Habeas Corpus* Act was passed in the reign of Charles II., but the writ had been known from a very early day, even in the time of Charles I. (1272). But the statute of Charles II. strengthened the

procedure and made an absolute protection against arbitrary imprisonment and detention without trial, heavy penalties being placed upon judges who refused to grant the writ, and jailors and others who refused to obey it. In 1816 the act was extended to cases of imprisonment other than for crimes, for example, lunacy, and now can be sued out for any case of false imprisonment.[3]

§ 56. **House of Lords.** The appeal to the House of Lords from the lower courts is as old as the Norman times, but in the day of Charles II. (1667), it clamored to try a case as a court of original jurisdiction. This was resisted by the commons with success, and the lords have not since exercised original jurisdiction except in peerage claims, the trials of peers for treason and felonies, and impeachments.

§ 57. **Public International Law.** Our modern public international law dates from the wars of Napoleon and the decisions of the great Lord Stowell. He was the English judge of Admiralty during this time and in his judgments in prize cases he established rules as to neutral territory, the right of visitation and search, trading with the enemy, the right of neutrals to trade with the enemy's colonies, contraband of war, blockade, and other international subjects.

§ 58. **Bankruptcy.** Until the reign of Queen Anne, when a trader became bankrupt[4] his creditors took all his property, jailed him, and he was still liable for the balance. But in 1711 the statute laid down the modern policy, that is, that on giving up to his creditors all he had, the debtor was entitled to be discharged.

§ 59. **Gaming.** The year 1727 saw the first legislation against gaming, in the Stock Jobbing Act, but the statute of Anne (1712) had made securities given for gaming debts illegal and non-recoverable.

§ 60. **The Law of Libel.** From the Stuarts' time until near the end of the reign of George III., the only question left to the jury was whether the defendant had published the libel. If he had, they were instructed they must find

[3] See article, "Extraordinary Legal Remedies." [4] See *ante*, § 43.

a verdict of guilty. The question as to whether the words were libel or not was a question of law for the court. But in 1792, after a great controversy between Erskine and Mr. Justice Buller in the Dean of Asaph's case,[5] a statute called Fox's Libel Act declared that in every trial for criminal libel the jury sworn to try the issue may give a general verdict of guilty or not guilty, upon the whole matter put in issue; and shall not be required or directed by the court or judge before whom such indictment shall be tried to find the defendant or defendants guilty, merely on the proof of the publication by such defendant or defendants of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information. This statute overruled the law of the King's Bench for a hundred years and established the principle that Erskine had contended for.

[5] 21 State Trials 847.

CHAPTER IV

GEORGE IV. (1827) TO THE PRESENT DAY

§ 61. The Period of Law Reform. The history of the law of England from 1827 is the history also of law reform, for it was in that year that the English Parliament entered upon the work of law reform. As well put by a recent writer:

"Until then, legislation upon legal subjects had, with very few exceptions, been of the most piecemeal character. There had been from the earliest times an unwillingness on the part of Parliament to interfere with law as distinguished from politics. The consequences were: (1) that the greater part of English law was contained in the decisions to be found in the books; (2) that many laws had survived when the reasons for them had vanished; (3) that laws, highly inconvenient, not having been repealed, were evaded by devices more or less cumbrous and expensive."

Bentham had specially attacked two things: *first,* the want of system and of certainty in the law; *second,* the extraordinarily harsh penal laws. With the aid of Brougham, Bentham finally won.

§ 62. Real Property. The Fines and Recoveries Act (1833) abolished the absurd fine and common recovery of the common law.[1] The Conveyancing Acts (1881-1890) simplified deeds of conveyance, and the Settled Lands Acts (1877, 1881-1893) gave tenants for life wide facilities for dealing with their estates, allowing them to sell the fee, the money being paid into court to be held for the reversioner or remainder man. The law of Copyhold was changed. At first, copyholds were held at the will of the lord; later, this was altered,[2] but it was still subject to the performance of services and payment of fines to the lord.

[1] See *ante,* § 11.

