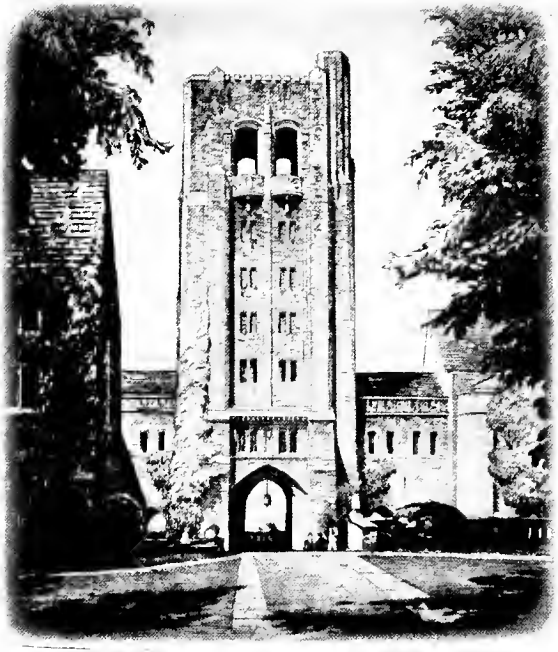
THE HEART OF BLACKSTONE
OR
PRINCIPLES OF THE COMMON LAW

NANETTE B. PAUL



The Heart of Blackstone

OR

Principles of the Common Law

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Introduction by

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TO ELLEN SPENCER MUSSEY, LL.M., FOUNDER OF THE WASHINGTON COLLEGE OF LAW, WASHINGTON, D. C., IS DEDICATED THIS ATTEMPT BY ONE OF HER FORMER PUPILS TO GIVE TO MEN AND WOMEN UNABLE TO ATTEND COLLEGE AN OPPORTUNITY TO LEARN SOMETHING OF THE PRINCIPLES OF LAW. : : : :

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PREFACE

THE design and object of the laws is to ascertain what is just, honorable, and expedient; and when that is discovered, it is proclaimed as a general ordinance, equal and impartial to all. This is the origin of law, which, for various reasons, all are under an obligation to obey: but especially because all law is the invention and gift of Heaven, the sentiment of wise men, the correction of every offense, and the general compact of the state: to live in conformity with which is the duty of every individual in society.—*Demosthenes.*

HISTORY informs us that the boys of ancient India were required to learn the civil and criminal laws of their country that they might be more able to understand and apply them when they became men. The laws of Athens were inscribed on wooden tablets set up in the public square, where all citizens could read them. The laws of ancient Rome were condensed into a simple form known as the Twelve Tables, which the small boys were obliged to commit to memory, that the significance of their principles might be indelibly impressed upon mind and heart. The "Great Law" enacted by the first General Assembly of Pennsylvania, in the year 1682, contained a provision requiring it to be taught in the schools of that province and its territories. Why these wise examples have not been followed in our modern

states is a question well deserving the thoughtful consideration of our statesmen and the general public alike.

We are, no doubt, all familiar with one of the three thousand maxims upon which the system of our law and order is based, "Ignorance of the law excuses no man"; but how many boys in our high schools, young men in our colleges, men of middle age, and those who have passed the threescore years and ten allotted to man, can repeat another? How many men exercising the symbol of free-born citizens on election day can enumerate the five great, absolute rights of every American? How many men well versed in the arts, sciences, business and social affairs of life can intelligently explain the differences in the three primary forms of government under some one of which all mankind, who claim to be civilized, must live? May there not be some connection between this unfortunate lack of legal knowledge and the illegal manipulation of the various departments of our municipal governments? May we not perchance find here the cause of so much that is dishonorable in high places? And may not it be the excuse for that indifference to and almost contempt for law which is fast becoming characteristic of our people?

Surely it is not too much to ask of every man before permitting him to cast a ballot, that he

know something of the law creating and regulating the duties of the officer about to be elected. Should not every man called to serve on a jury have some comprehension of the law which the accused has violated and which he has sworn to uphold? And why should not every woman consider a general knowledge of these principles an essential part of her education?

The thousands of immigrants thronging our cities, utterly ignorant of the basic principles and aims of our civic life, should be compelled to learn something of the practical working of the municipal governments before they are allowed to become citizens of the United States, and factors for good or bad in the progress of our civilization. Every department of science and art has been put in popular form for the benefit of untrained minds except the law, the only science which intimately concerns every individual both in his public and private life.

If the principles of our common law were put in simple, living language, shorn of all ponderous and technical phraseology, we believe they would appeal to the hearts of young and old, men and women. We believe, too, that a new reverence would be aroused for the splendid old maxims, some of which are as old as humanity itself.

If our free institutions are to endure, if the new race rising upon this continent is to come

into the glory of the brotherhood of man, this law, the bulwark of English and American liberty, must be learned by heart, must sink deep into the consciousness of every boy and girl of succeeding generations. That she may have contributed something toward this desirable end by the preparation of this elementary work is the earnest hope of the author. She desires to acknowledge her indebtedness for the material used to Lewis's Edition of Blackstone's Commentaries, Robinson's Elements of American Jurisprudence, Fiske's Civil Government in the United States, Woodrow Wilson's The State, Lawrence's Principles of International Law, and the several textbooks on the various branches of the law. It is with pleasure that she expresses her obligation for many helpful suggestions to her former legal instructor, Watson J. Newton, Esquire, who was a member of the Bar of the District of Columbia for more than thirty years.

With a sense of comradeship with men and women realizing their need of a knowledge of law but unable to supply that need in the usual way, she sends forth this little book. May its mission be accomplished and that law which is but "beneficence acting by rule" become more firmly intrenched in the minds and hearts of all classes of our people. NANETTE B. PAUL.

Washington, D. C.

INTRODUCTION

THE practical value of this book is not confined to lawyers and students at law, but the earnest and intelligent searcher after knowledge in other fields, no less than the members of the legal and other learned professions, cannot fail to derive accurate and profitable instruction from its study.

The author's rare power of condensation, orderly division of the subjects treated, and their logical development, give special value to this work as a succinct yet comprehensive view of the leading principles and maxims of the common law.

While no attempt at exhaustive citation of authorities has been made by the learned author of this convenient and useful manual, it has, what is of highest value, the sanction of the standard authorities of the law.

Lord Bacon, in the preface to his Rules and Maxims, says that he might have made an ostentation of learning by citing authorities, but that he abstained from it, "having the example of Mr. Littleton and Mr. Fitzherbert, whose writings are the institutions of the laws of England, whereof the one forbeareth to vouch authority altogether, and the other never reciteth a book but when he thinketh the case so weak of credit in itself as it needs a surety."

THOMAS H. ANDERSON.

CHAPTER I

The Source of the Common Law

The common law is grounded upon the general customs of the realm and includes in it the law of nature, the law of God, and the principles and maxims of the law; it is founded upon reason, and is said to be the perfection of reason acquired by long study, observation, and experience, and refined by learned men in all ages.

The world has been dominated by the genius of two great races for several thousand years, the Semites and Aryans. The former, as nearly as scholars can discover, had its original home in the desert and barren peninsula of Arabia. From that land, which never afforded sufficient sustenance for the people born upon it, the Semites wandered into the Mesopotamian valley and established a vast and powerful empire upon that of the Sumerian and Akkadian, already strong and flourishing. In the course of centuries they also conquered the empire of Babylonia and Assyria, controlled Egypt, and occupied the numerous small states in Asia Minor. The Aryans came down from northern Asia and settled in India, Persia, Europe, and the islands of Great Britain.

These races differed temperamentally. The Semites practiced polygamy and made the tribe

the unit, the patriarchal system being their ideal. Their religion was based upon the idea of one Supreme Being with public worship. Among the Aryans, the family was the unit, the young man was the hero, and individual rights were recognized. Their religious conception was that of many gods rather than One, and their worship was conducted in the privacy of the home.

When the Roman legions landed on the island of Britain in the early part of the Christian era they found a tribe of Aryans which had been there for an unknown period. While the Teutons, one branch of the Aryan migration from the north, stopped in the forests of Germany, another branch called the Celts crossing the narrow sea, halted on the islands and became known as the Britons. These rough tribes were never conquered entirely by the Romans, strong as the latter were; and as the power of the Queen City of the Tiber declined, her garrisons were withdrawn slowly from Britain until the middle of the fifth century, when the island was completely abandoned.

The Britons were thus left defenseless not only before the still ruder tribes on the north, the Picts and Scots, but to the mercy of their barbarian kindred from over the sea. Angles, Saxons, and Jutes soon came in swarms, killing and enslaving all Britons unable to escape to

the north or west. It was a complete conquest on the part of the invading tribes, although centuries of the most obstinate and cruel warfare were required to accomplish it. The south part of the island took its name from the most numerous of the invaders, the Angles, and has since been called England.

These German tribes had never come under the influence of the Roman language, law, or religion. The traditions, customs, and idolatrous worship of their Aryan ancestors were untainted. In their untutored hearts, however, were held a love of personal liberty, an enthusiasm, and an aspiration to better things characteristic of the Aryan race wherever found—qualities which had evolved in earlier ages the spiritual philosophy of the Hindu, the artistic development of the Persian, the matchless production in art and literature of the Greek, and the enduring principles of the Roman government. Little did they realize that in this small island they were to work out a great destiny. It is our good fortune to be the beneficiaries of some of the results born from their labors and hardships. The Britons had assimilated few ideas of the Romans, and having been so completely subjugated and so nearly destroyed by the German tribes, the influence of the four-hundred-years' dominion of Rome was almost gone.

Among the various traditions of these Teutonic tribes were some of the principles which form the basis of our Common Law. These principles were expressed in homely maxims or known as habits of the people; the origin of many was unknown even in that remote time.

These habits or customs became so numerous and conflicting that Alfred the Great, who is supposed to have lived from 840 to 901, compiled them into a book for the use of his whole kingdom. This famous Doombook, lost so long that its very existence was doubted, fortunately was found, and now may be seen in both the original Saxon and Early English. It is prefaced by the Ten Commandments, followed with many Mosaic precepts, and the significant utterance of Jesus, "Think not that I am come to destroy, but to fulfill." He quotes the canons of the Apostolic Council at Jerusalem, and the commandment, "As ye would that men should do to you, do ye even also to them"; and adds, "from this one doom a man may remember that he judge every one righteously: he need heed no other doombook."

These customs were no doubt more or less impaired by successive shocks of invasion and perpetual warfare; yet up to the time of the Norman Conquest they were the law of the land and as such had become endeared to the people. From the sixth to the tenth century most of

the learning of the English consisted of a knowledge of this law and the decisions rendered by the judges. Under the name of the Common Law they were taught in the monasteries, the universities, and in the families of the nobility. The clergy were so proficient in its study and practice that it was said, "There was no clergyman who was not also a lawyer." In fact the judges were created out of the sacred order, and, as the inferior offices were also supplied from the lower clergy, the name of *clerk* has clung to some of them even to the present time.

In the year 1066, William of Normandy succeeded in gaining possession of the throne of England. He brought with him the clergy of the Roman Church and placed many of the Roman priests in the offices hitherto held by the English priests or laymen. Most of the prominent English families were deprived of their lands which were transferred to William's Norman followers.

Little of the common law was written, and as it was known largely by tradition, use, and experience, it was in imminent danger of being lost to the English. The difficulty of understanding it with no knowledge of the native language, made the Normans indifferent to its efficiency. The sudden revival of the study of the pandects of Justinian, supposed to have been discovered in the twelfth century, also

tended to lessen their interest in the customs of a conquered people.

The old Roman, or civil law as it is called, was greatly favored by the clergy of the Catholic Church, and because of this regard it was made the basis of the church or canon law. Its study was introduced into the universities of Europe, and the growing nations of that continent incorporated many of its principles into their municipal governments.

Theobald, a Norman abbot, was elected to the See of Canterbury in 1138, and brought with him a number of men who had made a special study of this Roman law. One of them, Vacarius, was established as an instructor in the university of Oxford. This was followed by the attempt to impose the Roman law upon the whole English people in personal as well as public affairs. The monks and clergy adopted it willingly, and zealously supported it as against the crude and immature common law. On the other hand the laity, or people generally, were wedded to the customs of their forefathers, and having already felt the uncomfortable effects of many of the innovations of their conquerors, persistently refused to accept this one at their hands.

The resistance to the new law was not based upon the novelty or the name, but upon the grave and serious differences in the nature of

the principles upon which it was founded. The sturdy, independent English lords and barons would not accept the idea expressed in the statement: "The Emperor alone is deemed the maker and interpreter of the law"; or willingly acquiesce in the doctrine: "The constitution of the prince has the force of law, as the people place all their power and authority in his hands." Neither could they bring themselves to believe, "It is like sacrilege to oppose the rescript of the Emperor."

Bitter controversies arose and feeling ran high. The nation became divided against itself. Bishops and clergy, most of whom were foreigners, studied and taught the civil law, while the laity and nobility as zealously labored to maintain the native English law. Neither party would admit the really great merit residing in the claims of the other, therefore a compromise was impossible. The Parliament declared: "The realm of England hath never been unto this hour, neither by the consent of our lord and king, and the lords of parliament, shall it ever be ruled or governed by the civil law."

Finding it impossible to uproot this deep-seated affection for the common customs, the clergy gradually withdrew from the temporal courts. The papal authority forbade them to appear as advocates, and they soon ceased to

act as judges as well, because of their unwillingness to take the oath of office, which read: "To determine all things according to the law and custom of this realm."

The Roman or civil law controlled the spiritual courts, was taught in the universities, and to it the high court of Chancery conformed its proceedings. The clergy was forbidden by the Pope to study or even read the common law because its decisions were not founded upon the imperial constitutions. The degree of absurdity to which this zeal was carried is shown by the fact that the writers of that time could not draw a picture of the Virgin without making her an advocate and defender of the Roman law.

The result of the determined effort of the educated classes to bring the native law into disfavor caused its teaching to fall wholly into the hands of those who made a practical use of it in the common law courts. It would not have held its own against the opposition but for one peculiar incident which occurred at a critical time. It had been the custom for the tribunal in which disputes with regard to property were settled, known as the court of common pleas, to follow the King's household as he moved from one part of the kingdom to another. This practice caused great inconvenience, and often real hardship to all who brought cases before it.

