

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 *What has the land tax, in its modern shape, superseded?*—309.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

king, in return for that protection which the king affords the subject.

5. *What difference was there between the oath of fealty and the oath of allegiance?*—367.

The former, by the feodal laws, was required to be taken by all tenants to their landlord, and was couched in almost the same terms as the usual oath of allegiance; except that in the usual oath of fealty, there was frequently a saving or exception of the faith due to a superior lord by name, under whom the landlord himself was, perhaps, only a tenant or vassal. But when the acknowledgment was made to the actual superior himself, who was vassal to no man, it was no longer called the oath of fealty, but the oath of allegiance; and therein the tenant swore to bear faith to his sovereign lord, in opposition to all men, without any saving or exception; *contra omnes homines fidelitatem fecit*.

6. *What was the term of allegiance at length brought to signify?*—367.

It becoming, in England, a settled principle of tenure, that all lands in the kingdom are holden of the king as their sovereign and lord paramount, no oath but that of fealty could ever be taken to inferior lords, and the oath of allegiance was necessarily confined to the person of the king alone. By an easy analogy, the term of allegiance was soon brought to signify all other engagements which are due from subjects to their prince, as well as those duties which were simply and merely territorial.

7. *Is there an implied allegiance?*—368.

Yes; the law holds that there is an implied, original, and virtual allegiance, owing from every subject to his sovereign, antecedently to any express promise; and although the subject never swore any faith or allegiance in form. The sanction of an oath does not increase the civil obligation to loyalty; it only strengthens the social tie by uniting it with that of religion.

8. *What sorts of allegiance are there?*—369.

There are two sorts or species of allegiance, the one natural,

the other local; the former being also perpetual, the latter temporary.

9. *What is natural allegiance?*—369.

It is such as is due to the king from all men born within his dominions, immediately upon their birth.

10. *Can natural allegiance be forfeited?*—369.

No: It cannot be forfeited, cancelled, or altered by any change of time, place, or circumstance, nor by anything but the united concurrence of the legislature. For it is a principle of universal law, that the natural-born subject of one prince cannot by any act of his own, not even by swearing allegiance to another, put off or discharge his natural allegiance to the former; for this natural allegiance was intrinsic and primitive, and antecedent to the other, and cannot be divested without the concurrent act of that prince to whom it was first due.

11. *What is local allegiance?*—370.

It is such as is due from an alien, or stranger born, for so long a time as he continues within the king's dominion and protection; and it ceases the instant such stranger transfers himself from this kingdom to another.

12. *To what is the oath of allegiance applicable?*—371.

It, or rather the allegiance itself, is held to be applicable, not only to the political capacity of the king, or regal office, but to his natural person and blood-royal.

13. *Have alien enemies rights?*—372.

They have no rights, no privileges, unless by the king's special favor, during the time of war.

14. *Are the children of aliens, born in England, natural-born subjects?*—373.

They are, generally speaking, and entitled to all the privileges of such.

15. *What is a denizen?*—373.

He is an alien born, but who has obtained *ex donatione legis* letters patent to make him an English subject.

16. *How is naturalization performed?*—374.

Only by act of parliament; for by this an alien is put in the same state as if he had been born in the king's ligeance.

CHAPTER XII.

OF THE CIVIL STATE.

1. *How may the lay part of his majesty's subjects be divided?*—396.

Into three distinct states; the civil, the military, and the maritime.

2. *Of what does the civil state consist?*—396.

Of the nobility and the commonalty.

3. *What degrees of nobility are now in use?*—396.

Those of duke, marquis, earl, viscount, and baron.

4. *How is nobility now created?*—399.

Either by writ or by patent.

5. *Into what degrees are the commonalty divided?*—403-407.

They are divided into vidames, (now quite out of use,) knights, colonels, sergeants-at-law, doctors, esquires, gentlemen, yeomen, tradesmen, artificers, laborers.

6. *What constitutes the distinction of esquire?*—406.

It is a matter somewhat unsettled what constitutes the distinction, or who is a real *esquire*; for it is not an estate, however large, that confers this rank upon its owner. Camden reckons up four sorts of them: 1. The eldest sons of knights, and their eldest sons in perpetual succession. 2. The eldest sons of younger sons of peers, and their eldest sons in like perpetual succession. 3. Esquires created by the king's letters patent or other investiture, and their eldest sons. 4. Esquires

by virtue of their offices; as justices of the peace, and others who bear any office of trust under the crown.

7. *What constitutes the distinction of gentleman?*—406.

