

BOOK I.
OF THE RIGHTS OF PERSONS

CHAPTER I.

OF THE ABSOLUTE RIGHTS OF INDIVIDUALS.

1. *What are the primary and principal objects of the law?*—122.
RIGHTS and WRONGS.

2. *How are rights subdivided?*—122.

Into, first, those rights which concern and are annexed to the persons of men, and are called *jura personarum*, or the *rights of persons*; secondly, such as a man may acquire over external objects or things unconnected with his person, which are styled *jura rerum*, or the *rights of things*.

3. *How are wrongs divisible?*—122.

They are divisible into, first, *private wrongs*, which, being an infringement merely of particular rights, concern individuals only, and are called civil injuries; and, secondly, *public wrongs*, which, being breaches of general and public rights, affect the whole community, and are called crimes and misdemeanors.

4. *Of what sorts are the rights of persons which are commanded to be observed by the municipal law?*—123.

First, such as are due from every citizen, which are usually called civil duties; and, secondly, such as belong to him, which is the more popular acceptation of rights or *jura*.

5. *How are persons divided by the law?*—123.

Into natural persons and artificial. Natural persons are such as the God of nature formed us; artificial are such as are created

and devised by human laws for the purposes of society and government, which are called corporations or bodies politic.

6. *Of what two sorts are the rights of persons, considered in their natural capacities?*—123.

First, absolute, which are such as appertain and belong to particular men, merely as individuals or single persons. Secondly, relative, which are incident to them as members of society, and standing in various relations to each other.

7. *What is meant by the absolute rights of individuals?*—123.

Those rights which are so in their primary and strictest sense; such as would belong to their persons merely in a state of nature, and which every man is entitled to enjoy, whether out of society or in it.

8. *What is to be expected of the law as to the absolute duties of individuals?*—124.

It is not to be expected that human municipal law should at all explain or enforce them. It has no concern with any other but social or relative duties.

9. *What is the principal aim of society?*—124.

To protect individuals in the enjoyment of those absolute rights which were vested in them by the immutable laws of nature.

10. *What then is the first and primary end of human laws?*—124.

To maintain and regulate these absolute rights of individuals. Such rights as are social and relative result from, and are posterior to, the formation of states and societies; so that to maintain and regulate these is clearly a subsequent consideration.

11. *What general appellation is there for the natural rights of man?*—125.

The natural liberty of mankind.

12. *In what does this natural liberty consist?*—125.

It consists properly in a power of acting as one thinks fit, without any restraint or control, unless by the law of nature.

13. *What does every man, when he enters into society, give up?*—125.

A part of his natural liberty, as the price of so valuable a purchase.

14. *What is political or civil liberty?*—125.

It is no other than natural liberty, so far restrained by human laws (and no farther) as is necessary and expedient for the general advantage of the public.

15. *How have the absolute rights of Englishmen, usually called their liberties, been asserted?*—127, 128.

First, by the great charter of liberties, obtained from King John. Afterward, by the statute called *confirmatio chartarum*, whereby the great charter is directed to be allowed as the common law. Next, by a multitude of corroborating statutes. Then, by the Petition of Right, the *habeas corpus* act and other salutary laws passed under Charles the Second. Again, by the Bill of Rights of 1688; and lastly, by the Act of Settlement.

16. *To what principal or primary articles may these rights be reduced?*—129.

1. The right of personal security; 2. The right of personal liberty; 3. The right of private property.

17. *In what does the first consist?*—129.

In a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation.

18. *What are understood here by limbs?*—129.

By a man's limbs we understand only those members which may be useful to him in fight, and the loss of which alone amounts to mayhem by the common law.

19. *How is an infant in ventre sa mere considered in law?*—130.

For many purposes, it is supposed in law to be born. It is capable of having a legacy, or a surrender of a copyhold estate, made to it. It may have a guardian assigned to it; and it is enabled to have an estate limited to its use, and to take afterward, by such limitation, as if it were then actually born.

20. *What is meant by duress per minas?*—131.

If a man, through fear of death or mayhem, is prevailed upon to execute a deed, or do any other legal act, these may be afterward avoided, if forced upon him by a well-grounded apprehension of losing his life, or ever 'limbs, in case of his non-compliance.

21. *What is meant by civil death?*—132.

