19. *Who is by law visitor of all civil corporations?*—481.

The king; and the law has appointed the court of king's bench as the place wherein he shall exercise this jurisdiction.

20. *Who are visitors of eleemosynary corporations?*—482.

By the dotation the founder and his heirs are, of common right, the legal visitors.

21. *Are colleges lay corporations?*—483.

It is now held as established common law, that colleges are lay corporations, though sometimes totally composed of ecclesiastical persons.

22. *To whom do the lands and tenements of a corporation revert upon its dissolution?*—484.

To the person, or his heirs, who granted them.

23. *What becomes of the debts of the corporation, either to or from it, upon its dissolution?*—484.

They are totally extinguished.

24. *By what methods may a corporation be dissolved?*—485.

1st. By act of parliament.

2d. By the natural death of all its members, in case of an aggregate corporation.

3d. By surrender of its franchises into the hands of the king.

4th. By forfeiture of its charter, through negligence or abuse of its franchises.

25. *What is an information in the nature of a writ of* quo warranto?—485.

It is a proceeding to inquire by what warrant the members of a corporation exercise their corporate powers, having forfeited them by such and such proceedings.

26. *What is provided against the dissolution of corporations?*—485.

As, by the common law, corporations were dissolved in case the mayor or head officer was not duly elected on the day appointed in the charter, or established by prescription, it is now provided, by statute, that for the future no corporation shall be dissolved upon that account.

BOOK II.

OF THE RIGHTS OF THINGS.

CHAPTER I.

OF PROPERTY IN GENERAL.

1. *What are the rights of dominion or property?*—1.

Those rights which a man may acquire in and to such external things as are unconnected with his person.

2. *Are men in general well informed as to the nature and origin of these rights?*—2.

They are not: there is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe. And yet there are few that will give themselves the trouble to consider the origin and foundation of this right. Pleased as we are with the possession, we seem afraid to look back to the means by which it was acquired, as if fearful of some defect in our title; or, at best, we rest satisfied with the decision of the laws in our favor, without examining the reason, or authority upon which those laws have been built. We think it enough that our title is derived by the grant of the former proprietor, by descent from our ancestors, or by the last will and testament of the dying owner; not caring to reflect that (accurately and strictly speaking) there is no foundation in nature, or in natural law, why a set of words upon parchment should convey the dominion of land; why the son should have a right to exclude his fellow-creatures from a determinate spot of ground, be-

cause his father had done so before him ; or why the occupier of a particular field, or of a jewel, when lying on his death-bed, and no longer able to maintain possession, should be entitled to tell the rest of the world which of them shall enjoy it after him.

3. *Why has man dominion over external things?*—2.

In the beginning, we are informed by Holy Writ, that the all-bountiful Creator gave to man "dominion over all the earth ; and over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth." This is the only true and solid foundation of man's dominion over external things.

4. *To whom does the earth belong?*—3.

The earth, and all things therein, are the general property of all mankind, exclusive of other beings, from the immediate gift of the Creator.

5. *While the earth continued bare of inhabitants, were all things in common?*—3.

Yes ; every one took from the public stock to his own use such things as his immediate necessities required.

6. *Was this communion of goods ever applicable to the use of the thing?*—3.

No : it seems never to have been applicable, even in the earliest ages, to aught but the substance of the thing , nor could it be extended to the use of it.

7. *How was property first acquired?*—3.

By the law of nature and reason, he who first began to use anything, acquired therein a kind of transient property, that lasted so long as he was using it, and no longer. The right of possession continued for the same time only that the act of possession lasted.

8. *How originated separate property in the substance of the thing?*—5.

When mankind increased in number, craft, and ambition, it became necessary to entertain conceptions of more permanent

dominion, and to appropriate to individuals, not the immediate use only, but the very substance of the thing to be used.

9. *What species of property became first appropriated?*—5.

Movables, of every kind, became sooner appropriated than the soil.

10. *Was the article of food a matter of early consideration?*—5.

Yes ; such as were not contented with the spontaneous productions of the earth, sought for a more solid refreshment in the flesh of beasts, which they obtained by hunting. But the frequent disappointments incident to that method of provision, induced them to gather together such animals as were of a more tame and sequacious nature ; and to establish a permanent property in their flocks and herds, in order to sustain themselves in a less precarious manner, partly by the milk of the dams, and partly by the flesh of the young. The support of these their cattle, made the article of water also a very important point. And, therefore, the book of Genesis (the most venerable monument of antiquity, considered merely with a view to history) will furnish us with frequent instances of violent contentions concerning wells ; the exclusive property of which appears to have been established in the first digger or occupant, even in places where the ground and herbage remained yet in common. Thus we find Abraham, who was but a sojourner, asserting his right to a well in the country of Abimelech, and exacting an oath for his security, "because he had digged that well." And Isaac, about ninety years afterwards, reclaimed that his father's property ; and after much contention with the Philistines, was suffered to enjoy it in peace.