"As for gentlemen," says Sir Thomas Smith, "they be made good cheap in this kingdom; for whosoever studieth the laws of the realm, who studieth in the universities, who professeth the liberal sciences, and (to be short) who can live idly, and without manual labor, and will bear the port, charge, and countenance of a gentleman, he shall be called master, and shall be taken for a gentleman."

8. *How does the law recognize these degrees?*—407.

Tradesmen, artificers, and laborers, as well as all others, must, in pursuance of statute I., Henry V., c. 5, be styled by the name and addition of their estate, degree, or mystery, and the place to which they belong, or where they have been conversant, in all original writs of actions personal, appeals and indictments, upon which process of outlawry may be awarded; in order, as it should seem, to prevent any clandestine or mistaken outlawry, by reducing to a specific certainty the person who is the object of such process.

CHAPTER XIV.

OF MASTER AND SERVANT.

1. *What are the three great relations in private life?*—422.

Those of master and servant; husband and wife; parent and child.

2. *What fourth relation hath the law provided?*—422.

That of guardian and ward; which is a kind of artificial parentage, to supply the deficiency, whenever it happens, of the natural.

3. *Of what sorts are servants, as acknowledged by the laws of England.*—425-427.

1. Menial servants, so called from being *intra mœnia*, or

domestics. 2 Apprentices (from *apprendre*, to learn), usually bound for a term of years. 3 Laborers, who are only hired by the day or the week, and do not live *intra mœnia*, as part of the family. 4 Stewards, factors, and bailiffs, whom the law considers as servants, *pro tempore*, with regard to such of their acts as affect their masters' or employers' property.

4. *If the hiring of menial servants be general, without any particular time limited, what period does the law construe it to be for?*—425.

For one year.

5. *What does a person gain by hiring and service for a year, or apprenticeship under indentures?*—427.

A settlement in that parish wherein he last served forty days.

6. *What right do persons serving seven years as apprentices to any trade acquire?*—427.

They have an exclusive right to exercise that trade in any part of England.

7. *At common law might every man use what trade he pleased?*—428.

He might.

8. *Is actual apprenticeship to a trade necessary to entitle a person to exercise that trade?*—428.

Following the trade seven years is sufficient.

9. *May the master correct his apprentice?*—428.

He may in moderation.

10. *What if a servant assault his master, or master's wife?*—428

He shall suffer one year's imprisonment, and other open corporeal punishment not extending to life or limb.

11. *How may a master behave towards others, on behalf of his servant?*—429.

He may maintain, that is, abet and assist his servant in any action at law against a stranger.

12. *What is maintenance?*—429.

To encourage suits and animosities, by helping to bear the expense of them: it is an offence against public justice.

CHAPTER XV.

OF HUSBAND AND WIFE.

1. *What is the second private relation of persons?*—433.

That of marriage, which includes the reciprocal rights and duties of husband and wife.

2. *In what light does the law regard marriage?*—433.

In no other light than as a civil contract.

3. *When does the law allow the marriage contract to be good and valid?*—433.

In all cases where the parties at the time of making it, in the first place, were willing to contract; secondly, were able to contract; and, lastly, actually did contract, in the proper forms and solemnities required by law.

4. *Of what sorts are the disabilities to marriage?*—434.

They are, first, canonical; second, civil.

5. *How do canonical impediments affect marriage?*—434.

They are sufficient, by the ecclesiastical law, to avoid the marriage in the spiritual court; but, in our law, they only make the marriage voidable, and not *ipso facto* void until sentence of nullity be obtained.

6. *What are disabilities of this nature?*—434.

Pre-contract; consanguinity, or relationship by blood; and affinity, or relationship by marriage; and some particular corporal infirmities.

7. *How do the civil disabilities affect marriage?*—435.

They render it void *ab initio* and not merely voidable.

8. *What is the first of these disabilities?*—436.

A prior marriage, or having another husband or wife living

9. *What is the second?*—436.

Want of age.

10. *What is the third?*—437.

Want of consent of parents or guardians.

11. *What is the fourth?*—438, 439.

Want of reason.

12. *In what manner may marriage be dissolved?*—440.

Either by death, or divorce.

13. *What kinds of divorce are there?*—441.

Two kinds: one a *vinculo matrimonii*, which is total; the other a *mensa et thoro*, which is partial.

14. *In case of divorce a mensa et thoro, what does the law allow to the wife?*—441.

It allows her alimony, sometimes called estovers.

15. *What is the writ de estoveriis habendis?*—441.

It is a writ at common law to recover alimony.

16. *In what case does the law allow no alimony?*—442.

In case of the wife's elopement and living in adultery.

17. *What is the legal consequence of marriage?*—442.

That the husband and wife are one person in law.

18. *For what debts of the wife is the husband liable?*—442, 443.