[2] See *ante,* § 7.

By the Copyhold Act (1894) either lord or tenant can compel the freeing of the land from these services, the lord's compensation in case of dispute being fixed by a Board of Arbitration. In 1895 and 1900, acts to facilitate the registry of deeds were passed, but they are in operation in only a small portion of the country, nothing like our universal system of recording deeds being known in Great Britain. The absurd "lease and release", which required two instruments,[3] and which was cumbersome and expensive, was destroyed by the Real Property Act (1845) by which it was enacted that all corporeal hereditaments should thenceforth "be deemed to lie in grant as well as in livery". In other words, the old theory that actual delivery of possession, or an assumed delivery by the aid of the statute of Uses was necessary to a transfer of freehold land, was swept away and a simple deed of grant made sufficient. This deed of grant is still the common form of conveyance, but it has been greatly simplified for it is shorn of that verbiage which distinguished early deeds. The old and lengthy covenants for title, formerly entered into by a vendor, are abolished and implied statutory covenants take their place.

§ 63. Rights of Commoners. Common lands were the waste lands of a Saxon community, which in Norman times was claimed by the lord as part of his manor[4] over which, by ancient custom, prescription, or grant, certain persons called commoners acquired a right in common with the lord himself and others, to a profit *a prendre* (to take). This profit is a right to depasture cattle, or to fish, or to cut turf, etc. For centuries no one had any rights in common lands except the lord and the commoners; they could enclose the common and divide it among themselves. By the statute of Merton (1265) the lord alone could, without anyone's consent, enclose part of a common, so long as he left sufficient to satisfy the rights of the commoners. About the end of the eighteenth century it was thought that the total enclosure of common was desirable in the public interest,

[3] See *ante*, § 17.

[4] See *ante*, § 8.

for the reason that additional land would be brought under cultivation; but, as the unanimous agreement of lord and commoners was not obtainable, private acts of Parliament were necessary. In 1845 Parliament passed a general Enclosure Act to "facilitate the enclosure and improvement of commons and lands held in common, and for other purposes". By 1866 a reaction had set in. The growth of cities and the increase of population had rendered commons valuable as recreation grounds, while their importance for agricultural purposes had been reduced. In 1866 and 1869, acts were passed preventing the enclosure of commons, and by the act of 1893 the lord's right to partially enclose under the statute of Merton is subject to the approval of the Department of Agriculture; and it is said, that having regard to the trend of public opinion, very few enclosures are permitted under that act.

§ 64. **Dower.** The ancient law of dower[5] was much changed by the Dower Act of 1843. Instead of a wife being entitled to dower only in lands of which the husband was seised, she took dower out of his equitable estates also. And the husband was enabled to alienate his land *inter vivos* or by will, free from dower, which he was able to do formerly with great difficulty.

§ 65. **Married Woman's Property—Equity.** At common law a married woman, except in a few special cases, was not capable of making a valid contract. By marriage the husband became entitled to the rents and profits of all real estate owned by the wife at the time of the marriage and of all such as might come to her during coverture. As to the personal property of the wife in her possession, the husband became entitled to it, absolutely, at once on the marriage, and after his death such property was regarded as assets of his estate, the title passing to his executors and administrators to the exclusion of the wife, though she survived him. And the wife's earnings belonged to him also. But Equity early established a jurisdiction to set aside for her separate use any of her property, to get pos-

[5] See *ante*, §§ 5, 18.

session of which the husband was obliged to come into that court. Later it allowed her the same right on her own petition; and still later it recognized her power to bind by contract her separate property. But it was not until 1882 that her separate estate was recognized by statute in England.

§ 66. **Corporations: Joint Stock Companies.** A corporation in England can be formed only by royal charter or act of Parliament. At the time of the "South Sea Bubble", (1710-1720) numerous companies (unincorporated) were formed for all kinds of schemes, and the disasters that followed caused the passage of the Bubble Act (1720) prohibiting them altogether. In 1825 this statute was repealed and the crown was empowered to grant charters to joint stock companies, but the incorporators were held personally liable for the debts of the companies until 1844, when it was required that the creditor should show that he could not obtain payment from the company before he could sue the individual. But the demands of commerce required more freedom and in 1855 it was enacted that companies might be formed with limited liability in their stockholders, and such associations, called Limited Liability Companies, are now the promoters of the great business enterprises of England.