The people finally succeeded in having an article incorporated in the great charters of liberty both of King John and of Henry the Third, to the effect that "the common pleas should not longer follow the king's court, but be held in some certain place." Westminster was chosen as the place, and the professors of the common law who previously had been scattered through the kingdom formed a society which became famous under the care of Edward the First, often called the English Justinian.

Certain houses were purchased between the city of Westminster and the city of London "for the advantage of ready access to the one and plenty of provisions in the other." These houses were known as Inns of Court and Inns of Chancery. The word *inn* had been used to denote the town houses in which the nobility and gentry lived during the social season. The names remained when put to the new use. Lincoln's and Gray's Inns therefore inform us of the fact that Lords Lincoln and Gray formerly resided in them. The Middle and Inner Temples were homes of the Knights Templars. A few were ordinary hotels, and all retained their characteristic English names and signs.

This assemblage of earnest men, devoted to the study of the principles upon which their national character had been founded, developed into a popular institution of learning. It became

the fashion for families of the nobility to send their sons to these inns for the purpose of acquiring a knowledge of the elements of the law after completing the usual college course. These inns were described by Ben Jonson as the "noblest nurseries of humanity and liberty in the kingdom." When taken under the patronage of the king they became noted for the magnificence of their entertainments. The organization unfortunately failed to provide for necessary discipline, and in consequence the tone of the inns gradually declined until the time of Blackstone, when only young men who meant to follow the law as a profession frequented them.

The universities did not open their doors to the common law until 1758. In that year a chair of the Common Law of England with a salary of two hundred pounds per annum was established at Oxford by a Mr. Viner, who was honored later by being enrolled as one of the public benefactors of the university. Sir William Blackstone was the first professor. He was a man of brilliant intellect, deep learning, and broad sympathies. His poetic temperament and classic style combined with a reverence for the principles of freedom inherent in the English law enabled him to present the supposedly dry and uninteresting subject in so fascinating a manner that his lectures have continued to

form the initiatory step in the study of law both in England and America. He should be honored as a benefactor wherever the English language is spoken, or wherever free governments formed by virtue of principles inherent in the English Constitution exist; for under it the individual is permitted to attain his natural estate unhampered by restrictions of the sovereign power, be that sovereign power resident in a King, a Parliament, or held by the People.

The principles which he so nobly defended and brilliantly expounded were wrought out through centuries of social experience, and are based upon the needs of the individual. The enlarging rights of the individual have been disputed, refused, and fought for all through the ages. The English common law advocated and defended them in the face of strong and well-organized opposition. It comes to us enriched with the blood of martyrs, sanctified by the sacrifices of earnest men. With all its faults and deficiencies it is a heritage for which we should bow our heads in gratitude, and give our heart's blood if need be, to pass on unimpaired.

CHAPTER II

The General Principles of Law

Of law there can be no less acknowledged, than that her seat is in the bosom of God, her voice the harmony of the world. All things in heaven and earth do her homage—the very least as feeling her care, the greatest as not exempted from her power; both angels and men and creatures, of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace and joy.— *Richard Hooker.*

Law, in its general sense, is defined by Webster as that which is laid, set, or fixed. It is a term expressing and describing any regularly recurring phenomena in the field of nature, science, or art.

The law of nature is the regular method or sequence by which certain effects follow certain causes; the uniform method by which material and mental forces act in producing effects; as the law of gravitation, the law of self-preservation, etc.

The moral law, which is said to be contained in the Ten Commandments, prescribes the duty of men to their God and to one another. It embraces those rules of conduct which arise from the relation of men to one another in

society, and affirms the rights founded upon these relations.

The municipal or positive law declares the rules of a community or a state for the protection and control of its citizens. This municipal law may be the edict of a ruler or the enactment of a government. It may be written or unwritten. When written it may be either:

1. A statute, which is a particular law carefully drawn, distinctly enacted, and publicly proclaimed.

2. A regulation, a limited and often temporary law intended to secure some particular object.

3. An edict, a command or law issued by a sovereign, peculiar to a despotic government.

4. A decree, a permanent order either of a court or of the executive government.

When law is unwritten it is called in this country and in England Common Law. It consists of maxims, well-defined principles, and established usage. It is also found in decisions of judges and records of courts.

The existence of law implies some form of government. That form is of three kinds: (1) Monarchical, in which the sovereign power is intrusted in the hands of a single individual known as the King, Emperor, Czar, etc., and styled a Monarchy. (2) Aristocratical, in which the sovereign power is placed in a council com-

posed of a select number of persons and called an Aristocracy. (3) Democratical, in which the sovereign power is lodged in all the members of a community and known as a Democracy. All other forms have been derived from and may be reduced to these three.

There are writers on governmental questions who declare the sovereign power to be equivalent to the power of making laws, and that such power resides in the Legislature. Others hold the more reasonable view, and one more consonant with modern thought, that government is a mere agency established by the people for the exercise of those powers which are inherent in the people, and that powers of government, making laws, executing them, etc., are merely delegated to the lawmakers, specified as to time or not, as the case may be; that all such powers are therefore held in trust and may be revoked when such trust is violated.

Constitution

A constitution is the fundamental law of a state which determines the political duties and secures the rights of its citizens. This constitution is written, or is so imbedded in the consciousness of the people whose rights it protects, that it need not be spelled out in letters of black and white. In England the constitution is not written but is engraved upon the hearts of the

people. That body of principles upon which the character of the English race was grounded, which has preserved the independence of the House of Commons as the principal legislative body, which has prevented the King from acquiring absolute power, which has made Great Britain the refuge for liberty-loving and persecuted men of all nations, has never been written out by the hand of man. It was possible for the English to hold that loose agglomeration of principles in mind because their territory was small and they were of one race and language.

In the United States, which was open from the beginning to persons of all nations, to persons with high ideals and those with only their own interests to serve, and to every form of religious faith and political opinion, it was necessary to state explicitly the principles upon which the States in forming a nation were to build their political and social structure. It was an act of supreme wisdom to declare the exact limitations and restrictions of each department of government. During the long struggle between the people and the King of England, it was necessary to bind the latter by written documents to secure the people from the encroachment of the governing power. The most famous and highly reverenced of these documents is the Magna Charta wrested from King John in the twelfth century.

According to this view a constitution is the work and will of the people themselves in their original, sovereign, and unlimited capacity; and laws are the work and will of the Legislature in its derivative and representative capacity; the one the work of the creator, the other the act of the creature.

Sovereignty

The people of a state or nation consent to a form of government through which they express their will. Sovereignty is indivisible and can be lost only by a voluntary or forced subjection to or merger in another state or nation. Either all or part only of sovereignty may be delegated by the people to certain prescribed persons or institutions. In England the King, House of Lords, and House of Commons are given unlimited power; but no one of them may exercise it alone. It is vested in them jointly.

Each State of the United States distinctly declares in its Constitution what powers or part of sovereignty shall be delegated to the Legislative, the Executive, and the Judicial branch of its government. Neither branch may go beyond the limits set by the Constitution. The power not specifically delegated continues to reside in the people.

The Federal Constitution explicitly sets forth the powers given to the general government by

the States; and it is one of the functions of the Supreme Court of the United States to declare void or nullify laws enacted by Congress which would, if enforced, interfere with the rights or privileges of the individual States.

Municipal Law

It is the duty of the government of a state, whatever form it may assume, to make laws for the protection and safety of its people. Such laws are called municipal and may be defined thus: A municipal law is a rule of civil conduct prescribed by the supreme power of a state, commanding what is right and prohibiting what is wrong. It consists of four parts:

The Declaratory, which declares the rights to be observed and the wrongs to be eschewed.

The Directory, which enjoins the subject to observe the rights and to abstain from the commission of wrongs.

The Remedial, which describes the method by which a right may be recovered and a wrong redressed.

The Vindicatory, which fixes the penalty for committing public wrongs and for transgressing or neglecting a duty.

Interpretation of Law

The intent of a law is not always clearly stated by the Legislature, therefore it is neces-

sary to provide for its interpretation by a competent authority. In ancient Rome this power was lodged in the Emperor. His interpretation was called a Rescript, and in all succeeding cases of the same nature this interpretation was followed and had in fact the force of law. In the United States a law whose meaning is uncertain is interpreted by the courts.

There are certain well-established rules by which the courts of the present day arrive at the intention of the legislators.

1. Words are to be understood in their usual and best known significance, or that acquired by popular usage. Technical terms must be taken according to the acceptation of the learned in that particular science, trade, art, etc.

2. If a word continue uncertain the meaning must be gathered from the context, and the preamble consulted. The law may be compared with another by the same legislators or with others on the same subject. And the whole general system of legislation on the subject may be taken into consideration in order to throw light upon any particular act relating thereto.

3. Words are to be understood as having a direct bearing upon the subject matter, as the legislator is supposed to direct all his expressions to that end. The object designed to be reached by the act or law must limit and control

the literal meaning of the terms and phrases employed.

4. Where words in the law have either an absurd significance or none at all, the interpreter must deviate from the received sense and read into them that which is most reasonable.

5. The reason and spirit which moved the Legislature to enact the law must be fully considered and given due weight.

It is from this necessity of interpretation that the principle known as the "equity of a statute" arises. When a particular case does not seem to be covered by the law and yet it is obvious that it was within the intention of the legislators, the judge may, in his discretion, soften the rigor of the statute. He acts upon the principle, that had the legislators apprehended its effect in the particular instance they would have enlarged the law to cover it.

As in ancient times the interpretation and edict of the Emperor acquired the force of law, so now in the United States the decisions of the courts of justice are looked to as containing the evidence of what the common law is.

The municipal law or statute may be general or special, public or private. A public statute affects the public at large, and courts of law are bound to take notice of it without its being brought to their attention. Special or private acts are rather rules operating upon particular

persons and private concerns. They must be specially pleaded to obtain consideration in a court. Statutes are frequently provided with a "dictionary clause" which defines the persons, place, or things included in their context.

In construing statutes the court takes into consideration what the common law is, the nature of the point covered, and the remedy provided by the statute for its cure. All laws in derogation of common right, as conferring exclusive privileges upon corporations or individuals, exempting property from taxation, interfering with the personal liberty of the citizens, or conferring authority to impose taxes, should receive a rigid interpretation. Penal statutes—that is, those inflicting a penalty for their violation—are as strictly construed as may be consistent with carrying out the intention of the Legislature.

Remedial statutes, or laws enacted for the purpose of alleviating or removing an evil, are liberally interpreted. One law of the Twelve Tables of ancient Rome provided that whenever a law involved a question of liberty or slavery the presumption should be on the side of liberty. The same principle obtains in our courts. Laws which have reference to the public welfare, which are intended to encourage the staple productions, to maintain peace and security, to

extend education, etc., all receive a liberal interpretation.

If the statute modifies the common law, the latter gives way to the statute. If the statute is in derogation of the common law, or in violation of a principle, it is strictly construed. A new statute takes the place of one enacted previously on the same subject. The repeal of a statute will not be allowed to destroy rights which may have vested under its provisions. Acts of a Legislature which are impossible of performance are void. One Congress or a Legislative Assembly may not enact laws restricting the power of a subsequent Congress or Assembly.

All laws are construed to operate prospectively, that is, in the future, and not to cover past acts unless the language is so clear that the intention of the law-making body cannot be doubted. The aim of the court is to avoid absurd consequences, great inconveniences, and specific injustice.

Ex Post Facto Laws

The enactment of penal or criminal laws to take effect before the date of their passage is discouraged by the Federal and State constitutions. They are contrary to our sense of justice inasmuch as they prescribe a punishment for the violation of a law after it has been committed,

or alter the situation of the accused to his disadvantage. There are four classes of these *ex post facto* laws:

1. Laws which make an act done before the passage of the law, and which was innocent when committed, criminal and punishable.

2. Laws that aggravate a crime or make it greater than it was when committed.

3. Laws which change the punishment and inflict a greater punishment than was legal when the crime was committed.

4. Laws which alter the legal rules of evidence, making less or different testimony necessary to convict the offender than was required when the offense was committed.

For centuries a session of Parliament was regarded as one day, and all laws passed during the session took effect from the day Parliament convened. This often worked gross injustice, and a change was made in the reign of George the Third. Laws of our National Congress take effect from the day of their passage unless another time is specified in the statute.

Laws enacted by the State Assemblies are interpreted by the courts of the State. This interpretation is usually honored and followed by the courts of other States, and by the United States judges in all questions relating to the construction of State constitutions.

CHAPTER III

The Absolute Rights of Persons

Moral or natural liberty is the right which nature gives to all mankind of disposing of their persons and property after the manner they judge most consonant to their happiness on condition of their acting within the limits of the law of nature, and that they do not in any way abuse it to the prejudice of any other man.—*Jean Jacques Burlamaqui.*

Since the municipal law commands what is right and forbids what is wrong, it is necessary to consider the rights which are commanded and the wrongs prohibited separately and in detail.

The rights of persons fall into two classes: Those due from every citizen, called Duties; and those due to every citizen, called Rights. The rights of persons considered in their natural capacities are two kinds: Absolute, which belong to particular men as individuals, and Relative, which are incident to men as members of society.

Absolute Rights

The absolute rights of an individual are those which belong to him in a state of nature, and which he is entitled to enjoy alone or as a

member of an organized society. It is the principal aim of society to protect individuals in the enjoyment of these rights. Although less numerous than the relative rights, and occupying far less space in the ordinary codes of law, they are much more important. The absolute rights of a man considered as a free agent with power of knowing and choosing between right and wrong, good and evil, are generally summed up in one word—Liberty.

Natural liberty consists in acting as one pleases without restraint or control. Every member of an organized society impliedly gives up part of this natural liberty in consideration of benefits arising from concerted action, and must conform to those laws which the combined will of the community has established. Political or civil liberty is then nothing but natural liberty restrained by human laws for the advantage of the general public.

Courts have held that civil liberty may be understood in two ways: (1) the right of each person to live under equal laws; (2) the duty of the state, either in its written or unwritten constitution, to recognize a sphere with which the government may not interfere. In this last sense civil liberty is protected in the United States by the Bill of Rights appended to the Federal Constitution.

One writer defines civil liberty thus: "Civil

liberty, the great end of all human society and government, is that state in which each individual has the power to pursue his own happiness, according to his own views of his interests and to the dictates of his conscience unrestrained except by equal, just, and impartial laws. Laws must be, therefore, the just and necessary limits of natural liberty."