The husband is bound to provide his wife with necessaries, by law, as much as himself; and if she contracts debts for them, he is obliged to pay those debts. Also, if the wife be indebted before marriage, the husband is bound afterward to pay the debt.

19. *Is there not one case in which the wife shall sue and be sued as a feme sole?*—443.

Yes; when the husband has abjured the realm, or is banished; for then he is dead in law.

20. *What restraint may a husband now lay upon his wife in case of gross misbehavior?*—445.

The courts of law still permit a husband to restrain a wife of her liberty in case of any gross misbehavior.

CHAPTER XVI.

OF PARENT AND CHILD.

1. *What is the third, and most universal private relation of persons?*—446.

That of parent and child.

2. *Of what sorts are children?*—446.

They are of two sorts: legitimate and spurious, or bastards.

3. *Who is a legitimate child?*—446.

One that is born in lawful wedlock.

4. *What are the legal duties of parents to legitimate children?*—446.

Three: maintenance, protection, and education.

5. *When shall a second husband be charged to maintain his wife's child by her first husband?*—448.

If the wife, before the last marriage, was of sufficient ability to keep the child, the husband shall be charged to maintain it; but, at her death, the marriage relation being dissolved, the husband is under no farther obligation.

6. *In what case is a person bound to provide a maintenance for his issue?*—449.

Where the children are impotent and unable to work, either through infancy, disease, or accident.

7. *What is the law as to disinheriting children?*—450.

It has made no provision to prevent the disinheriting of children by will; leaving every man's property in his own disposal.

8. *What, among other things, may a parent do for his child, as its protector?*—450.

He may uphold and maintain his children in their lawsuits, without being guilty of the legal crime of maintaining quarrels. A parent may also justify an assault and battery in defense of the persons of his children.

9. *From what is the power of parents over their children derived?*—452.

From their duty towards them; this authority being given them, partly to enable the parent more effectually to perform his duty, and partly as a recompense for his care and trouble in discharging it.

10. *What power do our laws give the parent over his child?*—452, 453.

He may lawfully correct his child, being under age, in a reasonable manner. The consent or concurrence of the parent to the marriage of his child, under age, is absolutely necessary to its validity.

11. *When does this power cease?*—453.

When the child has arrived at the age of twenty-one years.

12. *Whence do the duties of children to their parents arise?*—453.

From a principle of natural justice and retribution; for to those who gave us existence we naturally owe subjection and obedience during our minority, and honor and reverence ever after.

13. *Who is a bastard?*—454.

One that is not only begotten, but born, out of lawful matrimony.

14. *Why is the reason of our law, on this head, superior to that of the Roman?*—455.

The civil and canon laws do not allow a child to remain a

bastard if the parents afterwards intermarry; but the English law makes it an indispensable condition, to legitimacy, that the child shall be born after lawful wedlock. The main end and design of marriage, to ascertain and fix upon some certain person to whom the care, the protection, the maintenance and the education of the child should belong, is thus better answered by the English law.

15. *What rights has a bastard?*—459.

Very few; being only such as he can acquire, for he can inherit nothing. Yet he may gain a surname by reputation, though he has none by inheritance.

16. *What does the incapacity of a bastard consist in principally?*—459.

He cannot be heir to any one; neither can he have heirs, but of his own body.

17. *How may a bastard be rendered legitimate?*—459.

By an act of parliament, and not otherwise.

CHAPTER XVII.

OF GUARDIAN AND WARD.

1. *What is the fourth private relation of persons?*—460.

That of guardian and ward.

2. *What is the first species of guardians?*—461.

The guardian by nature, viz.: the father and, in some cases, the mother of the child.

3. *If the father assign no guardian to his daughter under the age of sixteen, who shall be her guardian?*—461.

The mother.

4. *What is the second species of guardian?*—461.

Guardians for nurture. They are the father and mother

till the infant attains the age of fourteen; and, in default of father or mother, the ordinary usually assigns some discreet person to take care of the infant's personal estate, and to provide for his maintenance and education.

5. *What is the third species of guardian?*—461.

Guardians in *socage*, also called guardians by the common law.

6. *When does this third species of guardianship take place?*—461.

Only when the minor is entitled to some estate in lands, and then, by the common law, the guardianship devolves upon his next of kin.

7. *How long does guardianship in socage continue?*—462.

Only till the minor is fourteen years of age; for then, he is presumed to have discretion so far as to choose his own guardian.

8. *Is there another species of guardians?*—462.

Yes; guardians by statute, or testamentary guardians.

9. *How may they be appointed?*—462.

By deed or will.

10. *What is the power and reciprocal duty of a guardian and ward?*—462.