§ 67. **Law Merchant: Bankruptcy.** The Law Merchant has been amended and codified by the Bills of Exchange Act of 1882, the Partnership Act of 1890, and the Sale of Goods Act of 1893. The law of bankruptcy was amended in 1861 and 1883, the principal change being the allowing of one to declare himself a bankrupt and petition for a discharge.

§ 68. **Criminal Law.** The capital crimes, so numerous, were reduced in 1837 to a very few. By the statutes of 1851 and 1853 large powers of amendment of indictments were given to the courts.

Treason and Felony. By the Treason and Felony Acts of 1842 and 1848 the kinds of treason were reduced in number. For centuries, in England, an accused had no right

to counsel in treason or felony cases though he might have a question of law argued for him by a barrister. In 1747 counsel was allowed in treason cases but it was not until 1836 that the same privilege was permitted in trials for felony.

§ 69. **Libel.** The law of libel receives much attention in this period. In 1843, by Lord Campbell's Act, the old maxim in criminal libel, "the greater the truth, the greater the libel", was abolished, and if the defendant can prove that the publication was true and for the public benefit he is entitled to be acquitted. By subsequent acts (1881) a court may inquire into the truth of a newspaper libel, and may, if it deems the offense a trivial one, inflict a fine not exceeding £ 50. Fair and accurate reports of proceedings in courts, and at public meetings, are privileged, and no one can prosecute a person responsible for a newspaper libel, except by an order of a judge of the High Court.

§ 70. **Evidence.** Great reforms in the law of evidence are brought about in this period, under the lead of Jeremy Bentham. The common-law courts for centuries would not allow evidence to be given by either party to the suit, nor by his wife, nor husband, nor any one who might be directly or indirectly interested in the judgment. In 1843 by Lord Denman's Act no witness was to be excluded from giving evidence because of incapacity from crime or interest, except the parties or their husbands or wives. In 1851 the disabilities of parties to civil suits was removed. By the Criminal Evidence Act (1898) a husband or wife can give evidence for the other, if the other is charged with a criminal offense; but cannot be called for the prosecution except in a very few cases. Also, a prisoner is entitled, but not compellable, to give evidence on his own behalf. The difficulty of proving written documents was greatly removed by statutes of 1845, 1851, and 1879.

§ 71. **Procedure, Reform Of.** It is in the reform of legal procedure that this period is most marked. It has been shown how technical the common-law and equity practice became. We have seen what a multitude of writs was

required and how particular the judges were in matters of form. If the pleader selected the wrong form he would be non-suited; he tried another at his risk, and was lucky if on the third trial he struck the right one. In none of the courts would the judges consider whether or not an action would lie on the facts presented but only whether the particular kind of action would lie. Five hundred years were to elapse from the time of Edward I., before the conception of one single judicial instrument through which any right might be enforced and any wrong redressed, arose. From the statute of Westminster I. to the reign of Cromwell, no attempt was made to reform legal procedure. But Cromwell failed in his efforts, and it was near the end of the eighteenth century before the reform of the law found an able and bold champion. This was Jeremy Bentham, a pupil of Blackstone. He began the movement which Lord Brougham took up and succeeded in persuading Parliament to appoint a commission of great lawyers and jurists to consider the question of law reform. Changes were reported by this commission which were adopted by Parliament, and again in 1823, 1834, and 1838, similar commissions were appointed for similar purposes. In 1852, 1854, and 1860 statutes known as the Common-Law Procedure Acts, abolished the necessity of the writ setting out the cause of action; abolished real actions; authorized judgment by default; and amendments; allowed new parties to be added or wrong ones dropped; abolished fictitious allegations and special demurrers; permitted equitable defenses in actions at law; allowed common-law courts the power to grant injunctions. Then in 1873 came the Judicature Act which abolished the difference between law and equity, simplified pleadings, repealed all the old forms of actions, and gave to the courts authority to frame rules instead of fixing by legislation the practice of the courts. It made written pleadings absolutely unnecessary in all the most frequent suits, requiring simply an endorsement of contest of the claim on the writ of summons. Some of these reforms have been adopted in our own country.

