

4. *May the king change the punishment of the law?*—405.

The king cannot change the punishment of the law by altering the hanging or burning into beheading; though, when beheading is part of the sentence, the king may remit the rest.

5. *What if, upon execution of judgment to be hanged by the neck till he is dead, the criminal revives?*—406.

The sheriff must hang him again; for the former hanging was no execution of the sentence.

CHAPTER XXXIII.

OF THE RISE, PROGRESS, AND GRADUAL IMPROVEMENTS OF THE LAWS OF ENGLAND.

1. *Under what periods is it convenient to consider the state of the legal policy in English juridical history?*—407, 408.

Under five periods: 1. From the earliest times to the Norman conquest; 2. From the Norman conquest to the reign of King Edward the First; 3. From thence to the Reformation; 4. From the Reformation to the restoration; 5. From thence to the revolution of 1688.

2. *What, generally, did King Alfred effect for the constitution and laws of England?*—410, 411.

He new-modeled the constitution; rebuilt it on a plan to endure for ages, and out of its discordant materials he formed one uniform and well-connected whole. He collected the various customs that he found dispersed in the kingdom, and reduced and digested them into one uniform system, or code of laws, in his *Dom-vec*, or *liber judicialis*.

3. *What principally did King Edgar accomplish for the same end?*—412.

Observing the ill effects of three distinct bodies of laws,

(the Dane-Lage, West-Saxon-Lage, and Mercen-Lage), prevailing at once in separate parts of the kingdom, a result of the Danish invasion and conquest, projected and begun what his grandson King Edward the Confessor afterwards completed, viz., one uniform digest or body of laws, to be observed throughout the whole kingdom, being probably no more than a revival of King Alfred's code, with some improvements suggested by necessity and experience; which is probably the origin of the common law.

4. *What are among the most remarkable of the Saxon laws?*—412-414.

1. The constitution of parliaments.
2. The election of their magistrates by the people.
3. The descent of the crown, when once a royal family was established, upon nearly the same hereditary principles upon which it has ever since continued.
4. The great paucity of capital punishments for the first offense.
5. The prevalence of certain customs; as heriots and military services, in proportion to every man's land.
6. That their estates were liable to forfeiture for treason.
7. The descent of their lands to all the males equally.
8. The courts of justice consisted principally of the county courts.
9. Trials, among a people who had a very strong tincture of superstition, were permitted to be by ordeal, by the corsned or morsel of execration, or by wager of law with compurgators, if the party chose it; but frequently they were also by jury.

5. *What principal alterations in our laws resulted from the Norman invasion?*—415-418.

1. The separation of the ecclesiastical courts from the civil.
2. The depopulation of whole counties for the purposes of the king's royal diversion.
3. Narrowing of the remedial influence of the county courts.
4. The introduction of trial by combat.
5. The engrafting on all landed estates, a few only excepted, the fiction of feudal tenure.

6. *What was the course of William Rufus?*—420.

William Rufus proceeded on his father's plan, and in some points extended it, particularly with regard to the forest laws.

7. *What course was pursued by Henry the First?*—420.

Henry the First found it expedient, when first he came to the crown, to ingratiate himself with the people, by restoring (as the monkish historians tell us) the laws of King Edward the Confessor.

8. *What event dates from the reign of Stephen?*—421.

During this usurper's reign, the Roman civil and canon laws were introduced into the realm; and, at the same time, was imported the doctrine of appeals to the court of Rome, as a branch of the canon law.

9. *For what is the reign of Henry the Second remarkable?*—421—423.

In this prince's reign much was done to methodize the laws, and reduce them into a regular order. Throughout it, also, was continued the important struggle between the laws of England and Rome.

During the reign of Henry the Second, there are four things which peculiarly merit the attention of the legal antiquarian:—

1. The constitutions of the parliament at Clarendon, A.D. 1164.

2. The institution of the office of justices in eyre, *in itinere*; the king having divided the kingdom into six judicial circuits.

3. The introduction and establishment of the grand assize, or trial by a special kind of jury in writ of right, instead of the trial by battel.

4. The introduction of *escuage*, or pecuniary commutation for personal military service.

10. *What is to be remarked of Richard the First?*—423.

He enforced the forest laws with some rigor; and composed a body of naval laws, which are still extant, and are of high authority, called the laws of Oleron.

11. *What of Kings John and Henry the Third?*—423.

In King John's time, and that of his son Henry the Third,

the rigors of the feudal tenures, and the forest laws, were so warmly kept up, that they occasioned many insurrections of the barons or principal feudatories; which, at last, had this effect, that, first, King John, and afterward his son, consented to the two famous charters of English liberty, *magna carta* and *carta de foresta*. The effect of these was to redress many grievances.

12. *What of the reign of Edward the First, styled the English Justinian?*—425—427.

In his time the law received so sudden a perfection, that Sir Matthew Hale does not scruple to affirm, that more was done in the first thirteen years of his reign to settle and establish the distributive justice of the kingdom, than in all the ages since that time put together. The principal regulations established by this king, may be reduced under the following general heads:—

1. He established, confirmed, and settled the great charter and charter of forests.

2. He gave a mortal wound to the encroachments of the pope and his clergy, by limiting and establishing the bounds of ecclesiastical jurisdiction; and by obliging the ordinary, to whom all the goods of intestates at that time belonged, to discharge the debts of the deceased.