Civil death commenced, if any man was banished by the process of the common law, or abjured the realm, or entered into religion, that is, went into a monastery, and became there a monk professed; in which cases, he was absolutely dead in law, and his next heir should have his estate.

22. *How does the law of England regard personal liberty?*—134.

Next to personal security, it regards, asserts, and preserves the personal liberty of individuals.

23. *In what does this personal liberty consist?*—134.

In the power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law.

24. *What is habeas corpus?*—135.

It is a writ requiring the body of a person imprisoned to be brought before the court of king's bench, or common pleas, who shall determine whether the cause of his commitment be just, and thereupon do as to justice shall appertain.

25. *When may it be sued out?*—135.

If any person be restrained of his liberty by order or decree of any illegal court, or by command of the king's majesty in person, or by warrant of the council board, or of any of the privy council.

26. *What is imprisonment in law?*—136.

The confinement of the person in any wise. So that keeping a man against his will in a private house, putting him in the stocks, arresting or forcibly detaining him in the street, is an imprisonment.

27. *What does the law mean by duress of imprisonment?*—136.

A compulsion by an illegal restraint of liberty, until one seals a bond, or the like. In which case, he may allege the duress, and avoid the extorted bond.

28. *What is necessary to make an imprisonment lawful?*—137.

It must either be by process from the courts of judicature, or by warrant from some legal officer having authority to commit to prison, which warrant must be in writing, under the hand and seal of the magistrate, and express the causes of the commitment, in order to be examined into if necessary upon a *habeas corpus*.

29. *When is a jailor not bound to detain the prisoner?*—137.

When no cause of commitment is expressed in the process or warrant.

30. *What says Sir Edward Coke on the subject?*—137.

"The law judges," he says, "like Festus the Roman governor, that it is unreasonable to send a prisoner, and not to signify withal the crimes alleged against him."

31. *Can an Englishman be restrained from leaving the kingdom?*—137.

He may. The king, by his royal prerogative, may issue out his writ *ne exeat regno*, and prohibit any of his subjects from going into foreign parts without license.

32. *Can he be compelled to leave the kingdom?*—137.

He cannot, except in criminal cases, where the convicted are sometimes punished by exile or transportation. No power, except the authority of parliament, can send any subject of England out of the land against his will, not even a criminal; for exile and transportation are punishments unknown to the common law.

33. *What is the third absolute right of Englishmen?*—138.

That of property, which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land.

34. *Does the law authorize any violation of private property?*—139.

It will not authorize the least violation of private property, not even for the general good of the whole community.

35. *Is there any exception to this?*—139.

In case it would be beneficial to the public that a new road should be made through the grounds of a private person, the legislature can interpose to compel that person to acquiesce in its being made; not by stripping the subject of his property in an arbitrary manner, but by giving him a full indemnification and equivalent for the injury thereby sustained.

36. *What aids or taxes only can a subject of England be constrained to pay?*—140.

Only such as are imposed by his own consent, or that of his representatives in parliament.

37. *What are five secondary and subordinate rights of Englishmen?*—141-143.

1. The constitution, powers and privileges of parliament.
2. The limitation of the king's prerogative.
3. The right of applying to the courts of justice for redress of injuries.
4. The right of petitioning the king, or either house of parliament, for the redress of grievances, in case there should happen any uncommon injury, or infringement of the rights before mentioned, which the ordinary course of law is too defective to reach.
5. The right of having arms for their defence, suitable to their condition and degree, and such as are allowed by law.

These are auxiliary rights, which serve principally as outworks or barriers, to protect and maintain inviolate the three great and primary rights.

38. *What in England is the supreme arbiter of every man's life, liberty, and property?*—141.

The law.

39. *What is said as to the right of every Englishman to apply to the courts of justice for redress of injuries?*—141, 142.

That, for injury done to him *in bonis, in terris, vel persona*,

by any other subject, be he ecclesiastical or temporal, without any exception, he may take his remedy by the course of the law, and have justice and right for the injury done to him.

40. *Can the substantial part, or judicial decisions, of the law, or the method of proceeding, be altered except by parliament?*—142.

They cannot. The power to alter either rests in parliament alone.

41. *Can the king erect new courts of justice?*—142.

He can; but then they must proceed according to the established forms of the common law.

CHAPTER II.

OF THE PARLIAMENT.