§ 72. Fusion of the Courts by the Judicature Act. By the Judicature Act (1873), amended (1881), a complete revolution was made in the historical organization of the English Supreme courts. The courts of Exchequer, Common Pleas, Queen's Bench, Chancery, Probate, Divorce, and Admiralty were fused together as the High Court of Justice with four divisions,—Queen's Bench; Probate, Divorce, and Admiralty; Chancery; and Appeal. All causes or matters are triable in any of the first three divisions and the time, delay, and expense in going from a trial court to an appellate court is obviated by making the appellate court a division of the High Court of Justice.

§ 73. County Courts. The modern county court in England dates from 1846 when an act was passed dissolving the former inferior courts, and dividing the whole country into districts in which a local judge was to decide alone, or with the aid of a jury of five, all claims of small amounts. Later acts have increased their jurisdiction, adding bankruptcy and admiralty. There are more than five hundred of these courts grouped into fifty-four circuits and served by fifty-four judges. Each circuit has its judge who visits every court on his circuit on successive days and at short intervals. He administers law and equity concurrently. The proceedings are so simple that it is seldom necessary to retain a lawyer. Justice, cheap and expeditious, has thus been brought to the very doors of all.

§ 74. Court of Criminal Appeal. A court of Criminal Appeal was established in 1907. It consists of the chief justice of England and eight judges of the King's Bench and when sitting must have three members present. To it any one convicted of an indictable offense may appeal either against the conviction or against the severity of the sentence. The decision of the court is final, except on a fiat by the attorney-general a case may be taken to the House of Lords. The court has no power to grant a new trial and it must dismiss an appeal even where there is error, "if it considers that no substantial miscarriage of justice has actually occurred".

CHAPTER V

LEGAL HISTORY IN THE UNITED STATES

§ 75. Our Common Law; Basic Distinction. The history of our common law is the history of the English common law for more than six hundred years—through the three periods which have been described. The American Revolution resulted in a written Federal constitution, and similar documents have been adopted by all the States. Here, we come upon a basic distinction between English public law and our own, for, in England, Parliament is supreme, while with us our legislatures are limited in their power by the letter of the Constitution. Here, our courts assert the right to declare any statute void which they think is in conflict with the Constitution;[1] to refuse to allow a legislature to revoke a public grant once made;[2] and to command a sovereign State to perform its obligations,[3] against its will—theories of judicial power and legislative impotency unknown to English law. The theory upon which all these decisions are based is that of written constitutional law, every Constitution being a charter of government whose interpreters are the courts. Other changes and reforms will be briefly stated in the succeeding sections.

§ 76. Land Tenure. England obtained title to North America by occupation. The country was regarded as uninhabited, because savages are deemed incapable of possessing territory. John Cabot, who made an expedition to the new world in 1495, claimed for his sovereign, Henry VII., the whole vast region from the Gulf of Mexico to the northern ocean, and from the Atlantic to the Pacific. But France

[1] Marbrey v. Madison, 1 Cranch. 137; Loan Association v. Topeka, 20 Wall. 655.

[2] Fletcher v. Peck, 6 Cranch. 87.

[3] Dartmouth College v. Woodward, 4 Wheat. 518.

and Spain had superior titles to part of this domain, which were afterward extinguished by conquest or cession. In 1606, James I. granted a charter to certain of his subjects, who laid the foundations of the colonies of Virginia and Massachusetts. Other colonies were afterward established along the eastern coast—the last being that of Georgia, in 1732.