11. *What was the origin of the right to land?*—6.

The soil and pasture of the earth remained in common, and open to every occupant ; except, perhaps, in the neighborhood of towns, where the necessity of a sole and exclusive property in lands, for the sake of agriculture, was earlier felt, and therefore more readily complied with. Otherwise, when the multitude of men and cattle had consumed every convenience upon one spot of ground, it was deemed a natural right to seize upon, and occupy such other lands as would more easily supply their necessi-

ties. This practice is still retained among wild and uncultivated nations.

12. *Upon what was founded the right of migration?*—7.

Upon the same principle, as the right to land, was founded the right of migration, or sending colonies to find out new habitations, when the mother-country was overcharged with inhabitants.

13. *What was the principal source of property in land?*—7.

Labor and agriculture. The art of agriculture, by a regular connection and consequence, introduced and established the idea of a more permanent property in the soil.

14. *How did property in land become actually vested?*—8.

Occupancy is that by which the title to land was, in fact, originally gained; every man seizing to his own continued use such spots of ground as he found most agreeable to his own convenience, provided he found them unoccupied by any one else.

15. *How long continues the property in land thus acquired by occupancy?*—9.

It remains in the first taker, by the principles of universal law, till such time as he does some other act, which shows an intention to abandon it; for then it becomes, naturally speaking, *publici juris* once more, and is liable to be again appropriated by the next occupant.

16. *What was the origin of conveyances, wills, and inheritances?*—13.

Mutual convenience introduced commercial traffic, and the reciprocal transfer of property by sale, grant, or conveyance. All property must cease upon death, considering men as absolute individuals, and unconnected with civil society. The universal law of almost every nation, however, has either given the dying person a power of continuing his property, by disposing of his possessions by will; or, in case he neglects to dispose of it, or is not permitted to make any disposition at all, the municipal law of the country then steps in, and declares who shall be the successor, representative, or heir, of the deceased.

17. *When does escheat take place?*—11.

In case no testament be permitted by the law, or none be made, and no heir can be found so qualified as the law requires, to prevent the title of occupancy from again taking place, the doctrine of escheats is adopted in almost every country, whereby the sovereign of the state, and those who claim under his authority, are the ultimate heirs, and succeed to those inheritances to which no title can be formed.

18. *What things are in common, notwithstanding the introduction and continuance of property?*—14.

The elements of light, air, and water, among other things. Also, the generality of those animals which are said to be *ferœ naturæ*, which any man may seize upon and keep for his own use and pleasure.

19. *Has everything a legal owner?*—15.

Yes; the legislature has steadily pursued that wise and orderly maxim, of assigning to everything capable of ownership a legal and determinate owner.

CHAPTER II.

OF REAL PROPERTY; AND, FIRST, OF CORPOREAL HEREDITAMENTS.

1. *What are the objects of dominion or property?*—16.

Things, as contradistinguished from persons.

2. *Into what kinds are things by the law of England distributed?*—16.

Into things real, and things personal.

3. *What are things real?*—16.

Things real are such as are permanent, fixed, and immoveable, which cannot be carried out of their place, as lands and tenements.

4. *What are things personal?*—16.

Things personal are goods, money, and other moveables, which may attend the owner's person wherever he thinks proper to go.

5. *What are things real usually said to consist in?*—16.

Lands, tenements, and hereditaments.

6. *What does the term land comprehend?*—16.

All things of a permanent, substantial nature; being a word of very extensive signification.

7. *What does the word tenement signify?*—17.

It is a word of still greater extent than land, and in its original, proper, and legal sense, it signifies anything that may be holden, provided it be of a permanent nature; whether it be of a substantial and sensible, or of an unsubstantial, ideal kind.

8. *How does Sir Edward Coke define hereditament?*—17.

He says, "An hereditament is by much the largest and most comprehensive expression; for it includes not only lands and tenements, but whatsoever may be inherited, be it corporeal or incorporeal, real, personal, or mixed."

9. *Of what kinds are hereditaments?*—17.

Corporeal, and incorporeal. Corporeal hereditaments consist of such as affect the senses, such as may be seen and handled by the body; incorporeal are not the objects of sensation, can neither be seen nor handled, are creatures of the mind, and exist only in contemplation.

10. *Of what do corporeal hereditaments consist?*—17.

They consist wholly of substantial and permanent objects; all of which may be comprehended under the general denomination of land only.

11. *Do structures pass with the land?*—18.

They do.

12. *How is water considered?*—18.

It is considered as a species of land; an action cannot be brought to recover possession of a pool or other piece of water, by the name of water only; it must be brought for the land that lies at the bottom, as so many acres of land covered with water.