1. *What is the most universal public relation by which men are connected together?*—146.

That of government; namely, as governors and governed, or, in other words, as magistrates and people.

2. *What is the distinction between supreme and subordinate magistrates?*—146.

Of magistrates, some are supreme, in whom the sovereign power of the state resides; others are subordinate, deriving all their authority from the supreme magistrate, accountable to him for their conduct, and acting in an inferior secondary sphere.

3. *In England how is the supreme magistracy divided?*—146, 147.

Into two branches; the one legislative, to wit, the parliament, consisting of king, lords, and commons; the other executive, consisting of the king alone.

4. *How ancient are parliaments in England?*—149.

Parliaments, or general councils, are coeval with the kingdom itself. It is generally agreed that, in the main, the consti-

tution of parliament, as it now stands, was marked out so long ago as the seventeenth year of King John, A.D. 1215, in the great charter.

5. *How is parliament summoned?*—150.

By the king's writ or letter, by advice of the privy council, at least forty days before it begins to sit.* It is a branch of the royal prerogative, that no parliament can be convened by its own authority, or by the authority of any except the king alone.

6. *What are the constituent parts of a parliament?*—153.

They are, the king's majesty, sitting there in his royal political capacity; and the three estates of the realm; the lords spiritual and the lords temporal, who sit together with the king, in one house; and the commons, who sit by themselves in another.

7. *Of whom does the commons consist?*—158.

Of all such men of property in the kingdom as have not seats in the house of lords, every one of whom has a voice in parliament, either personally or by his representatives.

8. *What is the power and jurisdiction of parliament?*—160, 161.

To it is intrusted, by the constitution, that absolute despotic power, which must in all governments reside somewhere. It can do every thing that is not naturally impossible, and therefore some have not scrupled to call its power, by a figure rather too bold, the omnipotence of parliament.

9. *In what consists the democratical part of the British constitution?*—170.

In the elections for parliament; for in a democracy, there can be no exercise of sovereignty but by suffrage, which is the declaration of the people's will.

10. *What reason is given for requiring a property qualification in voters?*—171.

It is required in order to exclude such persons as are in so mean a situation that they are esteemed to have no will of their

* The time is now uniformly extended to fifty days, (2 Hats., 290,) although no positive law has been made on the subject.

own. If these persons had votes, they would be tempted to dispose of them under some undue influence or other. This would give a great, an artful, or a wealthy man a larger share in elections than is consistent with general liberty.

CHAPTER III.

OF THE KING AND HIS TITLE.

1. *In whom is the supreme executive power invested?*—190.

In a single person, the king or queen. The person entitled to it, whether male or female, is immediately invested with all the ensigns, rights, and prerogatives of sovereign power.

2. *What is the grand fundamental maxim upon which the right of succession to the crown depends?*—191.

That the crown is, by common law and constitutional custom, hereditary, and this in a manner peculiar to itself; but that the right of inheritance may from time to time be changed or limited by act of parliament; under which limitations the crown still continues hereditary.

3. *Is the right to the throne defeasible?*—195.

It is, by act of parliament. The supreme legislative authority, the king and both houses of parliament, may defeat this hereditary right, and by particular entails, limitations, and provisions, exclude the immediate heir, and vest the inheritance in any one else.

4. *Is the crown always hereditary in the wearer of it?*—196.

Yes; however the crown may be limited or transferred, it still retains its descendible quality, and becomes hereditary in the wearer of it.

5. *When began to be first taken the distinction of a king de jure and a king de facto?*—204.

In the reign of Edward IV.; in order to indemnify such as

had submitted to the then late establishment, and to provide for the peace of the kingdom by confirming all honors conferred and all acts done, by those who were now called the usurpers, not tending to the disherison of the rightful heir.

CHAPTER V.

OF THE COUNCILS BELONGING TO THE KING.

1. *What councils has the king to advise with?*—227.

To assist him in the discharge of his duties, the maintenance of his dignity, and the exertion of his prerogative, the law has assigned him, 1 the high court of parliament; 2. conventions of the peers, called to advise the king; 3. his judges of the courts of law, for law matters; 4. the privy council.

2. *How are privy counselors created?*—230.

They are made by the king's nomination, without either patent or grant; and on taking the necessary oaths, they become immediately privy counselors during the life of the king that chooses them, but subject to removal at his discretion.