The colonists, as British subjects, had brought from the mother country the laws and institutions adapted to their condition. Among them was feudal tenure, which in the original colonies after the Revolution had to be abolished by statute. But when new States were carved out of the territory of the United States, the feudal doctrines were not incorporated and the titles which were given by the Ordinance of 1787, in 400,000 square miles of territory, are more purely republican, and more completely divested of feudality, than any other titles in the Union at that time. In this great region the ancient notions of tenure do not exist even in theory, as they do in some of the older States. The owner of land holds of no superior. He owns absolutely and independently. All estates are allodial.[4]

§ 77. **Escheat: Primogeniture.** Perhaps the only trace of feudal tenure, that is, holding of a superior, existing in the greater part of the United States is the State's right of escheat. By this doctrine which is expressly declared in the constitution of a number of States, the people of the State, in their collective sovereign capacity, have an ultimate right to all land within their jurisdiction, when there is no legal power, as when one dies without making a will and leaving no heirs, in which case the law makes it escheat to them. This right of escheat bears a resemblance to that of the lord Paramount of the feudal days.

The law of primogeniture has never been in force in the United States and entails have been abolished.

§ 78. **Evidence.** Pecuniary interest was a disqualification for a witness in early days, but beginning with Con-

[4] The constitutions of four States, Arkansas, Minnesota, New York and Wisconsin, expressly declare all land allodial.

necticut, in 1848, statutes have removed nearly every kind of bar to the testimony in a trial of anyone who can give any light on the subject.

§ 79. **Corporations.** In colonial times charters for corporations were granted by the king or the governor, and until 1784 the idea of a general incorporation law under which a body could be organized, as such, without a special charter from the legislature was unknown. But in that year New York authorized by a general act the incorporation of religious societies, and a few years later this was extended by Pennsylvania to literary and charitable associations. In 1811, New York took the bold step of allowing persons to incorporate for the carrying on of certain kinds of manufacturing and this was extended to banking, in Michigan, in 1837. By 1850 this policy had been extended in almost all of the States to all other branches of industry, and for a half century it has been the American policy to allow persons for almost any purpose to form a corporation on complying with the provisions of the General Incorporation Acts.

§ 80. **Civil Procedure.** The English civil procedure, as it existed a century ago, is still in force in many of the States. In 1848 a reformed code of procedure was adopted in New York with the object of simplifying pleading and practice. It was in advance of the English system of that day. This code was very soon substantially adopted in Missouri and a number of other States. But from that time until the present, we have done practically nothing; and the legal procedure of States like Illinois is the procedure of England in the time of George I. Our code practice is not much better, and scarcely anything has been done in the matter of reducing the number of courts, abolishing appeals, and doing away with technicalities. The judicial system of most of our States, both in the organization of courts and in methods of procedure, is archaic.

Measures for reform emanating from bar associations—state and national—are being discussed in the legislatures, and in public prints, and much may be expected in this direc-

tion before very long. Public opinion at last seems thoroughly aroused to the situation.

§ 81. The Judge. Modern American legislation has shorn the trial judge of most of his common-law powers and with an unlimited right of appeal from any of his rulings. His real position in most of the States is not far above that of a bailiff, to preserve order and direct the proceedings.

By the constitution of most of the States he is elected for a short term. The common-law system of trial by a jury was one of exact balances, and demanded a free and fearless judge as well as a free and fearless jury. The jury may drag the car of justice, but the judge must drive, or before long they will drag it to destruction.[5] By the constitution of several States and by the statutes of many more the most important function of a trial judge is taken away, namely, his duty to weigh evidence, to comment on the character and demeanor of the witnesses, and to indicate to them his opinion as to the weight and value of the evidence.

These modern laws prohibit the judge from charging juries on matters of fact, or commenting at all upon them. In some States all the instructions to the jury must be in writing, and in others the judge is required to give or refuse the instructions presented by counsel without modification. Again, in a number of States, the control over the sentence in criminal cases is taken from the judge and given to the jury, thereby rendering uniformity of sentence for the same grade of crime absolutely impossible. This popular distrust of the independence and intelligence of the trial court does not seem to exist in any other civilized country, and is, in the opinion of one of our greatest jurists and public men, one of the degrading effects of the American plan of an elective judiciary.[6] The Federal courts, in which the judges are appointed for life, are not subject to this criticism.