Political liberty, then, is that state in which the individual enjoys civil liberty with security; a security only to be attained by the force of public opinion, formed and influenced by an untrammeled press, and through legislators chosen from and by the people upon whom their enactments are to operate. The value of any form of government depends upon the protection it affords the individual under its laws. The peace-loving William Penn says: "A government is free to the people under it, whatever the frame, where the laws rule and the people are a party to those laws; more than this is tyranny, oligarchy, and confusion. Whenever laws attempt more than is necessary to secure alike to every man, weak or strong, rich or poor, ignorant or instructed in the right, the moral power of seeking his own happiness in his own way, they invade that natural liberty of which they should be only the bulwark."

To obtain this security certain general rules

must be promulgated, tribunals must be erected, and courts established whose wisdom, independence, and impartiality are provided for. It is the duty of such courts to determine controversies arising among men, therefore power must be given them to enforce their decrees. The people should be instructed in the purpose and methods of these courts since the strength of every government rests upon the intelligent loyalty of its subjects. "A few laws executed are better than many that slumber on the statute book."

During the progress of civilization absolute rights have been retained only by the utmost vigilance and determined resistance to the encroachments of kings and princes. In England they have been asserted in Parliament and fought for by the people. Their progress may be traced through the Great Charter of liberties wrested from King John, its confirmation by his son Henry the Third, the Habeas Corpus act passed by Parliament under Charles the Second, the Bills of Rights delivered to William and Mary of Orange, and the Act of Settlement at the accession of the House of Hanover. These agreements between the people and their rulers are thus quaintly expressed: "The people do claim, demand, and insist upon, all and singular the premises, as their undoubted rights and liberties"; again, "All and singular the

rights and liberties asserted and claimed in the said declaration to be true, ancient, and indubitable rights of the people of this kingdom." The Act of Settlement declares them to be the "birthright of the people of England, according to the ancient doctrine of the common law."

These absolute rights were enumerated by the English as follows:

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

To these have been added by Americans:

4. The right of freedom in religious belief and practice.
5. The right of freedom of speech and of the press.

Personal Security

The right of personal security consists in the legal and uninterrupted enjoyment of a person's life, limbs, body, health, and reputation.

The right to life is inherent in every individual and begins in contemplation of law with the infant in its mother's womb. Such an infant is capable of having legacies made to it, a guardian assigned, and is considered born for all beneficial purposes. The civil rights of an unborn infant are respected and protected by the law at every stage of gestation. If the mother is maliciously injured so that the child

is born dead, the person responsible for the injury may be found guilty of manslaughter at common law. The right to security of life and limb is regarded so highly by the law that it excuses even homicide if committed in self-defense or in an effort to preserve either life or limb from serious danger.

If a man executes a deed or other legal document under a threat of death, serious bodily injury, or loss of personal liberty, the law will not compel a performance of the instrument if he can show to the satisfaction of the court that he acted under a well-grounded apprehension of losing his life, his liberty, or of being permanently injured. Such constraint or influence of one man over another to the latter's hurt is known in law as Duress, or Duress per Minas.

Duress consists of threats made against another's liberty of motion, as imprisonment. Duress per Minas consists of threats made against another's life or limbs. The common law maxim covering this principle is, "He is justified who acts in pure defense of his own life or limbs."

This justification does not extend to threats made to beat another, or to burn his house, destroy his goods, etc., because the injured person may recover compensation or their value in money through legal process. No adequate compensation can be secured for either loss of

life or of a physical member. Duress of goods under circumstances of peculiar hardship and difficulty has enabled a man to avoid a contract, but that is rare. In all cases of Duress the man injured must show that his fear is "not the apprehension of a foolish and fearful man, but such as a courageous man may be susceptible of; it should be, for instance, such a fear as consists in apprehension of bodily pain or danger to life."

Besides those limbs and members necessary for a man to defend himself, or to annoy his enemy, the rest of his person or body is entitled by the same natural right to security from corporal insults of menaces, assaults, beating, and wounding, although not amounting to destruction of life or the loss of the use of a limb. One is protected also from any practice which would injure his health, his reputation, or his good name. These are all rights to which every citizen is entitled by natural justice, since without any one of them he may not obtain perfect enjoyment of any other advantage or right.

Personal Liberty

Personal liberty consists in moving one's person to whatever place one may desire without restraint or imprisonment, unless by due process of law. Magna Charta affirmed this right in these words: "No freeman shall be

taken or imprisoned but by the lawful judgment of his equals, or by the law of the land."

The violation of this right led to the development of the great writ of Habeas Corpus. By this writ a person imprisoned for any offense other than treason or felony may be brought before the proper magistrate, his imprisonment inquired into, and, if proved to be unlawful, immediately released. The confinement of a person in any way is an imprisonment under the law. Keeping a person in a private house against his will, forcibly detaining him in the streets, illegally arresting him, are all examples of imprisonment.

The writ of Habeas Corpus has been changed in some particulars by statute in many of the States, but its general principles remain the same.

The right of personal liberty is considered of such paramount importance that it has been maintained by statesmen that unjust attacks upon the life or property are less dangerous to a commonwealth than attacks upon the personal liberty of the citizen. The Federal Constitution safeguards this right by the following unqualified provisions: "No person shall be deprived of life, liberty, or property without due process of law." "Excessive bail shall not be required." "The right of the people to be secure in their persons, houses, papers, and

effects against unreasonable searches and seizures shall not be violated." "The writ of Habeas Corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it." Also in the Bills of Rights of each State like provision is found.

Magna Charta declared against the banishment of a person from the realm except by a judgment of his peers. But transportation and exile are no longer recognized as means of punishment by the common law.

Private Property

The right of private property consists in the free use, enjoyment, and disposal of all one's acquisitions without control or diminution, except by the law of the land. Magna Charta declared: "No freeman shall be disseized or divested of his freehold, or of his liberties, or free customs, but by the judgment of his peers or by the law of the land." Various ancient statutes enacted: "No man's lands or goods shall be seized into the king's hands, against the Great Charter and the law of the land; and that no man shall be disinherited, nor put out of his franchise or freehold, unless he be brought to answer, and be forejudged by course of law; and if anything be done to the contrary, it shall be redressed, and holden for none."

The Federal and State constitutions provide for the taking of private property for public use upon payment of a just compensation. The right to destroy private property in order to prevent the spread of a conflagration is necessary to protect the public, and cannot be denied. The taking of private property under the guise of taxes, aids, levies, etc., has been the cause of long and bitter controversy between the people and their governments. The right of the government to acquire property for its legitimate uses by making a just compensation is called the right of Eminent Domain.

Religious Liberty

The world was a long time coming to the idea of freedom of religious belief and practice. In ancient times religion and law were interchangeable names for the same thing. Every country had its own religion and worshiped its own gods. If the country was subjugated or destroyed, the gods died with the government and religion. Gradually the human mind expanded to the conception of one Supreme Being, present in all parts of the earth at all times; and that the different religious faiths were but different interpretations of the same great revelation. Law separated from religion, each taking its own course of development and promoting the progress of civilization along its

own lines. In modern times the tendency has been to complete separation of church and state; with full freedom for the individual to choose his own religion, and to worship God as conscience dictates without advice or interference from the government. The Federal Constitution provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." Practically the same provision has been embodied in the constitutions of all the States.

Freedom of Speech

Congress is forbidden by the Constitution to enact any laws abridging the freedom of speech or the press. The State constitutions have more particular and precise clauses on the subject. The following is from the Constitution of Pennsylvania: "The printing presses shall be free to every person, who undertakes to examine the proceedings of the Legislature and any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty."

These absolute rights are maintained inviolate by the following subordinate ones:

1. The Great Charter affirms the right of every citizen, "For injury done him, by any other subject, without exception to take his remedy by course of law, and have justice and right for the injury done to him, freely without sale, fully without denial and speedily without delay." Or in other words, the courts of justice must be open at all times and the law duly administered therein.

2. For an uncommon injury or infringement of these rights which the ordinary course of law may not reach, another right is secured by the Constitution as follows: "The right of the people peaceably to assemble and to petition the government for a redress of grievance shall not be prohibited."

3. Provisions in both the Federal and State constitutions preserve to the people the right to keep and bear arms for resistance and self-preservation when the law is insufficient to restrain the violence of oppression. These provisions do not prevent the enactment of laws against the carrying of concealed deadly weapons by private citizens when such practice would endanger others.

All natural rights and liberties are ours to enjoy freely and fully except where the well-considered and firmly established law of the land lays them under necessary restraints.

CHAPTER IV

Relative Rights in Respect to Public Relations

The accumulation of all powers, legislative, executive, and judicial, in the same hands, whether of one, a few, or the many, and whether hereditary, self-appointed, or elective, may be justly pronounced the very definition of tyranny.—*The Federalist.*

The rights and duties of persons arising from their relation to one another as members of society are either Public or Private. The most general public relation arising from the association of men is that of Government. In every organized society there are governors and governed; magistrates and people. Magistrates are Supreme, those to whom the sovereign power of the state is delegated; and Subordinate, those who derive their authority from the supreme magistrates and act in an inferior capacity.

In all autocratic governments the supreme magistracy—that is, the right of making and enforcing the laws—is vested in one and the same man or in one and the same body of men. In governments of that kind true liberty cannot exist, therefore the tendency of modern progress

is toward the separation of the various powers of government.

In England the legislative power is vested in the King and Parliament; the executive in the King alone. The word Parliament, derived from the French, is of comparatively modern origin, and means an assembly of men that meet and confer together. It was first applied to the general assemblies of France under Louis VII, about the middle of the twelfth century. The first mention of it in English statute law was in 1272; but it is known that councils were called for the discussion of matters of importance in the different kingdoms of the island long before the Normans came into it. The practice was common among all German tribes. Tacitus says, "Concerning lesser affairs the leaders consult, but in graver matters all the people." The early English called their legislative body the "great council," the "great meeting," and the "meeting of the wise men."

After the small kingdoms combined, King Alfred issued the following decree: "For a perpetual usage, that these councils should meet twice in the year, or oftener if need be, to treat of the government of God's people; how they should keep themselves from sin, should live in quiet, and should receive right."

These great councils were held occasionally under the first princes of the Norman line, but

the constitution of Parliament as it now stands was probably effected by the Great Charter in 1215, when King John agreed "to summon all archbishops, bishops, abbots, earls, greater barons, and all other tenants in chief, to meet at a certain place with forty days' notice, to assess aids and scutages when necessary."

At the present time when a new Parliament is elected the King selects as Prime Minister the leader of the political party having a majority in Parliament. The prime minister selects members of his party as heads of the different executive departments. These names are ratified by the King, and the body chosen becomes his cabinet, often called The Ministry. The ministers are jointly responsible to the House of Commons, and an adverse vote on legislation advised by them, obliges them to resign in a body. The King then calls upon the leader of the opposition to form a new cabinet, or he dissolves Parliament and orders a new election. Unless Parliament is thus prorogued by the King its term of office is seven years. It must convene as often as once in three years. The usual practice is to convene each year and remain in session an indefinite time. It is no longer prorogued by the death of a sovereign.

In the United States the supreme power or sovereignty resides in the people, who delegate certain powers to the different branches of

government. After the Revolution the independent and sovereign States granted specific powers to the Federal government. These powers are distinctly set forth in the instrument called the Federal Constitution, or the Constitution of the United States.

Constitutional Convention

The Constitutional Convention was called in May, 1787, and was composed of delegates from the thirteen original States. After much discussion it was found impossible to amend the Articles of Confederation so as to meet the needs of the country, and the Convention, therefore, recommended an entirely new Constitution. It was approved by the Legislatures of all the States, Rhode Island being the last one to act on it in May, 1789. The new government was immediately organized under it, and the first President, George Washington, was inaugurated on the 30th of April, 1789.

The Constitution creates departments for the exercise of sovereign power and declares: "This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the

contrary notwithstanding." The United States is given authority over the whole territory of the Union, acting upon the States and the people of the States. It is limited in its powers, but wherever its sovereignty extends it is supreme.

The Constitution never yields to a treaty nor to an enactment of Congress. It is not altered by time, and does not yield to any combination of circumstances. It may be amended only by its own provisions for amendment. It is "A law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances." It establishes three departments of government, and determines their powers directly or by implication. They are:

The Legislative, which makes, amends, and when advisable repeals the laws.

The Executive, which executes and enforces the laws.

The Judicial, which construes and applies the laws when controversies arise under them.

Legislative Department

The Legislative powers granted by the Constitution to the United States are vested in a Congress consisting of a Senate and a House of Representatives, and are subject to a qualified veto in the President of the United States. The State Legislatures provide for the time, place,

and manner of holding election for the members of Congress. All the regulations of the States, however, may be changed by Congress except the place for electing Senators. The Constitution originally provided that the members of the Senate should be elected by the Legislature of the State which the Senator represented; but since the adoption of the amendment for the popular election of Senators, the members of both Houses of Congress are elected directly by the people.

The House of Representatives is composed of members elected every second year by the people of the several States. The qualifications of the voters, and the manner of electing Representatives must be the same as those used by the State for the election of members to the lower house of its legislative assembly. Representatives are apportioned among the States according to their respective populations, excluding Indians not taxed. The inhabitants of the District of Columbia, Alaska, and of the Island Possessions are not counted in this basis of representation. When the Constitution was adopted the ratio of representation was one to thirty thousand; but according to the last apportionment, made in the year 1913, the ratio was changed to that of one to one hundred and ninety-two thousand one hundred and eighty-two of the population; making the present mem-

bership of the House four hundred and thirty-five.

A Representative must be a resident of the State at the time of his election; must have been a citizen of the United States at least seven years, and be not less than twenty-five years of age. The House of Representatives elects its own officers. The presiding officer is known as the Speaker; a term used in England, where it was first applied to the presiding officer of the House of Commons in 1377.

The Senate is composed of two members from each State, elected for a term of six years. The membership is divided into three classes, one of which is elected every second year with the members of the House of Representatives. A Senator must be at least thirty-five years of age, must be a resident of the State from which he is chosen, and must have been a resident of the United States for nine years. The Senate elects all its officers except its president. The Constitution provides that the Vice-President of the United States shall preside over the Senate, and cast the deciding vote in case of an equal division of Senators. In the absence of the Vice-President, or when the latter is called upon to exercise the office of President of the United States, a President pro tempore is elected.