CHAPTER VI.

OF THE KING'S DUTIES.

1. *What is the king's principal duty?*—233.

To govern his people according to law. This has always been esteemed an express part of the common law of England, even when prerogative was at the highest.

2. *What are the terms of the original contract between king and people?*—234, 235.

They are couched in the coronation oath. In the king's

part of this original contract are expressed all the duties that a monarch can owe to his people; viz., to govern according to law; to execute judgment in mercy; and to maintain the established religion.

CHAPTER VII.

OF THE KING'S PREROGATIVE.

1. *How is the royal prerogative limited?*—237.

By bounds so certain and notorious that it is impossible he should ever exceed them, without the consent of the people, on the one hand, or without, on the other, a violation of that original contract which, in all states impliedly, and in ours most expressly, subsists between the prince and the subject.

2. *What is usually understood by the word prerogative?*—239.

That special pre-eminence which the king hath over and above all other persons, and out of the ordinary course of the common law, in right of his regal dignity. It is either direct or incidental.

3. *What are direct prerogatives?*—239, 240.

Such positive substantial parts of the royal character and authority as are rooted in and spring from the king's political person, considered merely by itself, without reference to any other extrinsic circumstances; as the right of sending ambassadors, of creating peers, and of making war and peace.

4. *What are incidental prerogatives?*—240.

They bear always relation to something else, distinct from the king's person, and are indeed only exceptions, in favor of the crown, to those general rules that are established for the rest of the community.

5. *Of what kinds are the direct prerogatives?*—240.

They are divided into three kinds; being such as regard

1. the king's royal character; 2. his royal authority; 3. his royal income.

6. *What are the several branches of the royal character or dignity?*—241–249.

I. The law ascribes to the king the attribute of sovereignty or pre-eminence. II. The law ascribes also to the king, in his political capacity, the attribute of perfection. III. A third attribute of the king's majesty is his perpetuity.

7. *Can suit or action be brought against the king?*—242.

It cannot, even in civil matters, because no court can have jurisdiction over him.

8. *Is the person of the king sacred?*—242.

By law, the person of the king is sacred, even though the measures pursued in his reign be completely tyrannical and arbitrary.

9. *Are the subjects of England destitute of remedy, in case the crown should invade their rights?*—243.

The law has provided a remedy in cases both of private injury and public oppression.

10. *What remedy is there in cases of private injury?*—242.

If any person has, in point of property, a just demand upon the king, he must petition him in his court of chancery, where his chancellor will administer right as a matter of grace, though not upon compulsion.

11. *What remedy has the subject in cases of public oppression?*—244.

As to cases of ordinary public oppression, the law hath also assigned a remedy; for, as a king cannot misuse his power without the advice of evil counselors and the assistance of wicked ministers, these men may be examined and punished.

12. *Can the king do wrong?*—244.

It is a maxim of the law that the king can do no wrong, since it would be a great weakness and absurdity in any system

of positive law to define any possible wrong without any possible redress.

13. *What is meant by this maxim?*—246.

Two things : first, that whatever is exceptionable in the conduct of public affairs is not to be imputed to the king, nor is he answerable for it personally to his people ; and, secondly, that the prerogative of the crown extends not to do any injury ; it is created for the benefit of the people and cannot be exerted to their prejudice.

14. *Can Parliament remonstrate?*—247.

Yes ; notwithstanding the personal perfection which the law attributes to the sovereign, the constitution in respect to both houses of Parliament, has allowed a latitude of supposing the contrary, each of which, in its turn, hath exerted the right of remonstrating and complaining to the king, even of those acts of royalty which are most properly and personally his own, such as messages signed by himself, and speeches delivered from the throne.

15. *Can laches be imputed to the king?*—247.

No ; the law determines that in the king can be no negligence, or laches ; and, therefore, no delay will bar his right.

16. *What is meant by the attribute of perpetuity?*—249.

The law ascribes to the king, in his political capacity, an absolute immortality. The king never dies. Immediately upon the decease of the reigning prince, in his natural capacity, his kingship or imperial dignity, by act of law, without any *interregnum* or interval, is vested at once in his heir ; who is, *eo instanti*, king to all intents and purposes.

17. *Is the king sole magistrate?*—250.

He is not only the chief, but properly the sole, magistrate of the nation ; all others acting by commission from, and in due subordination to him.