13. *What extent has land in its legal signification?*—18.

It has an indefinite extent, upward as well as downward; so that the word "land" includes not only the face of the earth, but everything under it, or over it. *Cujus est solum, ejus est usque ad cœlum*, is a maxim of the law.

14. *What passes in law by a grant of water?*—19.

A right of fishing only.

CHAPTER III.

OF INCORPOREAL HEREDITAMENTS.

1. *What is an incorporeal hereditament?*—20.

It is a right issuing out of a thing corporate (whether real or personal,) or concerning, or annexed to, or exercisable within the same. It is not the thing corporate itself, which may consist in lands, houses, jewels, or the like; but something collateral thereto, as a rent issuing out of those lands or houses, or an office relating to those jewels.

2. *Of what sorts are incorporeal hereditaments?*—21.

They are principally of ten sorts: advowsons, tithes, commons, ways, offices, dignities, franchises, corodies or pensions, annuities, and rents.

3. *What is an advowson?*—21.

It is the right of presentation to a church, or ecclesiastical benefice.

4. *What are tithes?*—24.

They are defined to be the tenth part of the increase, yearly

arising and renewing from the profits of land, the stock upon lands, and the personal industry of the inhabitants.

5. *When does "time of memory" commence?*—23.

Time of memory hath been long ago ascertained, by the law, to commence from the beginning of the reign of Richard the First.

6. *How may any custom be destroyed?*—23.

By evidence of its non-existence in any part of the long period from that time to the present.

7. *What is right of common?*—32.

A profit which a man hath in the land of another; as to feed his beasts, to catch fish, to dig turf, to cut wood, or the like. It is chiefly of four sorts: common of pasture, of piscary, of turbary, and of estovers.

8. *What is common of piscary?*—34.

It is a liberty of fishing in another man's water.

9. *What is common of turbary?*—34.

A liberty of digging turf upon another's ground.

10. *What is common of estovers?*—35.

A liberty of taking necessary wood, for the use or furniture of a house or farm, from off another's estate.

11. *What is a right of way?*—35, 36.

It is a right of going over another man's ground, and has reference only to private ways, in which a particular man may have an interest and a right, though another be owner of the soil.

12. *How does private right of way arise?*—36.

It may be founded on a special permission, or grant. A way may be also by prescription. A right of way may also arise by act and operation of law.

13. *How may it arise by operation of law?*—36.

If a man grants me a piece of ground in the middle of his

field, he at the same time tacitly and impliedly gives me a way to come at it, and I may cross his land for that purpose without trespass; for when the law doth give anything to one, it gives impliedly whatsoever is necessary for enjoying the same.

14. *What are franchises?*—37.

Franchise and liberty are used as synonymous terms; and their definition is a royal privilege, or branch of the king's prerogative, subsisting in the hands of a subject.

15. *What is an annuity, and wherein does it differ from a rent-charge?*—40.

An annuity is a thing very distinct from a rent charge; a rent charge being a burden imposed upon and issuing out of lands, whereas, an annuity is a yearly sum chargeable only upon the person of the grantor.

16. *What are rents?*—41.

A certain profit issuing yearly out of lands and tenements corporeal.

17. *What are the requisites to a rent?*—41.

1st. It must be a profit. 2d. The profit must be certain. 3d. It must issue yearly. 4th. It must issue out of the thing granted. 5th. It must issue out of lands and tenements corporeal.

18. *What rents are there at common law?*—41.

Rent service, rent charge, and rent seck.

19. *What is rent service?*—42.

It is so called because it hath some corporeal service incident to it, as, at the least, fealty or the feodal oath of fidelity.

20. *What is rent charge?*—42.

It is where the owner of the rent hath no future interest, or reversion expectant in the land.

21. *What is rent seck?*—42.

It is in effect nothing more than a rent reserved by deed, but without any clause of distress, or a barren rent.

22. *What are rents of assise?*—42.

Rents of assise are the certain established rents of the freeholders and ancient copyholders of a manor, which cannot be departed from or varied.

23. *What are chief-rents?*—42.

Those of the freeholders are frequently called chief-rents, *reditus capitales.*

24. *What are quit-rents?*—42.

Both those of freeholders and ancient copyholders are indifferently denominated quit-rents, *quieti reditus*, because thereby the tenant goes quit and free of all services.

25. *When quit-rents were reserved in silver, or white money, what were they called?*—42.

They were anciently called white rents, or blanch farms, *reditus albi;* in contradistinction to rents reserved in work, grain, or baser money, which were called *reditus nigri*, or black mail.

26. *What is rack-rent?*—43.

Rack-rent is only a rent of the full value of the tenement, or near it.

27. *What is fee-farm rent?*—43.