Each House is the judge of the elections,

returns, and qualifications of its own members, determines the rules of its proceedings, punishes its members for disorderly conduct, and with the concurrence of two thirds, may expel a member. Each House is required to keep a journal of its proceedings and from time to time to publish it, excepting such parts as in the judgment of the members require secrecy. The votes of the members on any question are entered on the journal, that they may be a matter of record, upon the demand of one fifth of those present. A majority of the membership of each House constitutes a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members. Neither House may adjourn for more than three days, nor to any other place than where the Congress is sitting, without the consent of the other.

The members of both Houses are exempt from arrest for all cases except treason, felony, and breach of the peace, during the attendance at the sessions of their respective Houses, or in going to and returning from the same; and they may not be questioned as to anything said in debate in the transaction of legitimate business. A member is not permitted to hold another civil office under the authority of the United States during his term as a member of Congress.

Either House may originate bills and may

propose amendments to, or concur in, the amendments of the other. Each member has an equal right of introducing bills with every other member. Revenue bills, that is, bills for raising money for the expenses of the government of the United States, must be introduced first in the House of Representatives, but may be altered by amendments in the Senate. When a measure is adopted by both Houses it does not become a law until it is signed by the President of the United States. If the President vetoes it, that is, refuses to sign it, he returns it to the House in which it originated. If both Houses by a two-thirds vote pass it over his veto, it becomes a law without the signature of the President. If the President does not wholly approve of the measure as adopted by Congress, and does not wish to sign it, but still does not want to defeat it, he may hold it ten days, Sundays excepted, when it becomes a law without his signature.

Congress convenes annually the first Monday in December, at twelve o'clock, noon. The first, or long session, may continue during the entire year; but the second, or short session, must adjourn by the fourth day of the following March; that being the date of the expiration of the term of the members of the House of Representatives and of one third of the Senators. The Congress may be convened in extra

session at other times by proclamation of the President of the United States.

Executive Department

The executive branch of the government is vested in a President, and a Vice-President elected for a term of four years. To be eligible for the Presidency, one must be a natural-born citizen, a resident of the United States fourteen years, and at least thirty-five years of age. In case of the death or resignation of the President, removal from office, or inability to discharge its duties, the Vice-President succeeds to his place. Should the Vice-President become incapacitated, the office devolves upon the Cabinet officers in the following order: the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Attorney-General, the Postmaster-General, the Secretary of the Navy, and the Secretary of the Interior.

The Cabinet officers are appointed by the President and confirmed by a two-thirds vote of the Senate. They are advisers merely, and form a body similar to that of the Ministry of the English government. Their term of office is presumably that of the President, who is their chief and responsible for all their official acts. They are sometimes called Executive agents.

The President is Commander-in-Chief of the

army and the navy of the United States, and of the militia of the several States, when called into actual service. He nominates, and, with the consent of the Senate, appoints Ambassadors, Public Ministers, Consuls, and all other officers whose appointment is not provided for in the Constitution or by act of Congress. With the advice and assistance of the Secretary of State, he negotiates treaties with foreign powers. The treaties are not operative, however, until ratified by a two-thirds vote of the Senate. When Congress convenes, and during the session, he may give information on the state of the Union, and recommend such measures for legislation as he deems necessary or expedient; and he may call an extra session of Congress for special and immediate legislation. The Constitution gives him the power of granting pardons and reprieves for offenses against the United States in all cases except that of impeachment. His compensation, seventy-five thousand dollars a year, is fixed by act of Congress and may not be changed to take effect during the period for which he was elected.

Judicial Department

The Constitution provides "That the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts

as Congress may, from time to time, ordain and establish."

A court is defined to be "A tribunal created by the State for deciding controversies concerning legal rights, and for the prevention, redress, or punishment of legal wrongs." Courts have existed from very ancient times, but modern tribunals derive their authority from the Constitution or statutes of the States, and consist of one or more judges, clerks, sheriffs, jurors, and such other officers as are necessary for executing orders and decrees.

The number of Judges of the Supreme Court of the United States is at present nine. They are appointed by the President, and serve during life or good behavior, and have the privilege of retiring at the age of seventy years. The number may be changed, but may not be diminished so as to deprive any member of office. The Court sits in the Capitol in Washington, in a room used formerly as the Senate Chamber. It convenes in October and holds sessions throughout the fall and winter.

Congress has organized and established five inferior Federal Courts, making in all six courts under the laws of the United States. They are: the Supreme Court, the Circuit Court of Appeals, the Circuit Courts, the District Courts, the Court of Claims, and the Courts of the District of Columbia.

The jurisdiction of these courts, according to the Constitution, extends to all cases arising under the Constitution or the laws of the United States, and treaties made under their authority; to all cases affecting ambassadors, public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, or between a State and citizens of another State; or between citizens of different States, or between citizens of the same State claiming land grants of different States, or between a State and citizens thereof, and foreign States, or subjects.

The Federal Courts possess both common law and equity powers, and follow as far as public policy permits the laws of the State in which the controversy arose and where the matter would have been determined had it not come within the Federal jurisdiction. In equity proceedings they follow the methods of the English courts of Chancery. The Supreme Court and the Court of Claims sit only in the Capital City, but the Circuit Courts of Appeals and the Circuit Court are limited to their respective districts into which the United States is divided, nine in all. The Courts of the District of Columbia exercise jurisdiction in that District only.

Each State has a Supreme Court to which are brought all questions concerning the interpretation of its laws and their application to the facts of the controversy; and its constitution provides for the establishment of inferior courts, for the appointment or election of judges, their duties, terms of office, etc.

Congress has provided that the courts of the United States shall have jurisdiction in the following cases, exclusive of the courts of the State:

1. All crimes and offenses cognizable under the authority of the United States.
2. All suits for penalties and forfeitures incurred under the laws of the United States.
3. All civil causes of admiralty and maritime jurisdiction, except where the common law remedy is adequate.
4. All seizures under the laws of the United States, on land or waters not within the admiralty and maritime jurisdiction.
5. All cases arising under patent-right or copyright laws of the United States.
6. All matters and proceedings in bankruptcy.
7. All controversies of a civil nature where a State is a party, except between a State and its own citizens, and between a State and citizens of other States, or aliens.
8. All actions arising under the postal laws,

in regard to duties and revenue laws; for the violation of the United States statutes for the protection of civil rights; the deprivation of rights, privileges, and immunities, etc., granted by the Constitution; and others of a more indefinite nature.

Subordinate Magistrates

Besides the President and Vice-President of the United States, Members of Congress, Judges of the Federal and State courts, Governors and Lieutenant-Governors of the States, there are many public officers connected with the various branches of our government who are classed as subordinate magistrates. They are:

The Marshal, appointed for each judicial district of the United States, whose duty is to execute the process of the Federal courts.

The Sheriff, either appointed by the Governor of the State or elected by its citizens. His duty is to execute the civil and criminal process of the county court, to take charge of the jail and the prisoners, to attend the sessions of the court, and to keep the peace.

The Coroner, whose duty is to inquire into the manner of violent deaths, and to act as a substitute for the Sheriff if for any reason the latter is incapacitated.

In addition to these public officers there are

others of a quasi-public nature, such as the superintendents and teachers of the public schools and minor officers.

Responsibility of Public Officials

The State is not responsible for the misconduct or neglect of public officers and is not bound by any acts beyond the scope of the authority conferred upon them. Every public officer is presumed to know his legal duties and the limit of his authority; and ignorance thereof will not excuse him from personal liability for any act exceeding that authority. The process of impeachment is used in cases of official negligence or oppression on the part of the President, the governors of States, judges of the higher courts, and other officers of great political importance. If an officer is convicted under this process, he is removed from office and disqualified forever from holding any office under the Constitution.

Legislative bodies have the right of suspending and expelling their members, and superior officers may dismiss their inferior officers after a hearing or trial provided by law for the specific violation. All persons dealing with public officers are supposed to understand the scope of the officer's authority, and act at their own peril when ignorant.

CHAPTER V

Relative Rights in Respect to Private Relations

Let the great general duty of submission to civil authority be engraven on our hearts, wrought into the very habit of our minds, and made a part of our elementary morality.—*Hall.*

The most important relations of private life are four:

1. Master and Servant, which is founded in convenience, whereby a man may call upon others for assistance when his own skill and labor are not sufficient.
2. Husband and Wife, which is founded in nature, but modified by the regulations of civil society.
3. Parent and Child, which is based upon the necessity of protecting, maintaining, and educating children.
4. Guardian and Ward, which is an artificial parentage to supply the natural relation of parent and child when that relation fails.

Slavery

Perhaps the dominant factor of English

civilization is the love of personal freedom. The common people of England from the earliest times could not endure slavery in any form. In the year 1543, a law was enacted by Parliament requiring all idle vagabonds to be fed on bread and water, small drink, and refuse meat; to have an iron ring soldered round their necks, arms, and legs; and to be compelled, by beating, chaining, or otherwise, to perform the work assigned them. The people considered this a form of slavery, and compelled Parliament to repeal the law in less than two years after its passage. They would not allow so degrading a system to exist even though its purpose was to promote industry and discourage idleness and sloth. The institution of slavery flourished in the United States from the day the first shipload of Negroes landed in Jamestown, Virginia, in the year 1619, until the Emancipation Proclamation of President Lincoln went into effect in 1863.

The practice of binding a person to serve a certain term of years to a master who is bound to maintain and instruct him during that time for his labor, is called Indenture, and is of a very remote origin. During the middle ages it was used not only in the trades but also in the more polite occupations, such as husbandmen and gentlemen. Children of poor parents were apprenticed, or bound out until they were

twenty-one years of age, with the consent of their parents and two justices. Gentlemen of fortune, clergymen, and others able to maintain other children than their own, were compelled to take one or more of the poor children of the parish. The law provided a means by which the apprentice could be discharged upon reasonable cause either at his own request or that of his master.

This form of service is seldom used in the United States. The method now in vogue is hiring by the day, week, or month. The servant in this way does not become so intimate a member of the family.

There are many statutes in England regulating the subject of service and declaring that all who have no visible effects may be compelled to work; prescribing the time of work in summer and in winter; the method of punishing those who desert their work; empowering the proper officers to settle wages; and inflicting penalties upon those who exact more than is due, or who pay more than is legal, etc. By the laws of King Alfred, a servant was allowed to fight for his master, a parent for his child, a father for the chastity of his daughter, and a husband for the honor of his wife.

By virtue of the common law a master may maintain, that is, abet and assist, his servant in an action at law against a stranger, although

it is an offense against public justice to encourage suits at law by helping to bear the expense of them. He may also defend his servant in an assault because of his interest in the service which the servant is under obligation to render him. The servant, also, may justify an assault in defense of his master, because it is a part of his duty to do all that the master himself may do in defense of his own person.

If the servant commit a trespass by the command and encouragement of his master, the master is held guilty, although the servant is not wholly excused; he is supposed to obey only in matters that are honest and lawful. If a servant causes loss to a stranger by his negligence while in the actual employ of the master, the latter must answer for the injury. This principle was illustrated by a provision of the ancient common law that if a servant kept his master's fire so negligently that a neighbor's house was burned, the master was liable for the amount of actual loss to the owner. According to the law of the famous Twelve Tables of Rome, a person by whose negligence a fire began was bound to pay double the loss to the sufferers; and if the careless party were unable to pay, he was subjected to some form of corporal punishment. The wrong done by the servant is the wrong of the master who com-

mands him. This principle is based upon the legal maxim, "No man shall be allowed to make any advantage of his own wrong."

Husband and Wife

The relation of husband and wife was known under the old common law as that of *baron* and *feme*. Upon marriage the legal existence of the woman was incorporated in that of her husband, "under whose wing, protection, and cover she performed everything." She was called in law French a *feme covert*, and her condition was known as that of *coverture*.

Upon the principle of the union of husband and wife in one person depended all the legal rights, duties, and disabilities, acquired by each when entering into the marriage relation. The union was never perfect, however, for upon the wife fell most of the disabilities and burdens. Losing her legal existence, she no longer had control over her own property. Her personal property vested in her husband immediately upon marriage, and at his death he could will it entirely away from her. If he died without a will, she had a right to but one half if there were no children; and to but one third if there were children. All the profits from her land and real estate went to her husband during her life; and if she gave birth to a living child, the law gave him the use of it until his death even

when he survived her. If she outlived him she could claim the use of but one third of his real estate during her lifetime.

The law discriminated against the wife in other ways. If the husband, or *baron,* murdered his wife, the crime was equal to that of killing a stranger. But if the wife killed her husband, she was held guilty of a crime against authority, and was punished with the same severity as one who had slain the King. The man was drawn and hanged; the woman was drawn and burned alive. Women were not allowed the *benefit* of *clergy,* and however learned they might be, were sentenced to death and executed for manslaughter, bigamy, the first offense in petit larceny, and many other minor offenses.

The husband was protected in his right of moderately chastising his wife; an ancient privilege so highly considered and lovingly cherished, that the Supreme Court of North Carolina, in 1866, declared, "A husband has the right to whip his wife with a stick as large as his finger but not larger than his thumb." This doctrine, however, has been entirely abandoned by the American courts, and, in fact, never was fully incorporated into the American law, although it was offered as a defense in the District of Columbia as recently as the year 1895.

Marriage

The common law considers marriage a civil contract and protects it if the parties entering into it are able, willing, and actually did contract according to the required forms. The maxim of the civil law followed by the common law is, "Consent, and not cohabitation, makes the marriage." A marriage is, therefore, complete if there is full, free, and mutual consent between parties capable of contracting.

All persons are able to contract, unless laboring under a few disabilities, determined by laws enacted by the various States. These are: (1) precontract; that is, being already married; (2) consanguinity, or related by blood; (3) affinity, related by marriage; (4) want of legal age; (5) lack of mental capacity to enter into any contract. The common law age is twelve years for girls, and fourteen years for boys; but the age for both has been raised by statute to eighteen and twenty-one in most of the States.

A marriage may be dissolved for various causes. There are two kinds of divorces: *avinculo matrimonii,* from the bonds of matrimony; and *amensa et thoro,* from bed and board. In the United States the word "divorce" generally implies a complete annulment of the marriage tie, and not a mere separation.

The causes for which divorces are granted

are established by the laws of the States. The length of residence necessary to give the courts of the State jurisdiction varies from a few months to five years. The court usually provides for the support of the divorced woman by giving her alimony; that is, a certain sum of money paid by the month out of the husband's income.

The States have enacted laws ameliorating the rigors of the common law in respect to the control of a wife's property by her husband. Generally speaking, she is protected from his creditors, and her ownership and control continues very nearly the same as before marriage. She may engage in any business that is legitimate, and conduct it in person or by an agent. She is personally liable on all contracts executed in the ordinary course of her business, and may sue or be sued alone.