§ 82. The Jury. In nothing, more than in the jury system, is there so great a contrast between early common-law

[5] Baldwin, Mod. Pol. Inst. 250. [6] Baldwin, 254.

methods and our modern ones. Anciently, the jurors were the witnesses, but today the fact that a man has formed an opinion on a case, from what he has been told or read of it, is by the laws of some of the States a ground of disqualification. The person offered as a juror may be examined on the *voir dire* (to speak truth) or preliminary examination, as to his bias—a procedure not known in England—and the care which American legislation takes to obtain impartiality in a juror has sometimes, at least, the effect of taking all the stupid ones and rejecting all the thoughtful ones.

§ 83. **Crimes and Punishments.** The nineteenth and twentieth centuries in the United States have seen a great change in the rigor of the common law. Treason as defined in all the constitutions, State and Federal, is restricted to levying war against the State or nation or adhering to its enemies. Degrees of murder and of other felonies have been adopted. But the number of acts made criminal has enormously increased. Every session of every legislative assembly in all the States adds by the score to the acts which are to be punished as crimes, and were it not that many of the laws are never enforced, it would be hard for the average American to keep out of jail. A passion for curing every evil, and making the standard of conduct the same among all citizens by a threat of punishment, is one of the peculiarities of the American legislator.

Punishment for crime has been ameliorated; the stock, the whipping-post, and the gallows have been either abolished or rarely used. Nine-tenths of the criminals who in England a century ago would have been hanged, now receive no greater punishment than a fine or a short term in jail or penitentiary. In many States, by a system of parole, a convict may escape punishment entirely; in one State, at least, even a felon after conviction may be paroled by the judge with an injunction not to do it again.[7]

§ 84. **Criminal Procedure.** In the matter of procedure, however, there has been no change or reform, and our criminal trials have all the forms and technicalities of the days

[7] Rev. Stat., Mo., § 5365.

of the Stuarts. With one hand we have abolished all the savagery of the old English common law of crime, but with the other we have retained the procedure and refinement which the English judges devised to save men from the vengeance of their savage code.

Giving the right to appeal from court to court on the most trivial matters, requiring the strictest form in indictments, and reversing, as our supreme courts are in the habit of doing, every criminal conviction where there is the slightest error in form, though the guilt of the accused may be clear to all, we have reached a point when in the case of certain crimes, lynch law takes the place of court law and where by the ease with which a criminal escapes through an error of procedure, it has become a most difficult task to convict and punish a guilty man. But reform in this respect is being called for not only by the public, but by the bar itself and will one of these days be accomplished if our government is to endure. The following is an example of an indictment for murder according to the form used in most of the States:

STATE OF MISSOURI, } ss.
COUNTY OF JASPER. }

In the Jasper County Circuit Court, August Term, A. D. 1905.

"The Grand Jurors for the State of Missouri, impaneled, sworn, and charged to inquire within and for the body of the county of Jasper and State aforesaid, upon their oath present and charge:

"That *X* and *Y*, late of the county of Jasper and State of Missouri, on the sixteenth day of January, 1904, at the county of Jasper and State of Missouri, did then and there, in and upon the body of one *Z*, then and there being unlawfully, willfully, feloniously, premeditatedly, on purpose, and of malice aforethought make an assault, and with a certain dangerous and deadly weapon, to-wit, a club, which said club was then and there of the length of four feet, of the breadth of two inches, and of the weight of 10 pounds, and which said club the said *X* and *Y*, then and there in hands had and held, the said *X* and *Y* did then and there unlawfully, willfully, feloniously, premeditatedly, on purpose, and of their malice aforethought, strike and beat him, the said *Z*, and at and upon the right side of the head of him, the said *Z*, with the club aforesaid, and inflicting on and giving to him, the said *Z*, in and upon the right side of the head of him, the said *Z*, one mortal wound, which said mortal wound was of the length of four inches and of the breadth of two inches, of which said mortal wound the said *Z*, from said 16th day of January, 1904, the year aforesaid, in the county aforesaid, until the 18th day