18. *In what is the king absolute?*—250.

In the exertion of lawful prerogative, the king is, and ought

to be, absolute ; that is, so far absolute, that there is no legal authority that can either delay or resist him.

19. *What is the king in foreign affairs?*—252.

The delegate or representative of his people. What is done by the royal authority, with regard to foreign powers, is the act of the whole nation ; what is done without the king's concurrence, is the act only of private men.

20. *What are the branches of his power in foreign affairs?*—253-262.

I. He has the sole power of sending ambassadors to foreign states, and receiving ambassadors at home. II. It is also his prerogative to make treaties, leagues, and alliances, with foreign states and princes. III. He has the sole prerogative of making war and peace. IV. He grants letters of marque and reprisals. V. It is also his prerogative to grant safe-conducts or passports.

21. *What are prerogatives of the king in domestic affairs?*—262-281.

I. He is a constituent part of the legislature, and, as such, has the prerogative of rejecting such provisions in Parliament as he judges improper to be passed. II. He is considered as the generalissimo, or the first in the military command, within the kingdom. III. He is considered as the fountain of justice and general conservator of the peace of the kingdom. By the fountain of justice the law does not mean the author or original, but only the distributor. IV. He is the fountain of honor, of office, and of privilege ; and this in a different sense from that wherein he is styled the fountain of justice, for here he is really the parent of them. V. The laws of England consider the king as the arbiter of commerce, that is, domestic commerce. VI. The king is also considered, by the laws, as the head and supreme governor of the national church.

CHAPTER VIII.

OF THE KING'S REVENUE.

1. *What are the king's fiscal prerogatives?*—281.

Such as regard his revenue, which the constitution hath invested in the royal person, in order to support his dignity and maintain his power. This revenue is either ordinary or extraordinary.

2. *What is his ordinary revenue?*—281.

It is such as has either subsisted time out of mind in the crown, or else has been granted by Parliament, by way of purchase or exchange for such of the king's inherent hereditary revenues as were found inconvenient to the subject.

3. *What has the land tax, in its modern shape, superseded?*—309.

All the former methods of rating either property, or persons in respect of their property; whether by tenths or fifteenths, subsidies on land, hydages, scutages, or talliages.

4. *What are the usual annual taxes?*—309.

Those upon land and malt.

5. *What are the perpetual taxes?*—314-327.

I. The customs or duties on imports and exports. II. The excise duties. III. The duty on salt. IV. The post-office duty, for the carriage of letters. V. Stamp duties. VI. Duty on houses and windows. VII. Duty on servants. VIII. Licenses on hackney-coaches and chairs. IX. Duty on offices and pensions.

6. *What has been the general tendency of changes in the constitution as regards the royal prerogative?*—336.

Most of the laws for ascertaining, limiting, and restraining this prerogative, have been made within the compass of little more than a century past, from the Petition of Right in 3 Car. I to the present; so that the powers of the crown are to all ap-

pearance greatly curtailed and diminished since the reign of King James the First, particularly by the abolition of the Star Chamber and High Commission Courts in the reign of Charles the First, and by the disclaiming of martial law and the power of levying taxes on the subject by the same prince; by the disuse of forest laws; and by the many excellent provisions enacted under Charles the Second, especially the abolition of military tenures, purveyance, and pre-emption; the *Habeas Corpus* Act, and the act to prevent the discontinuance of Parliaments for above three years; and, since the Revolution, by the strong and emphatical words in which our liberties are asserted in the Bill of Rights and Act of Settlement; by the act for triennial, since turned into septennial, elections; by the exclusion of certain officers from the House of Commons; by rendering the seats of judges permanent, and their salaries liberal and independent; and by restraining the king's pardon from obstructing parliamentary impeachments.

CHAPTER X.

OF THE PEOPLE, WHETHER ALIENS, DENIZENS, OR NATIVES.

1. *What is the first and most obvious division of such persons as fall under the denomination of the people?*—366.

Into aliens and natural-born subjects.

2. *Who are natural-born subjects?*—366.

Such as are born within the dominions of the crown of England; that is within the ligeance, or, as it is generally called, the allegiance of the king.

3. *Who are aliens?*—366.

Such as are born out of that allegiance.

4. *What is allegiance?*—366.

It is the tie, or *ligamen*, which binds the subject to the