Under the old common law neither husband nor wife was permitted to testify for or against each other in court because of the absorption of the wife's identity in that of her husband. The presumption was that their testimony would necessarily be partial. If admitted for each other, they would violate the maxim, "No one is allowed to be a witness in his own behalf." If one were permitted to testify against the other, there would be a violation of another maxim, "No one is bound to accuse himself."

The States have very generally modified this practice, so that a husband or wife may be ordinarily a competent witness in civil matters.

Parent and Child

The relation of parent and child is the most common one in nature. In law children are of two classes, legitimate and illegitimate.

A legitimate child is one born in lawful wedlock, or within a competent time after marriage. The duties of parents to their children are three: maintenance, protection, and education.

The obligation of maintaining or providing for children is not only laid upon the parents by nature, but the law assumes that by bringing children into the world the parents have impliedly entered into a contract with the State to preserve their lives and protect their bodies so far as they are capable of doing. The institution of marriage is based largely upon the right of helpless children to protection. A principle of the common law places upon every man the obligation of providing for all those who are descended from his loins. Therefore a parent may be indicted for not supplying a legitimate child with necessaries, particularly young and helpless children. Courts of justice favor all heirs and natural children and will not allow them to be disinherited by any dubious or ambiguous words in a will. A parent may

defend his child in an assault and battery, and may assist it in a suit at law without being guilty of the offense of maintaining quarrels.

It is the duty of parents to give their children an education suitable to their station in life. The compulsory education laws in nearly all States require them to send their children to school a certain number of months each year, or to provide them with other adequate means of acquiring an education.

In ancient times the father had the power of life and death over his children, upon the principle that he who gave life could take it. This cruel and arbitrary practice gradually gave way to a more tender one, and the old maxim was superseded by one still expressed in our law, "Paternal power should consist in kindness, not in cruelty." The father has the custody and control of the children against all other persons, unless he renders himself unworthy by criminal habits, drunkenness, etc. Either parent may correct the children in a reasonable manner. What constitutes excessive punishment is a question of fact for the jury.

Parents have a right to the labor, or the hire thereof, of their children while maintaining them. A parent is only a trustee, however, for the child's estate, and must account for all the profits gained during the child's minority. Children attain their majority, generally, at

the age of twenty-one years, are emancipated, and are supposed after that to care for themselves.

The duties of children to their parents are founded in natural justice rather than in law. The laws of ancient Athens compelled all legitimate children to provide for their parents if they became poor and helpless. Any liability resting upon children in our law is the result of statute.

An illegitimate child, or bastard, is one not only begotten but born out of wedlock. Most of the States have enacted laws by which a child born before marriage becomes legitimate if the parents marry afterward. At common law an illegitimate child has no rights. Under the old social conception, he was considered to be the son of nobody, could inherit property from no one, and unless he left heirs of his own body, all property acquired by his own efforts escheated to the State upon his death. The rigor of the old common law is softened by statute in all the States.

Guardian and Ward

The relation of Guardian and Ward is temporary, arising out of, and closely resembling that of parent and child. The powers and duties are practically the same. The guardian must give an account of all transactions in con-

nection with the estate of the ward when the latter comes of age; and he is held liable for all losses by willful default or negligence. Guardians are liberally treated by the courts, and are required to show only common skill, prudence, and caution in administration of their trust. If the guardian abuses the trust imposed upon him, the court will check, punish, or remove him.

Persons under twenty-one years of age are regarded by law as infants, and as such have various privileges and numerous disabilities. An infant may not be sued except under the protection and in the name of his guardian; but he may sue either by his guardian or his next friend, called in law, his *prochein amy*. Under the age of seven years, he may not be punished by death although he may have committed a capital offense. Between seven and fourteen he may be convicted and undergo judgment and sentence of death, if it is established to the satisfaction of the court that he was capable of discriminating between right and wrong when the crime was committed.

The deeds of an infant are voidable, and his contracts will not bind him after he attains his majority; but the law holds him liable for his necessary meat, drink, clothing, education, and all other things necessary to his station. If he marries before twenty-one, he must bear the

responsibilities of his family and perform all duties connected therewith.

Among the old Greeks, Romans, and other ancient people, women never came to their majority, and were subjected to perpetual guardianship unless they married; then they were under the tutelage of their husbands. At common law a girl continued to be a ward until twenty-one unless she married before that age. Some of the States have lowered the time of emancipation to eighteen years.

CHAPTER VI

Artificial Persons or Corporations

A political institution may further the weal of the community, though it checks the growth of its wealth; a political institution which quickens the growth of its wealth may hinder the advancement of its weal.—*Austin.*

It was said by Thomas Carlyle that although a man is sufficient for himself, yet ten men united in love are capable of being and doing what ten thousand men singly would fail in doing. Realizing the limitations of the natural body, man in very remote times began to organize artificial bodies under authority of the sovereign for the prosecution of certain work. These organizations in law became known as "artificial persons," "bodies politic," and "corporations."

Organizations exist in all civilized societies for governmental, social, charitable, religious, commercial, and other purposes. They are endowed by the state with the quality of succession, and other powers necessary to the accomplishment of their purposes. They are created by act of incorporation, or by grant of a charter, and consist of one or more persons. A sole corporation is unusual in the United States.

The act of incorporation may be (1) a general statute of the State, under which any association of persons may become a corporation by fulfilling the prescribed conditions; (2) a special statute conferring a specific charter upon one particular association of natural persons for a definite purpose.

The charter of a corporation is evidence of its organic life, defines its rights and duties, and explicitly sets forth its powers. Courts of law give a corporation no more power than is intended by the words of its charter. Its whole existence is within the bounds set by the Legislature by which it is created. Its charter is construed favorably to the public.

Privileges bestowed upon a corporation by the State are usually called Franchises. A Franchise is a right belonging to the government to be enjoyed by private persons only when there has been a special grant from the sovereign power. A Franchise may be the privilege of imposing a tax for a particular purpose; of taking certain private property for the benefit of the public good, etc.

The members of a corporation enact by-laws, which are in effect rules providing for the election of officers, the payment of money, voting by proxy, etc. These rules must be in accordance with the provisions of the charter or act of incorporation. The work of the cor-

poration to be valid must conform to the method prescribed by the by-laws and the law creating the corporation.

A corporation acts through its officers and agents. It is held liable for all acts performed under its direction, for all torts or wrongs committed in the fulfillment of the duties it imposes upon them, and is responsible for injuries to the person and property of others. It is known in law by a name selected by its members and sanctioned by the State in the act of incorporation, or by an amendment. It receives and transfers property, enters into contracts, and sues and is sued by that name. It manifests its authority by means of a seal given by the government.

A corporation is not a citizen, but it has its home in the State from which it received its charter. It has no legal existence elsewhere. The government may restrict its home and its activities to a certain district, town, or city. Having no natural body, it cannot suffer corporal punishment, but it may be subjected to the payment of fines, and to the forfeiture of its charter. It protects its reputation by an appeal to the courts.

Corporations are subject to the legislative control of the State from which they derive their power. Their franchises and other property may be appropriated for public use when con-

ducive to the public good; and all powers withdrawn if used in an unlawful manner, for illegal purposes, or if they refuse to exercise them at all. A repealing clause is usually contained in the charter. When a corporation is dissolved by the court an officer is appointed to administer the assets for the benefit of those who may be entitled to them.

The artificial body of a corporation is entirely distinct from the natural person of its members, and may sue them at law or in equity. The members may also sue the corporate body to recover claims held against it, or to prevent it from violating its Charter powers. Corporations are of three kinds—public, private, and quasi-public.

Public Corporations

A public corporation is established by the State for governmental purposes. It is usually an organization of the people in a subordinate government which exercises the legislative, judicial, and executive powers for the benefit of a local community. A limited part of the sovereignty is delegated to it, and its powers determined generally by a legislative act. It is known as a municipal corporation and may take the form of a town, a city, or a county.

The powers conferred upon public corporations include, among others, control over public

roads, streets, police and fire departments, cemeteries, hospitals, public schools, sewerage system, health and sanitation, water supply, lighting and market conveniences. They are given the power of making contracts, acquiring and holding property, issuing bonds for public improvements, imposing and collecting taxes, etc. The authority of the State over them is limited only by its Constitution and the principles of common law. The United States as an organization under the Federal Constitution is sometimes spoken of as a corporation. It differs from a corporation, however, in that its powers are inherent, and not granted by a higher body.

Private Corporations

All corporations not created for purposes of government are called private corporations. Their charters are generally in the form of contracts, and accepted by the persons constituting the corporate body before they take effect. The privilege of enacting by-laws, electing officers, entering into contracts to further the purpose of organization, and the right to hold property are implied if not explicitly stated. Their charters may be forfeited for a wrong use of the powers conferred, or for neglecting to use them. They are liable for torts committed by their officers and agents. The usual officers are a

President, a Secretary, a Treasury, and a Board of Directors. The duties of these officers should be clearly set forth in the by-laws adopted by the corporation.

Private corporations are of two classes, Civil and Eleemosynary. A Civil corporation is established for the benefit of its own members, or for the promotion of a cause in which its members and others are interested. If organized for the exclusive benefit of its members, the purpose may be for pecuniary interests, social intercourse, intellectual or moral improvement. The details of organization should conform to the particular object in view.

A Stock Company is a corporation in which a number of persons unite their money in a business enterprise. The act of incorporation enables them to limit their liability, and gives them the privilege of transferring their interests to other persons. The company is managed by a board of directors provided for in its charter and by-laws, and elected in accordance therewith by the members or stockholders. If the business of a stock company is not conducted properly, an interested party may secure the appointment of a Receiver in a court of equity. This officer winds up the affairs of the stock company under the supervision of the court. The shares of a stock company may be purchased and owned by a person, the corporation

itself, or the State. The State, however, holds shares as a corporate body and not as a sovereign.

An Eleemosynary corporation is organized solely for the purpose of charity. It may take the form of a hospital, asylum, free school, missionary society, religious association, etc. Its powers are granted for beneficial purposes and must not be used otherwise. A board of visitors to supervise and oversee the work of the institution is usually provided by the charter.

Quasi-Public Corporations

A Quasi-Public corporation is a private corporation upon which certain special franchises are conferred in addition to those granted to an ordinary corporation. These are conferred upon it for the purpose of enabling it to render a specific service to the public and may be (1) the right of eminent domain; (2) the right to occupy public property; (3) the right to a monopoly; (4) the right to take toll.

The right of Eminent Domain is the privilege of taking private property for public use by making a just compensation to the owner. The government has given this right often to railroad companies that they may secure property at a reasonable price for their roadbeds.

The right to occupy public property is sometimes vested in a corporation in order that the property may be better adapted to the public use; for instance, the owning and operating of street railways, gas and water works, telegraph and telephone lines, maintaining buoys, wharves, etc.

The right to a monopoly is the right to exclude all others from participating in a common privilege. The State grants monopolies only for the benefit of the public, and the grant is always an express act, not an implied one. A monopoly is granted to induce corporations and private persons to undertake enterprises which do not appeal to them when open to competition. The practice of granting monopolies in articles of trade was much abused in England, particularly by Queen Elizabeth. Some of the most lively debates in the House of Commons were directed against this abuse. The Queen justified her gift of the right to sell playing cards to one man by the statement, "Divers subjects of able bodies, which might go to plow, did employ themselves in the art of making cards." The abuse of this privilege became so flagrant that Parliament passed the Statute of Monopolies in 1623; which law made all monopolies illegal except those granted by Parliament, or for the protection of new manufactures and inventions.

The right to take toll is the right to exact a specific fee for a service rendered irrespective of its value or of a contract between the parties. The State establishes the price and imposes it upon all who accept the service as a condition for the rendering of the service, and of receiving payment therefor. The right to collect toll is conferred upon canal, ferry, and railroad companies, and to all others giving similar service.

Quasi-Public corporations are frequently placed under the indirect control of the State by supervision of commissioners appointed for the purpose.

Joint-Stock Companies

Joint-stock companies are associations organized under a name usually descriptive of the purpose to be accomplished, and have features common to corporations and partnerships. They adopt by-laws to regulate the election of officers, the transaction of business, and the transfer of shares. They are not dependent upon the State for existence, but are voluntary associations which carry on certain lines of work without being incorporated. The members, or stockholders, are personally and individually liable for all acts and contracts of the company, and of its authorized agents acting within scope of the association's powers.

Joint-stock companies, like corporations, may

buy, hold, and sell real estate and personal property. The legal title of such property is sometimes vested in trustees to be held in trust for the benefit of the shareholders. The capital of the company is divided into shares held by the members, which may be transferred to heirs, or to others without causing the dissolution of the company. This peculiar association is regulated by statute in all the States.

Partnership

A partnership is defined by Chancellor Kent as "A contract of two or more persons to place their money, effects, labor, and skill, or some or all of them, in lawful commerce or business, and to divide the profit and bear the loss, in certain proportions." The leading characteristics of a partnership are (1) a community of interests for business purposes in the stock of the firm, and (2) a sharing of profit and loss. The partners are joint owners of the stock; but the death of one dissolves the partnership so far as his interests are concerned. They pass to his heirs or representatives with his other property.

During the life of the partnership each member has authority to bind the others by his acts and contracts relating to the business of the firm. Upon its dissolution, the property owned by it is applied to the satisfaction of the partner-

ship debts before the claims of the individual partners are paid.

Silent partnership is one in which money alone is furnished by one or more members, who take no part in the control or direction of the business.

CHAPTER VII

The Rights of Things

The statute law is the will of the Legislature in writing, the common law is nothing else but statutes worn out by time; whether it is now law by usage or by writing is the same thing. Statute law and common law both originally flowed from the same fountain.—*Lord Chief-Justice Wilmot.*

Blackstone makes the following statement: There is nothing which so generally strikes the imagination and engages the affections of mankind as the right of property. The same idea is expressed by many modern writers. The word property has many meanings. Its signification in law is: A sole and despotic dominion over the external things of this world to the total exclusion of the right of any other individual.

The right of exclusive enjoyment by one individual of certain portions of the earth and its products, originally free to all, is one of the fundamental principles upon which modern society is founded. The right extends not only to the body of the thing possessed, but includes its essential characteristics—the right to use, to sell, and so forth. The principle on which this right is established in one person prevents any

use of it which would interfere with the enjoyment of the same right in all other persons.