of January, in the year aforesaid, in the county aforesaid, did languish, and languishing, did live, on which said 18th day of January, in the year aforesaid, the said *Z*, in the county and State aforesaid, of the mortal wound aforesaid, died; and so the Grand Jurors aforesaid upon their official oath as aforesaid, doth say that the said *X* and *Y*, with the said *Z*, in the manner and by the means aforesaid, willfully, unlawfully, feloniously, premeditatedly, on purpose, and of malice aforethought did kill and murder, against the peace and dignity of the State."

This is almost exactly in the form of the English indictment in the first three periods of English history from the days of the Normans to the days of George III. But below is the form used in England today:

"The Jurors for our Lord, the King, upon their oath present that G. W. and C. W. on January 16, 1904, feloniously, willfully, and of their malice aforethought, did kill and murder one E. P. against the Peace of our Lord, the King, his Crown and Dignity."

A criminal prosecution in most of the States can be begun only by warrant—a curious survival of the old common-law rule that the defendant in a civil action must give bail to appear and contest.

§ 85. Marriage and Divorce. The common-law disability of a married woman to hold property, has been entirely removed in most of the States, where her real and personal property remains free from the control of the husband. All real and personal property acquired by her after marriage, by devise or descent, by purchase or gift, or in any other way, remains her sole and separate property. And she may make contracts and sue or be sued on them the same as a *feme sole.*

Laxity of Divorce Laws. Divorce, which in England has always been difficult and expensive, is in most of the States easy and cheap.

§ 86. Some Other Changes. The English and European doctrine, "once a subject, always a subject," was early overthrown in the United States and the right of a person to change his citizenship was maintained by our government until the rest of the world was compelled to accede to our position of voluntary expatriation in place of perpetual allegiance. In making treaties with other nations, docu-

ments which are a part of the supreme law of the land, and as binding on courts as are statutes, the United States Constitution has changed the old idea.

The old rule of the English law that only such waters as were affected by the ebb and flow of the tide were subject to the jurisdiction of Admiralty was overthrown by the Supreme Court of the United States in 1865.

In both civil and criminal cases truth is a justification to a charge of libel.

EXAMINATION PAPER

LEGAL HISTORY AND LAW REFORM

Read Carefully: Place your name and full address at the head of the paper. Any cheap, light paper like the sample previously sent you may be used. Do not crowd your work, but arrange it neatly and legibly. *Do not copy the answers from the Instruction Paper; use your own words, so that we may be sure you understand the subject.*

1. Describe land tenure in England before and after the Normans.

2. What was the effect of the Statute *De Donis?*

3. What was the effect of the Statute *Quia Emptores?*

4. What was the effect of the Statutes of *Mortmain?*

5. What was the object of the Statute of Uses and how was it afterwards evaded?

6. What was livery of seizin?

7. Describe how the jurisdictions of the three common-law courts were extended by fictions.

8. How did the jurisdiction of the Court of Chancery arise?

9. How was a civil action originally begun?

10. What caused progress in remedies to stop in the 14th century?

11. What were the most important personal actions at common law?

12. Give some fictions of law which arose in actions of trover and ejectment.

13. When and how did our modern idea of a patent for an invention arise?

14. What is the Law Merchant?

15. From what time does our modern International Law date?

16. Describe the law of libel in England from 1600 to 1800.

17. Describe the reform of legal procedure in England from 1845 to 1873.

18. What were a married woman's rights to property at common law?

19. How are they changed by modern legislation?

20. What was the King's Peace?

21. What are Ecclesiastical Courts? Describe their jurisdiction.

22. What is the basic distinction between English and American law?

23. How were corporations formed in Colonial times; how now?

24. What is the position of the trial judge in many of the American states?

25. How has the jury changed in modern times from its original idea?

After completing the work, add and sign the following statement:
I hereby certify that the above work is entirely my own.
(Signed)