The same, *pro tempore*, as that of father and child.

11. *What is the guardian bound to do when the ward comes of age?*—463.

He is bound to give his ward an account of all that he has transacted on his behalf, and must answer for all losses by his wilful default or negligence.

12. *Who is the general and supreme guardian of all infants?*—463.

The lord chancellor, by right derived from the crown.

13. *Are the ages of male and female different for different purposes?*—463.

Yes; a male at twelve years may take the oath of alle-

giance; at fourteen is at years of discretion, and therefore may consent or disagree to marriage, may choose his guardian, and, if his discretion be actually proved, may make his testament of his personal estate; at seventeen may be an executor; and at twenty-one is at his own disposal, and may alien his lands, goods, and chattels.

A female at seven years of age may be betrothed or given in marriage; at nine is entitled to dower; at twelve is at years of maturity, and therefore may consent or disagree to marriage, and, if proved to have sufficient discretion, may bequeath her personal estate; at fourteen is at years of legal discretion, and may choose a guardian; at seventeen may be executrix; and at twenty-one may dispose of herself and her lands.

14. *When is full age in male or female completed?*—463.

Full age in male or female is twenty-one years; which age is completed on the day preceding the anniversary of a person's birth, who till that time is an infant, and so styled in law. Among the ancient Greeks and Romans, women were never of age, but subject to perpetual guardianship, unless when married, "*nisi convenissent in manum viri*:" and, when that perpetual tutelage wore away in process of time, we find that, in females as well as males, full age was not till twenty-five years. Thus, by the constitution of different kingdoms, this period, which is merely arbitrary, and *juris positivi*, is fixed at different times.

15. *How only may an infant be sued?*—464.

Under the protection, and joining the name of his guardian; for he is to defend him against all attacks as well by law as otherwise.

16. *How may he sue?*—464.

Either by his guardian, or *prochein amy* or next friend who is not his guardian.

17. *Who may be prochein amy?*—464.

Any person who will undertake the infant's cause.

18. *At what age may an infant be capitally punished?*—464.

In criminal cases, an infant of the age of fourteen years, for any capital offense; but under the age of seven he cannot.

19. *What if an infant neglect to demand his right?*—465.

In general, an infant shall lose nothing by non-claim or neglect of demanding his right; nor shall any other *laches* or negligence be imputed to an infant, except in some very particular cases.

20. *What legal act is an infant capable of?*—465.

If he has an advowson, he may present to the benefice when it becomes void.

21. *Can an infant purchase lands?*—466.

He may purchase lands, but his purchase is incomplete; for when he comes to age, he may either agree or disagree to it, as he thinks prudent and proper, without alleging any reason.

22. *Can an infant make a deed which is not voidable?*—466.

In some cases he may bind himself apprentice by deed indentured, or indentures, for seven years; and he may by deed or will appoint a guardian for his children, if he has any.

23. *May an infant in any case bind himself by contract?*—466.

Yes; he may bind himself to pay for necessities; and for his good teaching and instruction, whereby he may profit himself afterward.

CHAPTER XVIII.

OF CORPORATIONS.

1. *What are corporations?*—467.

Artificial persons who may maintain a perpetual succession, and who enjoy a kind of legal immortality, are called bodies politic, bodies corporate, or corporations.

2. *For what purposes are they constituted?*—467.

For the advancement of religion, of learning, and of com-

merce; in order to preserve entire and for ever those rights and immunities, which, if they were granted only to those individuals of which the body corporate is composed, would upon their death be utterly lost and extinct.

3. *What is the primary division of corporations?*—469.

Into aggregate and sole.

4. *What are corporations aggregate?*—469.

They consist of many persons united together into one society, and are kept up by a perpetual succession of members, so as to continue for ever; of which kind are the mayor and commonalty of a city, the head and fellows of a college, &c.

5. *What are corporations sole?*—469.

They consist of one person only and his successors, in some particular station, who are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. In this sense the king is a sole corporation; so is a bishop; so are some deans and prebendaries, distinct from their several chapters; and so is every parson and vicar.

6. *How are incorporations, either sole or aggregate, again divided?*—470.

Into ecclesiastical and lay.

7. *Of what sorts are lay corporations?*—470.

Civil and eleemosynary.

8. *What is absolutely necessary to the erection of any corporation?*—472.

The king's consent, either expressly or impliedly given.

9. *May Parliament incorporate?*—474.

Yes; it may perform this, or any other act whatsoever, and actually has performed it. But the king may prevent it when he pleases, as the royal assent is necessary.

10. *Is a name essential?*—475.

Yes; a name must be given to it, and by that name alone