Ancient Doctrine

In very ancient times all things were no doubt held as the property of the tribe or family. Many centuries must have elapsed before the right of individual ownership was asserted. Different races have come to it by slow and painful experience; some not yet having reached it. Among the ancient Germans the earth was the property of all. Every year a new section of land was assigned to each member of the tribe for cultivation. The cultivator owned what he produced and nothing more. This practice still obtains in some Slavonic and Semitic tribes. The Tartars recognize the right of individual ownership in flocks, but not in land.

In India the very old village community still exists. The land is owned by the village; every man has a right to a separate share if he wishes a division. His right is recognized by law and would be respected if urged, but no man demands a division, and ownership continues to remain in the village community. The same village community exists in Russia, except that the individual may separate his share temporarily. At certain times all private rights are extinguished, the land is thrown together, and a new distribution made for another period.

The practice of private ownership obtained among the Greeks and Romans from earliest times. Certain Greek cities made the produce of land common property, dividing it equally among all the inhabitants. The individual owned the soil, but was not master of the crop raised from it by his own labor. The territory, or hunting grounds, of the American Indians belonged to the tribe. The title was vested in the general council fire of the confederacy of the Six Nations. The separate tribes had no right to sell or transfer any part of the land.

In most primitive societies the rights of property were established by religion. The God who created the land was supposed to give it to his favorites. We are told in the Bible that the Lord said unto Abraham, "I am the Lord that brought thee out of Ur of the Chaldees, to give thee this land to inherit it"; and again to Moses, "Go up hence, . . . unto the land which I sware unto Abraham, to Isaac, and to Jacob: unto thee will I give it." Religion, and not law, guaranteed title to property. The land was common property of the tribe or nation, and the individual members of the tribe or nation enjoyed only a temporary ownership, or the mere use of it. The private ownership acquired later was derived from the sovereign of the country, and when fully established carried with it the right of disposal by gift or sale. Even to-day

if the owner of property dies without making disposition of it, and leaves no heirs, the property returns to the common owner, that is, escheats to the state.

Doctrine of the United States

The courts of the United States hold that the right to all property is founded upon and regulated by law; that it depends upon civil and not natural or religious rights; and that all law has its foundation in public policy. Wills and testaments, rights of inheritance and succession, are all creatures of the common law, and must conform to its provisions except as it may be modified by statute. The law considers a man's legitimate children as his heirs and successors, unless expressly declared otherwise by means of a will. Compliance with the requirements of the statute in the execution of such an instrument is necessary, however useless the details may appear.

The origin of private ownership is lost in the remote past. Some writers affirm that the person settling upon a piece of land and cultivating it, acquired a right to a temporary use of the soil, and also the original right to permanent property in the substance of the earth itself; and that such occupancy excluded all others from future as well as the present use of it. However the origin of private ownership may

be accounted for, it is a fact that occupancy is essential to the title of land discovered; and that title to such land does not vest in the person making the discovery, but in the nation to which he belongs and under whose flag he sails.

Movable Property

Property which may be moved from place to place, without an owner, may be appropriated by the first taker. The title vests in him until he abandons it, then another may appropriate it to his use and acquire permanent ownership therein.

If one casts a jewel into the sea, or a public highway, the property in it will vest in the finder adopting it to his own use. Should the jewel be buried in the earth or hidden in a secret place and accidentally discovered, the finder acquires no right to it. The owner by carefully hiding it shows his intention of retaining his property therein. If lost, or dropped accidentally, the finder of the jewel must use every effort to restore it to the real owner, but he has a right to its possession against every one except the true owner.

A few things by nature remain in common ownership, belonging to the first occupant during the time of holding them, then to the next, and so on indefinitely. These are light, air,

water, and those animals considered wild by nature, but which may be seized upon, tamed, and kept for use or pleasure. These may all be enjoyed by the occupant as long as held in possession; when abandoned they revert to the common stock. The use of light and water is controlled and regulated by the laws of our cities, and the right to certain wild animals is regulated by "game laws."

Things

All objects of which the law takes notice and recognizes a right of ownership therein, except natural and artificial persons, are known as Things. Natural persons are also so classified when in a condition of slavery, when life has departed from the physical body, or when consciousness, reason, and will are suspended.

Things are divided according to their nature into two classes, Corporeal and Incorporeal.

Things corporeal arē those which may be handled and occupied by man, or delivered by one person to another; as lands, houses, animals, furniture, and all other objects which may be bodily transferred from one owner to another.

Things incorporeal are those which may not be handled, occupied, or delivered; as franchises of corporations, powers of the mind; the right to use the forces of nature, such as water

power of streams, and electricity; contract rights, equities of redemption, rights of action at law, copyright, patent rights, and other similar rights. These are intangible, rather than tangible; are transferred from one person to another only by spoken or written words, or by acts indicating that the owner has transferred his claim and that new ownership has begun. Incorporeal things coming under the protection of law are constantly increasing both in number and importance.

There are a few Things which are both corporeal and incorporeal. Money, for instance, when taken out of the bank and held in one's hand or carried in one's pocket is corporeal; but the right to draw it out of the bank by check when again deposited with the common fund, where it loses its identity, is incorporeal.

Things corporeal are divided according to their relations into two classes, Movable and Immovable.

Things corporeal are movable when they may be transported from one place to another without losing their identity; as farm implements, rugs, art objects, crops separated from the ground, etc. They are supposed to follow the owner wherever he goes, and are presumed to be always in his legal possession.

Things corporeal are immovable when they are permanently attached to the freehold, or

when they may not be moved without diminishing their value; as growing crops, buildings on a farm, or ornaments nailed to a house. They remain in the same locality, and are controlled by its law regardless of the whereabouts of the owner.

The law controlling the rights of Things is much more voluminous and requires greater discrimination in application than that controlling the rights and duties of persons.

Property Real and Personal

The law of Things is divided into the law of Real Property and the law of Personal Property.

Real Property acquires its name from the ancient practice of calling all actions at law *real* when the rightful owner could recover possession of the particular object of which he had been deprived; as of land, buildings, minerals, crops, and things pertaining to the use of land. If the owner could not recover the thing itself, but had to be satisfied with money damages for the injury sustained, the action at law was called *personal.* Gradually all things movable not having the characteristics of real property were classed as personal property. The principal differences between the two are: (1) On the death of the owner, all real property passes at once to the heir or devisee; personal property

goes to the personal representative, who distributes it to the parties entitled thereto. (2) Real property is not used for the payment of debts of the deceased until the personal property has been exhausted. (3) The transfer of real property from one owner to another is accomplished by means of a written instrument called a deed, executed exactly according to certain prescribed formalities; personal property passes by sale or verbal contract, generally with immediate delivery.

Real property is known in law by the terms lands, tenements, and hereditaments.

Land signifies a certain section of ground or earth, together with all the permanent, substantial things resting upon it, and attached thereto; as forests, water, orchards, houses, fences, monuments. The maxim says, "He who owns the soil has it even to the sky."

Tenement in its original legal sense included land and everything that could be holden, or owned; whether substantial and sensible, or of an unsubstantial, ideal kind. At common law it covered rents, franchises, rights of common, offices, etc. In some States it also includes a lease of land for a term of years.

Hereditament is the largest term, and covers not only lands and tenements, but whatever may be inherited, corporeal or incorporeal; real, personal, or mixed. Such heirlooms as jewelry,

furniture, watches, guns, dishes, family portraits, and things of like nature, are really movable personal property, but by virtue of the ancient custom which let them descend to the heir with the house, they are still classed with real property.

Personal property is known as Goods and Chattels. These terms include money, stock in banks, shares in corporations and companies of all kinds, mortgages and other interests arising out of lands; and the more obvious things which may be transported from place to place.

CHAPTER VIII

Property in Things Real or Real Estate

As in the life of individual man no moment of complete stillness is experienced, but a constant organic development, such also is the case in the life of nations, and in every individual element in which this life consists; so we find in language a constant formation and development, and the same is true of law.

The term Real Estate is used in law to indicate the degree, quantity, nature, and extent of the interest one may hold in lands, tenements, and hereditaments. This interest covers not only the face of the earth, but includes the soil and everything attached thereto; whether such attachment is effected by the course of nature, as trees, herbage, and water; or by the hand of man, as fences, monuments, and buildings. It includes all land, arable meadows, woods, pastures, marshes, furzes, heath, lakes, ponds, and streams.

Water

The law considers water a kind of land, and if one wishes to recover a pond or pool the action must call for so many acres of land covered with water, and not for so much water. One can acquire only a temporary and tran-

sitory interest in water because of its wandering and unstable nature. If water runs naturally off one man's land on to another's, the first owner has no means of recovering it.

Owners of land through which a stream flows have a proprietary right to the middle of the stream, but no property in the water itself. All persons living on its banks have an equal right to use the water, but no one may use it to the injury of others. The quantity of water which flows to the land below may not be diminished nor an undue amount thrown back upon the land above without the consent of all parties interested. Each proprietor may use the water as it flows over his land, but he may not detain it for an unreasonable time, nor give it another direction. He must return it to the ordinary channel before it leaves his estate. The legal maxim is, "Water runs, and ought to run, as it was accustomed to run."

Waterpower generated by the fall of a stream is incident to the land and may be utilized by the occupant so long as the rights of those above and below are not endangered. Ice belongs to the owner of the land over which it is formed. That formed on public waters may be appropriated by any person who wants it. The right to fish in the tide waters and navigable streams of a State is open to all except as the right may be restricted by statute.

Land

Land not only includes all water upon its surface, but everything directly above and below it. The legal maxim is, "Whoever has the land possesses all space, upward as well as downward, to an indefinite extent." A building which would overhang another's land may not be erected without the consent of the owner of such land. This maxim does not apply to the overhanging branches of a tree, for title to a tree on the surface of the ground determines the right to all that is connected therewith. Fruit on branches overhanging a neighbor's garden belongs to the owner of the tree and not to the neighbor.

Title to land conveys all buildings, monuments, fences, trees, growing crops, and herbage on the surface, and all mines or quarries underneath. The right of coinage from gold and silver mines in this country was held by the King during colonial times and in England still belongs to the crown. In States which have enacted laws regulating the mining districts, the right to minerals does not pass with a grant of the land.

The vegetable products of the soil, as corn, wheat, rye, oats, and other crops, produced by the labor of the occupant of the land, are distinguished from those of a natural growth. They are known in law as "emblements" and

usually belong to the person planting them. If the land is rented, the tenant usually has the right at the end of the season to harvest and remove all crops upon which he has expended time and labor.

Title

The ownership of real property is acquired and held by means of title. The State may acquire this title in several ways:

1. By discovery, conquest, and treaty.
2. By confiscation and escheat.
3. By exercise of the right of eminent domain.
4. By ordinary transfer from individuals.

Title to land in the United States was acquired first by discovery, conquest, and treaties entered into with the Indians by the European governments. Rights held by Great Britain passed to the States at the close of the Revolutionary War. Most of the unoccupied land of the States which had not been granted to actual settlers was conveyed to the Federal Government upon the adoption of the Federal Constitution. Since then the United States has acquired other land by treaty and purchase. When a person dies without heirs and without having disposed of his property, it escheats or vests in the State.

The right of eminent domain is the right of

the United States, or of a State government, to take private property of all kinds for public use, upon making proper compensation to the owner. This is usually made before the property is actually taken. Both Federal and State governments may acquire property from individuals by purchase, gift, and devise.

Private persons may acquire title to land by grant from the State, by conveyances from one to another, by adverse possession, by accretion, by devise, by descent, and by various judicial processes. All titles held by private persons are presumably derived from the State.

Public Lands

The unoccupied land of the United States is surveyed and divided into sections of 640 acres each. These sections are divided into halves, quarters, and eighths, any one of which may be easily located by an ingenious system of numbering. This land is sold only on the authority of Congress, and transferred through the public land office. One wishing to secure a tract of public land must make an entry on the tract, make the required payment, and comply with all other provisions of the Federal homestead law. Then he receives a certificate which entitles him to a patent. This patent is signed by the President of the United States, or some authorized person, and has affixed to it the seal

of the United States government. The patent thus authenticated is the formal conveyance, and continues to be the highest evidence of title. The public land of the States is conveyed in much the same way.

Conveyances

Real property is passed from one person to another by means of conveyances. The form of conveyance and the execution thereof are controlled by statute in the different States, and must follow the law of the State in which the land to be conveyed is situated. The most usual form is known as the Warranty deed. The old definition of deed was, "A sealed writing conveying real estate." But as many of the States have abolished seals, a deed may be defined as "A written contract by which lands, tenements, and hereditaments are conveyed from one party to another." A warranty deed must have the following parts: (1) It must state a consideration or purchase price; (2) must name the party or parties disposing of the land, and the person or persons who are to receive it; (3) must use the words of conveyance prescribed by the statute; (4) must be witnessed and acknowledged according to the law of the State where the land to be conveyed lies; (5) must be signed by the grantor, or by a person authorized to sign for him; (6) must

be sealed where a seal is still required. The deed does not then become operative until it is delivered, and in some States it must be accepted by the purchaser.

A Quitclaim deed is one given by the owner of land without warranting the title, and conveys only the interest, if any, of the grantor.

The States of Illinois and Ohio have inaugurated a system of registration of titles similar to that of the German Grundbuch and the Australian method, called the Torrens title system. By its provisions a certificate is given for each piece of land registered, on which are indorsed the mortgage, encumbrances, liens, and charges to which the owner's title is subject. A duplicate slip is kept in the office of the registrar, so that it is possible to ascertain the condition of every parcel of land in the State at a moment's notice. When a tract of land is transferred the certificate of title is surrendered and a new one is issued to the purchaser. If but part of the tract is transferred, a new certificate is issued to the owner for the remaining portion. Transfer by descent, devise, or by judicial process is made by the registrar in accordance with the order of the court.

This system prevents title by adverse possession, a title gained by proving peaceable possession of land for a certain number of years under a claim of right. The time required

varies in the different States, but is often twenty years.

Title by Accretion

Title is acquired by accretion when soil is washed up by the sea on the land of adjoining owners, or when soil becomes attached to the banks of a river by the action of water. If an island is formed in the center of a private stream which is not navigable, it belongs equally to the owners of the adjoining land. If formed on one side of the stream, it becomes the property of the man owning the land on that side. A sudden change in the channel of a river does not alter the boundary line of the riparian owners.