3. He defined the limits of the several temporal courts of the highest jurisdiction.

4. He settled the boundaries of the inferior courts in counties, hundreds, and manors.

5. He secured the property of the subject, by abolishing all arbitrary taxes and talliages levied without consent of the national council.

6. He guarded the common justice of the kingdom from abuses, by giving up the royal prerogative of sending mandates to interfere in private causes.

7. He settled the form, solemnities, and effect of fines levied in the court of common pleas, though the thing itself was of Saxon origin.

8. He first established a repository for the public records of the kingdom.

9. He established watch and ward, for preserving the public peace, and preventing robberies.

10. He settled and reformed many abuses incident to tenures, and removed some restraints on the alienation of landed property, by the statute of *quia emptores*.

11. He instituted a speedier way for the recovery of debts, by granting the writ of *elegit*.

12. He effectually provided for the recovery of advowsons, as temporal rights.

13. He effectually closed the great gulf, in which all landed property of the kingdom was in danger of being swallowed, by his reiterated statutes of mortmain.

14. He established a new limitation of property, by the creation of estates-tail.

15. He reduced all Wales to the subjection, not only of the crown, but in a great measure of the laws, of England.

From his time to that of Henry the Eighth, there happened very few, and those not very considerable, alterations in the legal forms of proceedings.

13. *What is to be remarked of the period between the reigns of Edward the Third and Henry the Seventh?*—428, 429.

The civil wars and disputed titles to the crown, gave no leisure for further juridical improvement: "*nam silent leges inter arma*." To this period is due the method of barring entails by the fiction of common recoveries, invented originally to evade the statutes of mortmain, but introduced under Edward the Fourth, for the purpose of unfettering estates, and making them more liable to forfeiture.

14. *What is to be remarked of the reigns of Edward the Second and Edward the Third?*—428.

During their reigns, the old Gothic powers of electing the principal subordinate magistrates, the sheriff, and conservators of the peace, were taken from the people, and justices of the peace were established instead of the latter. In the reign of Edward the Third, the parliament is supposed, most probably, to have assumed its present form, by a separation of the commons from the lords.

15. *What is characteristic of the reign of Henry the Seventh?*—429.

The distinguishing character of this king was that of amassing treasure in the royal coffers, by every means that could be devised; and almost every alteration in the laws, however salutary or otherwise in their future consequences, had this, and this only, for their great and immediate object.

16. *What was effected, with regard to the civil polity, by the Reformation and Henry the Eighth?*—430.

The Reformation, under Henry the Eighth and his children, opens an entirely new scene in ecclesiastical matters: the usurped powers of the pope being now forever routed and destroyed, his connections with England cut off, the crown restored to its supremacy over spiritual men and causes, and the patronage of bishoprics being once more indisputably vested in the king. With regard also to civil polity, the statute of wills and the statute of uses made a great alteration, as to property.

17. *What is to be said of the reign of Queen Mary?*—431, 432.

Many salutary and popular laws, in civil matters, were made under her administration.

18. *What did Queen Elizabeth accomplish for the liberties of the nation?*—432.

The measures and schemes to re-establish religious slavery were defeated by her accession. The administration of civil rights, in the courts of justice, was carried on in a regular course, according to the wise institutions of King Edward the First, without any material innovations. All the principal grievances introduced by the Norman conquest seem, about this period, to have been finally shaken off, and the Saxon constitution restored, with considerable improvements, except in the continuation of the military tenures, and a few other points.

19. *When, after the period of the conquest, was the time of greatest despotism in England?*—435.

The latter years of Henry the Eighth.

20. *What is to be remarked, especially, of the reign of Charles the Second?*—439.

That the constitution of England had arrived to its full vigor, and the true balance between liberty and prerogative was, then, happily established by law.

21. *What, generally, has been effected from the revolution in 1688 to the present time, with respect to the administration of private justice and the public polity?*—440—442.

In this period many laws passed; as the bill of rights, the toleration act, the act of settlement with its conditions, the act for uniting England and Scotland, and some others, which have asserted the English liberties in more clear and emphatic terms; have regulated the succession of the crown by parliament; have confirmed and exemplified the doctrine of resistance when the executive magistrate endeavors to subvert the constitution; have maintained the superiority of the laws above the king, by pronouncing his dispensing power to be illegal; have indulged tender consciences with every religious liberty consistent with the safety of the state; have established triennial, since turned into septennial, elections of members to serve in parliament; have excluded certain officers from the House of Commons; have restrained the king's pardon from obstructing parliamentary impeachments; have imparted to all the lords an equal right of trying their fellow peers; have regulated trials for high treason; have afforded posterity a hope that corruption of blood might one day be abolished and forgotten; and have made the judges completely independent of the king and his ministers.

22. *What is a summary of the matters contained in the commentaries?*—442.

We have seen, in the course of the inquiries contained in them, that the fundamental maxims and rules of the law, which regard the rights of persons and the rights of things, the private injuries that may be offered to both, and the crimes which affect the public, have been and are every day improving, and are fraught with the accumulated wisdom of ages; that the forms of administering justice came to perfection under Edward the

First, and have not been much varied, nor always for the better, since; that the religious liberties were fully established at the Reformation; but that the recovery of our civil and political liberties was a work of longer time, they not being thoroughly and completely regained till after the restoration of King Charles, nor fully and explicitly acknowledged and defined till the era of the revolution of 1688.