It is a rent charge issuing out of an estate in fee, of at least one-fourth of the value of the lands, at the time of its reservation.

28. *When and where is rent regularly due and payable?*—43.

It is regularly due and payable upon the land from whence it issues, if no particular place is mentioned in the reservation; but in case of the king, the payment must be either to his officers at the exchequer, or to his receiver in the country; and strictly, the rent is demandable and payable before the time of sunset of the day whereon it is reserved; though perhaps not absolutely due till midnight.

CHAPTER IV.

OF THE FEODAL SYSTEM.

1. *What is the origin of the constitution of feuds?*—45.

It had its origin from the military policy of the northern or Celtic nations, the Goths, the Huns, the Franks, the Vandals, and the Lombards. It was brought by them from their own countries, at the declension of the Roman empire.

2. *What were feuds?*—45.

Large districts or parcels of land were allotted by the conquering general to the superior officers of the army, and by them dealt out again in smaller parcels, allotments, to the inferior officers and most deserving soldiers. These allotments were called *feoda*, feuds, fiefs, or fees; which last appellation signifies a conditional stipend or reward.

3. *What condition was annexed to them?*—45.

That the possessor should do service faithfully, both at home and in the wars, to him by whom they were given; for which purpose he took the *juramentum fidelitatis*, or oath of fealty.

4. *At about what time was the feodal polity received in England?*—48.

Not universally and as a part of the national constitution, till the reign of William the Norman.

5. *What is the feodal acceptation of the word conquest?*—48.

It signifies no more than acquisition.

6. *What fundamental maxim of English tenures resulted from the reception in England of the feodal polity?*—51.

That the king is the universal lord and original proprietor of all the lands in his kingdom; and that no man doth, or can, possess any part of it, but what has mediately or immediately been derived as a gift from him, to be held upon feodal services.

7. *How was the feodal system affected by the charter of King Henry the First?*—52.

He gave up the greater grievances, but still reserved the fiction of feodal tenure, for the same military purposes which engaged his father to introduce it.

8. *What were the grantor and grantee of a feud respectively styled?*—53.

The grantor was called the proprietor, or lord; the grantee was styled the feudatory, or vassal, which was only another name for the tenant or holder of the lands.

9. *What was the manner of granting a feud?*—53.

The manner of the grant was by words of gratuitous and pure donation, *dedi et concessi*. This was perfected by the ceremony of corporeal investiture, or open and notorious delivery of possession in the presence of the other vassals.

10. *What were the oaths of fealty, and homage?*—53, 54.

The oath of fealty, was the parent of the oath of allegiance, or profession of faith to the lord. The vassal or tenant, upon investiture, usually did homage to his lord; openly and humbly kneeling, being ungirt, uncovered, and holding up his hands both together between those of the lord, who sat before him; and there professing that "he did become his man, from that day forth, of life and limb and earthly honor;" and then he received a kiss from his lord.

11. *What was the nature of the service of the vassal?*—54.

This, in pure, proper, and original feuds, was only two-fold: To follow, or do suit to, the lord in his courts in time of peace; and in his armies or warlike retinue, when necessity called him to the field.

12. *Why were the feudatories called* pares curtis?—54.

The lord was, in early times, the legislator and judge over all his feudatories; and, therefore, the vassals of the inferior lords were bound, by their fealty, to attend their domestic courts baron, in order as well to answer such complaints as might be

alleged against themselves, as to form a jury or homage for the trial of their fellow-tenants; and upon this account, in the feudal institutions they are distinguished by the appellation of peers of the court; *pares curtis*, or *pares curiæ*.

13. *Were feuds hereditary?*—55, 56.

They were not yet hereditary, though frequently granted, by the favor of the lord, to the children of the former possessor; till in process of time it became unusual, and was therefore thought hard to reject the heir, if he were capable to perform the services. Infants, women, and professed monks, who were incapable of bearing arms, were also incapable of succeeding to a genuine feud.

14. *What was the mode of descent of feuds?*—56.

They came by degrees to be universally extended, beyond the life of the first vassal, to his sons, who succeeded him in equal portions; and, as they died off, their shares reverted to the lord. But, when such a feud was given to a man and his heirs, in general terms, then, upon the death of the feudatory, his male descendants *in infinitum* were admitted to the succession.

15. *Why could neither the lord nor vassal alien his estate without the consent of the other?*—57.

Because the feudal obligation was looked upon as reciprocal.

16. *What were improper feuds?*—59.

The feudatories frequently found it necessary to commit part of their lands to inferior tenants, obliging them to returns in service, corn, cattle, or money; which returns were the original of rents. This demolished the ancient simplicity of feuds. In course of time they were subjected to greater innovations; they began to be bought and sold. Improper or derivative feuds comprised all such as were not genuine or original feuds; which latter were all of a military nature, and in the hands of military persons.