Will or Testament

Title is acquired by devise when (1) the will or testament is properly executed by a competent person; (2) when the property is accurately described or can be identified; and (3) when the right words of conveyance are used. A will is governed by the law in force at the time it was executed, and not by that which prevails when it is probated. A will conveys land only when its provisions conform to the requirements of the State where the land to be conveyed is situated. Its provisions take effect immediately upon the death of the testator, and the devisee

takes the land subject to all liens and encumbrances existing at that time.

If the testator sell or otherwise dispose of the land after his will is executed, that part of the will relating to the land disposed of becomes inoperative. If the devisee should die before the testator, the devise lapses and falls into the residue, or descends to the heirs of the deceased. Every man and woman who owns property should consider it one of the urgent duties of life to arrange for the disposition of such property in case of sudden death. The following is a model which may be made to conform to the testamentary laws of each State:

LAST WILL AND TESTAMENT OF JOHN SMITH

I, John Smith, of the city of Washington, District of Columbia, being of sound mind, memory, and understanding, do hereby make, publish, and declare, this, as and for my last will; hereby expressly revoking all other wills heretofore made by me.

1. I request my hereinafter named executors to pay all my just debts including my funeral expenses, out of the first money coming into their hands.

2. I give and bequeath to my daughter, Mary Smith Scott, and to my son, James Smith, five thousand dollars each.

3. I give, devise, and bequeath to my wife, Mary Smith, her heirs and assigns forever, all the residue of my estate whether real, personal, or mixed, of which I die seized, possessed, or entitled, whether now owned by me or hereafter acquired, and wherever found or situated.

4. I hereby appoint my friends, John Jones and James Lee, both of the city of Washington, District of Columbia, executors of this my last will.

In testimony whereof, I have hereunto set my hand and seal this fifth day of January, 1909.

JOHN SMITH [Seal]

Signed, sealed, published, and declared, as and for the last will and testament of John Smith, in the presence of us, who at his request, and in his presence, and in the presence of one another, have subscribed our names as witnesses hereto.

SAMUEL BROWN, —— —— ——. Washington, D. C.
RUPERT GREEN, —— —— ——, Washington, D. C.
MARY GREEN, —— —— ——, Washington, D. C.

TITLE BY DESCENT

Real property not disposed of by will passes at once to the heirs of the deceased owner. Their title is called title by Descent. This method of acquiring title is regulated by statutes in all the States. The details differ considerably, making necessary a knowledge of the laws of the State where the property lies.

Title is acquired by Judicial Process when the title to land is transferred by an order of a court, by sale for nonpayment of taxes, and by condemnation under the right of eminent domain.

CONVEYANCE OF TITLE

All persons may take and hold real estate, but power to convey it is in some cases restrained by law. In most of the States persons under twenty-one years are not of legal age; therefore, they cannot be held to any transfer

of real property after they attain their majority unless they ratify the contract. A married woman, at common law, cannot convey real property without her husband's consent; but her disabilities along this line have been almost entirely removed by statute in all the States. The rights of aliens have also been regulated by statute and by treaty between the United States and other nations. The power to take and convey real property is conferred sometimes upon corporations by the act of incorporation. Title to real property may vest in one individual, or in several individuals collectively, as joint tenancies, tenancies in common, estates in partnership, etc. Each method has advantages and certain restrictions.

Fee Simple

The interest held by an owner of land may be either absolute, for a limited time, or qualified by certain conditions. When it is unlimited and unqualified it is called a Fee Simple. The fee is the largest estate in lands and tenements that a person can own, and at common law was created by the word "heirs." The form used in all kinds of conveyances that passed an unlimited estate was, "to John Brown and his heirs." A conveyance to John Brown without the words "and his heirs" gives him but a life estate at common law. Statutes in many of the

States have made the use of those words unnecessary in passing a fee.

Life Estates

Life estates in land are either Conventional, which are created by act of the parties; or Legal, created by operation of law.

Conventional life estates are granted to a person for his own life, or during the lives of one or more persons. The tenant of a life estate must keep the property in reasonable repair. He may use the timber for repairs and fuel. He must keep the interest paid on all encumbrances but is not expected to pay the principal of the debt. He may dispose of his interest to another, but he may not commit any permanent or material injury to the inheritance.

The legal life estates are Curtesy, Dower, and Homestead.

An estate in Curtesy at common law is a right in a wife's real estate, to use during his life, which vests in the husband upon marriage and the birth of a child born alive. The estate becomes consummate upon the death of the wife. This estate in curtesy has been changed in many States and abolished in others.

Dower is the provision which the law makes for a widow out of the lands of her husband for her support. In most of the States it is a life interest in one third of the real property

owned by the husband at his death. Both curtesy and dower may be defeated by annulment of the marriage, by divorce in many States, release by the one in whom it vests, and perhaps in other ways as a result of statutes.

The Homestead right is an exemption of a home from liability for certain debts to a person who is the head of a family. This right was unknown at common law and varies greatly in the States. It is necessary to consult the statutes in order to understand its object and effect.

Estate for Years

An estate for years is an estate created for a definite time, measured by years or fractions of a year. It is usually known as a lease. The person granting it is called the lessor or landlord, and the person receiving it the lessee, or tenant. Any person who is capable of holding real estate, and under no legal disability, may make a lease of lands that accords with his estate or interest therein. The words generally used in granting a lease are "lease," "demise," and "farm let," although other words will suffice if the intention is clear. The obligations of both are fixed by the contract.

Mortgage

A mortgage is a conveyance of land as security for debt, and is usually accompanied

by a bond, note, or other evidence of the indebtedness. The owner of the land giving the mortgage is called the mortgagor, and the person who loans the money and takes the mortgage as security is known as the mortgagee. The mortgagor usually retains possession of the land until default. At common law the estate of the mortgagee became absolute, giving him the right of immediate possession if the money was not paid when due. This practice worked an injustice to the mortgagor when the value of his land was in excess of the amount of money secured by the mortgage. The defect is remedied by the court of equity which appoints a competent person to sell the land and return the balance to the mortgagor after the debt with interest has been satisfied. The right of the mortgagor to what is left after the debt is paid is called an "equity of redemption." An equity of redemption is a real interest which may be transferred as any other estate, subject of course to the condition of the mortgage.

A mortgage deed must be recorded, or registered, the same as a warranty or quitclaim deed, and should be canceled and released of record when the debt which it secures is paid.

CHAPTER IX

Property in Things Personal

All that a government takes out of the pockets of individuals in the shape of taxes, direct or indirect, for any other than its appropriate and legitimate purposes, is an invasion of their right to the enjoyment of the fruits of their own labor of mind or body.—*Lord Brougham.*

Property may be defined as the exclusive right of possessing, enjoying, and disposing of lands and chattels. Chattels include every kind of personal or movable property.

Ownership of property may be in two or more persons at the same time, jointly or in common; and the possession may be present, or a right to be enjoyed in the future. The legal title may be in one person and the equitable interest in another; as when a man mortgages his property as security for a loan of money, the legal title vests in the mortgagee while the mortgagor retains only an equity of redemption.

Absolute ownership is subject to the following limitations: (1) A person may not use his own property to the injury of another person; (2) the police power of the State may control the use of all property, even to taking it from

the owner, if the safety or comfort of the people makes it advisable; (3) the government of a State may take a reasonable proportion of all kinds of property for its support and maintenance, under the name of taxes; (4) the Federal and State governments may take private property for public use under the power of eminent domain; (5) the property of every person may be taken for the satisfaction of debt except in so far as it may be exempt by statute.

Real property consists of things which are permanently fixed and are of undetermined duration. Personal property consists of all things that may be moved from place to place, and the duration of which is certain.

Personal Property

In ancient times personal property was considered of little value, but was subjected to heavy taxation. The rapid growth of commerce during the past three centuries has greatly augmented its quantity and value until it is treated now with as much consideration as real estate. It is larger than would be implied by the term "movable," but covered by the term "goods and chattels."

Chattels Real is an interest issuing out of, or annexed to land. They are closely allied to real property but are of lower value than the

lowest estate in land because of their fixed duration. They are leases of land for a certain number of years and partake of the nature of realty because they are immovable; but are classed with personal property because they are limited to a definite time. Chattels Personal are all those things which may be carried about with the owner.

Property in goods and chattels may be in possession when the owner has both the right to enjoy and the actual enjoyment of the thing. And property may be in action when a person has the bare right without the present occupation or enjoyment.

Property in Possession

Property in possession is either absolute or qualified. Absolute possession exists when one has the sole right to, and the occupation of an article so entirely that it may not be transferred from him or cease to be his without his act or default. Such is the property in all inanimate things; as furniture, plate, money, jewels, garments, farm implements, fruit of trees when severed, and plants taken from the ground.

Ownership in animals is limited. All civilized nations recognize two classes of animals: those of a tame nature, and those in a wild or natural state. In domestic animals, as horses, sheep,

poultry, and others, one has an absolute ownership which is not lost if the animal strays out of his control by accident or by fraudulent enticement. The issue of all tame and domestic animals belongs to the mother. The maxim of both the civil and common law is, "The offspring follows the condition of the mother."

Property in wild animals is qualified, limited, or special. It may be acquired by taming them so that they cannot regain their natural liberty; and so long as they remain in possession they are the property of the one who tamed them. If they escape and join the herd or flock, his special property is lost unless there is a known intention of returning. This intention is known by the habit of returning, but "when this custom or habit is forsaken, then the intention of returning is no longer presumed." Deer in a park, rabbits in an inclosed warren, doves in a dovecote, pheasants or partridges in a mew, fish in private ponds, and bees in a hive, are examples of acquired property. Mere pursuit of a wild animal does not vest any property right to it. The possession must be established by trapping, snaring, or other means which will prevent its escape. The Roman law declared that no right attached to a wounded beast until it was actually taken by the person inflicting the wound.

Property in bees is acquired by hiving them. When they swarm the owner may claim them as long as they remain in sight and he has the power to pursue them. Finding and marking a tree which contains bees will not make the bees the property of the person finding the tree. Oysters are called wild animals in law, but as they have no power of motion they become the property of any one who plants them in public waters and marks the bed so that it can be identified. A qualified property may be acquired in wild animals which are unable to run or fly away; as the young of birds that build in trees, coneys and other creatures that make nests or burrow in the land of the owner. A transient qualified property may be acquired also in animals known as game, by one who has received a grant from the government of the privilege of hunting, taking, and killing them. This privilege does not permit the pursuit of the game on another man's land without his consent.

A limited right may be acquired in the various elements of air, light, fire, and water. These are so fugitive and vague that only a very precarious and qualified ownership attaches while they are in actual use and occupation. Property in them ceases the instant they are out of possession, as everyone has equal right to appropriate them to his own use.

Property may be of a qualified or special nature on account of the peculiar circumstances of the owner, when the thing itself is capable of absolute ownership. An example of this is bailment, or a delivery of goods to another for a particular purpose; as to a carrier to convey to a distant city, or to an innkeeper to guard in his office. Neither the bailor nor the bailee has an absolute right to the goods; the first having a right without the immediate possession, and the second having the possession but only a temporary right. Each one, however, has a right to an action at law should the goods be damaged or stolen. Property rights of this nature are always the result of an express contract creating the bailment.

Property in Action

Property in action is that condition in which a person has a bare right to occupy a thing, but the possession of which must be recovered by a suit at law. The thing which may be recovered is called a *chose in action.* The maxim is, "We are supposed to have a property in our goods whenever we can have an action to recover them." A *chose in action* includes all rights to personal property not in possession which may be enforced by law. It includes a right (1) to damages arising from the commission of a tort; (2) the omission of a duty;

(3) the breach of a contract. It is a possibility rather than a real thing; but the owner has an absolute property in and is as well entitled to a *chose in action* as to things in possession.

Title

Title to personal property may be acquired in the following ways: by occupancy, prerogative, forfeiture, custom, succession, marriage, judgment, gift or grant, bankruptcy, will or testament, and by administration.

Occupancy was probably the original and only primitive method of acquiring property, but it has been restrained by the positive laws of modern society in order to maintain peace and harmony among mankind. Gifts, contracts, testaments, etc., were introduced for the purpose of transferring property and possession in things personal which had been acquired by occupancy. The few things now found without an owner belong to the King, the Sovereign, or the State by virtue of its prerogative. In ancient times any person could seize to his own use the goods of an alien enemy, for the reason that all persons connected with the enemy were deprived of the protection of law. All disputes as to property in consequence of war, either on land or sea, are adjusted now in the Admiralty, or other special courts, and not in the common law courts as formerly. All mov-

ables found upon the surface of the land or sea are supposed to have been abandoned by the last proprietor, and having been thus returned to the common stock and mass of things, may be held by the first occupant or fortunate finder. No chattel is lost, however, if it had been placed where it was found and forgotten by the owner.

The use of light, air, water, and property in wild animals is appropriated only by occupancy. These rights have been the subject of much legislation in recent years. Game laws exist in all the States, which make the destruction of certain animals during a part of each year a misdemeanor.

It was a principle of the Roman, and later of the common law, that any accession, whether by natural or artificial means, belonged to the owner of the original thing. In case of the growth of vegetables, the pregnancy of animals, the embroidering of cloth, the conversion of wood or metal into furniture, vessels, and utensils, the owner of the original thing continues to have the sole right to it in its improved condition. If, however, the original article is changed by such operation into something entirely different, as by making wine out of another's grapes, oil from olives, bread from wheat, the thing created belongs to the one effecting the change in species. But he must

make satisfaction to the former owner for the materials used.

If the goods of two or more persons, by their consent, become confused so that the several portions cannot be distinguished, they become owners in common of the whole mass in proportion to their respective shares. If one willfully intermixes his money, coin, hay, fruit, or other goods with that of another without the knowledge or approbation of the owner, he loses all right to what he adds to the other's store and gains no interest in the whole. Because of his wrongful act he must bear the loss.

Trade-Marks

The right to the exclusive use of distinctive trade-marks, or of the name of a partnership firm, for the purpose of enabling the public to know in what it is dealing, and to distinguish the manufactures of a particular person or firm, is founded upon the right of occupancy.

A Trade-Mark is a name, symbol, figure, letter, form, or device adopted and used by a manufacturer or merchant in order to designate the goods he manufactures or sells, and to distinguish them from goods manufactured or sold by other manufacturers. This right is granted by the government in order that one may secure the profit resulting from a reputation for superior skill, industry, or enterprise. The trade-mark

is acquired by adoption and use. It must be new and not previously have been used by another person for another article. The right to or property in the trade-mark may be transferred in various ways characteristic of chattels. The owner is protected by law from infringement of his right.

Copyright

The right of an author to publish and sell his own literary compositions is title by occupancy. The copyright law of the United States protects authors of books, maps, charts, and musical compositions, inventors and designers of prints, cuts, and engravings, if citizens of the United States, in the exclusive right of printing, reprinting, publishing, and selling them for the term of twenty-eight years from the time of recording the title thereof. And if the author, inventor, designer, or any of them when the work was originally composed and made by more than one person, be living, and a citizen of the United States, or resident therein; or, being dead, shall have left a widow or child or children either or all of them living, or the executor of the author may secure the same exclusive right for a further term of twenty-eight years by applying for such renewal one year prior to the expiration of the original term of copyright.

Patents

Patents are issued by the Patent Office of the United States government to any person who discovers or invents a new and useful art, machine, manufacture, or composition of matter, not known or used by others, before the discovery or invention, and sale. This is an exclusive right to the patentee, his heirs, executors, administrators, or assigns, to make, use, and to vend the same for a term of seventeen years, with a possible renewal for a further term of seven years.

Forfeiture

At common law the goods and chattels of any person were forfeited to the crown upon conviction of treason, felony, flight in treason or felony, standing mute when arraigned for felony, drawing a weapon on a judge, striking another in the presence of the King's court, upon a second conviction for pretended prophecies, challenging to fight on account of money won at gaming, and for many other acts. Few of these are enforced now, but they still have an interest for us by showing the precarious title in personal property.

The Federal Constitution declares, "No attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained"; and Congress has pro-

vided, "No conviction or judgment shall work corruption of blood, or any forfeiture of estate." All laws providing for forfeitures and penalties belong to the "odious" class and are strictly construed by all courts.

Custom

Under the feudal law certain customs prevailed by which the best live beast, or the most valuable article of plate, the finest jewel, or a sum of money went to the lord upon the death of the tenant, and was called the Heriot. A gift of the second best chattel was made to the church, and was called a Mortuary.

Heirlooms are such chattels as are connected with the estate, and upon the death of the owner go with the land and not to the executor with the personal property. They generally include those things which cannot be removed without damaging the inheritance; as deer in a park, doves in a dovecote, monuments, tombstones, and in some places pews in a church. The jewels of the crown belong to the state rather than to the person of the sovereign. Carriages, utensils, and household furniture are passed by special custom in some jurisdictions. Special custom must be strictly proved if questioned.

Succession

Corporations acquire property by succession

when one set of persons, succeeding another set, obtain title to all goods, movables, and other chattels of the corporation. In a devise of land to a corporation the form is to a corporation and its successors, not to its heirs, as in the case of a natural person.

Marriage

Immediately upon marriage, at common law, the personal property of the wife in possession vested absolutely in the husband, and her *choses in action* became his if he reduced them to possession by any act which indicated ownership. The common law has been changed by statute in all or most of the States until now a wife retains the right to all property, both real and personal.

The wife acquires a right to certain articles which she may hold after the husband's death. These are called her paraphernalia and consist of the apparel, ornaments, and jewels suitable to her rank and degree. This right had its origin in ancient Germanic law, which had special rules for the transmission of female attire and the armor and other articles appropriate to men.

Judgment

Property in chattels is acquired by judgment in consequence of a suit or action in a court of law. It may arise (1) under a statute which

gives a sum of money as a penalty for the information that another person is not conforming to the provisions of the statute; (2) by recovering damages awarded as compensation for an injury sustained.

Gift or Grant

A Gift or Grant is a voluntary transfer of goods and chattels from one person to another either by writing or by word of mouth. This method of transferring property is looked upon with suspicion by the law, and is considered fraudulent if creditors, or others, suffer because of such gift or grant. If immediate delivery is not possible, and immediate possession cannot be obtained, a deed or some written instrument is necessary as evidence of the transfer of title.

Contract

A Contract may be defined as an agreement between two or more competent persons, upon sufficient consideration, to do, or not to do, a particular thing. A contract is either express or implied.

An express contract is one in which the terms of the agreement are clearly stated at the time of making; as to deliver an ox, or ten loads of timber, or to pay one dollar a yard for a certain number of yards of goods. An implied contract is one which reason and justice dictate, and

which the law presumes a person intends to perform. If a person is employed to do certain work, the law implies that the employer contracted to pay what the labor was worth. Or if one orders goods sent home from a store, the law implies that the person ordering such goods meant to pay the price set upon them by the merchant.

A consideration is any benefit, delay, or loss to either party. An agreement to do, or to pay, anything by one party without compensation to the other, is void at law and the first party cannot be compelled to fulfill his promise. A consideration of some kind is absolutely essential to a contract. The most usual contracts by which property may be acquired are sale or exchange, bailment, hiring and borrowing, and debt.

Sale or Exchange

Sale or Exchange is the transfer of property from one person to another in consideration of a fixed price or its equivalent. If it is a transfer of goods for goods, it is called an Exchange; if the goods are transferred for money, it is called a Sale. There are three kinds of sales: (1) An absolute sale is one made and completed without any condition whatever; (2) a conditional sale is one dependent for its validity upon the fulfillment of some condition; (3) a public

sale is one made at public auction to the highest bidder.

All civilized nations have adopted some convenient article to serve as money or a medium of exchange. The ancient Hindus used cattle. The American Indians threaded beads made from the great clam, the pearl oyster, and the Venus shells, and called it wampum. The beads were white, black, and dark purple. The white constituted the wampum proper, and six beads passed for an English penny. The colonists made use of tobacco in lieu of money. In the colony of Virginia a man forfeited twenty pounds of tobacco for firing a gun without good cause on the Sabbath, and every master of a family was required under a penalty of ten pounds to bring a gun with powder and shot to church for defense against the Indians.

A formal act by which conclusive assent was manifested to the terms of a bargain was common to all countries and in all ages. The Indians smoked a pipe; the people of the North shook hands; the ancient Jews took off one shoe and handed it to the other party. Many were the curious and interesting customs before writing was known, or pens and paper common.

When a sale of goods is made without immediate delivery, and no written memorandum passes as evidence of the contract, the buyer generally pays part of the purchase price as an

earnest to bind the bargain. Various methods have been resorted to in order to protect an innocent purchaser from designing men. The ancient Saxons prohibited the sale of anything above the price of twenty pence except in open market where witnesses were numerous. These open markets were known as Market Overt and were held on special days in the country. In London and other cities, they were held every day of the week except Sunday. One is supposed to use his eyes and to know the value of the goods he is purchasing in open market. The maxim of the common law is still applicable, "Let the buyer beware."

Bailment

Bailment is a delivery of goods in trust, upon a contract, express or implied, that the trust shall be faithfully executed by the person receiving them. If money or goods are delivered to a person to convey from Washington to New York, he is under contract, in law, to pay the carrier, or to carry them himself to the person addressed. The law imposes upon a carrier the obligation of safety, and a responsibility for all damage to the goods unless caused by an act of God, such as lightning or storm. If goods are intrusted to another to make up into garments, as to a tailor, the bailee is bound to exercise ordinary care to prevent injury to them while

in his possession. An innkeeper must exercise extraordinary diligence and care to preserve the property of guests intrusted to his keeping, so long as they comply with the rules of the inn.

Hiring and Borrowing

Hiring and borrowing are contracts by which a qualified property may be transferred to the hirer, or to the person borrowing an article. Hiring is always for a price or recompense, but borrowing is without compensation. If a man hires a horse for a month, he has the possession and a qualified property in the horse during that time. At the end of the month his property right ceases and the owner becomes entitled to the return of the horse and the price for which it was hired.

Money is the most usual subject of hiring; the compensation for its use is called Interest. When the interest exacted exceeds that prescribed by law it is called Usury. The rate of interest is regulated by statute in all the States, and varies from six to ten per cent.

Debt

A Debt is a contract whereby a specified sum of money becomes due but is not paid, remaining in action merely. The most common kinds of debts in law are bills of exchange and promissory notes.

A Bill of Exchange is a written order from one person to another, requesting the latter to pay to a designated person a certain sum of money therein named. It also specifies the time of payment and that it is drawn for value. The person drawing the bill is called the Drawer, the one to whom it is drawn the Drawee, and the one to whom the money is to be paid the Payee. The bill is usually spoken of as a Draft.

If the exchange is drawn in one country and is to be paid in another, it is a Foreign Bill, but if made payable in the same State, it is an Inland Bill. The following is the usual form:

WASHINGTON, D. C., January 20, 1909.

Exchange for London.

£500.

Thirty days after sight, pay to the order of John Smith five hundred pounds sterling, value received, and charge the same to account —— —— ——.

JOHN JONES.

To Baring Bros., London, England.

The following is a form of inland bill or draft:

ELMIRA, NEW YORK, January 20, 1909.

$500.00.

Thirty days after sight, pay to the order of John Smith five hundred dollars, value received, and charge to account of —— —— ——.

JOHN JONES.

To First National Bank, New York City.

A Promissory Note is a written promise to pay to a person named or to his order, and at

a time specified therein, a certain sum of money. Both bills of exchange and promissory notes are made assignable, and therefore negotiable, by making them payable to the order of the payee. The following is a form of a promissory note:

WASHINGTON, D. C., January 20, 1909.

$500.00.

Thirty days after date I promise to pay to the order of John Smith, five hundred dollars, value received. Interest six per cent per annum.

JOHN JONES.

The person who makes the promise and signs the note is the Maker. The one to whom the promise is made and to whom the money will be paid is the Payee. When a draft or note is made payable to order or bearer, the person having legal possession of the paper transfers the possession to another by signing his name on the back, across the left end. This is called Indorsing a note.

A Bank note is a promissory note, made payable by a bank to bearer on demand, and intended to circulate as money.

A Check is a draft, or order on a bank for the payment of a certain sum of money to a person named therein, to his order, or to bearer, and payable on demand. The drawer must have money deposited in the bank to his credit. The following is the ordinary form:

WASHINGTON, D. C., January 20, 1909.
First National Bank of Washington, D. C.
Pay to John Smith, or order, Five Hundred and 50/100 Dollars. $500.50.
JOHN JONES.

A private check, particularly for a small amount, should never be sent outside the State or city in which the bank upon which it is drawn is situated.

BANKRUPTCY

The early English law defined a Bankrupt as: A trader, who secretes himself, or does certain other acts, tending to defraud his creditors. The word itself is derived from *bancus,* signifying the table or counter of a tradesman, and *ruptus,* broken. Therefore one whose shop or place of trade is destroyed.

The modern law of bankruptcy is intended for the benefit of trade, and is founded upon principles of humanity and justice. It confers certain privileges upon the creditors as well as upon the debtor. The Federal law of bankruptcy requires the merchant or other person who wishes to take advantage of the law to surrender all his property for the benefit of his creditors to a person appointed by the court, usually called a Receiver. The receiver assumes entire control of the estate and disposes of it under the direction of the court. This discharges the bankrupt, and relieves any property

that he may acquire in the future from liability for all claims brought into court.

Will and Testament

History informs us that personal property passed by means of wills from time immemorial. Copies of wills were found in the ruins of ancient Nineveh. Jacob bequeathed to his son Joseph a double portion. The Roman soldier made a will while preparing for battle. Solon regulated the making of wills in Athens. The English law, in the time of Henry the Second, divided a man's property into three equal parts; one went to his heirs or lineal descendants, one to his wife, and the remaining third was at his own disposal. If without wife or children, he was permitted to will away the whole of his personal property.

In wills the word which is used to pass real property is *devise,* and for personal property *bequeath.* The personal property bequeathed is called a bequest, or legacy. The Executor is the person named in the will to carry out the direction of the testator.

If a person die without making a will or appointing an executor to carry out his wishes, the court grants Letters of Administration to some competent and interested person. The administrator becomes the servant of the court and acts under its guidance.

CHAPTER X

Private Wrongs or Civil Injuries

The law had been for a master killing in the necessary defense of his servant, the husband in defense of his wife, the wife of the husband, the child of its parent, or the parent of the child; for the act of the assistant shall have the same construction in such cases as the act of the party should have had if it had been done by himself; for they are in a mutual relation to one another.—*Sir Matthew Hale.*

The purpose of law is to establish rights and to prohibit wrongs; therefore wrongs, like rights, may be divided into two classes, public and private.

Public wrongs are a violation of public rights and duties affecting the whole community, as a community. They are called crimes and misdemeanors, and will be treated fully in the following chapter.

Private wrongs consist of an infringement or privation of the private rights belonging to individuals, considered as individuals. They are called Civil Injuries. Courts of justice are established in every civilized society for the purpose of redressing all kinds of injuries. They seek to protect the weak from the strong

by expounding and enforcing laws which define what is right and prohibit what is wrong.

Remedy for civil injuries is sought (1) by act of the party himself; (2) by act of the party and the operation of law; (3) by application to court, in civil suit or action.

The first method of redressing private wrongs may be either the sole act of the party injured, or the joint act of all the parties interested. If a person or any of his relations be forcibly attacked in his person or property, the law permits him to defend himself and to repel force with force. And if a breach of the peace results, it is charged upon the person making the unlawful attack upon the other. This gives rise to the primary right of

Self-Defense

The right of defending one's life from violence is the first law of nature. It cannot be taken away by any regulation of society. The law justifies the defense of a husband for his wife, a parent for his child, and a master for his servant. If one does not stand in a close relation to the person injured, he may still justify an interference in an effort to keep the peace. The right of self-defense must not exceed what is necessary to prevent injury. The injured party may not become the aggressor. Just how much force is necessary to repel the

attack and is justifiable depends upon the particular circumstances, and is a question of fact for the jury rather than a question of law.

Recaption

Recaption, or reprisal, is another remedy by act of the injured party. When a man has been wrongfully deprived of his goods or chattels personal; or if his wife, child, or servant has been wrongfully detained, he may lawfully reclaim and take them wherever he finds them if he can do so without causing a breach of the peace. The law considers the public peace of more value than any one man's private property. Nor may he use violence to recover possession of his property. If a horse be stolen and the owner finds it in a public place, he may take it; but he may not break open a private stable to get it. He may not enter the house and grounds of a third person to recover a stolen animal unless he has notified the proprietor of his purpose.

If a person has taken possession of lands or houses without any right to them, the lawful owner may recover possession by an *entry;* that is, by doing something which indicates ownership, providing he can accomplish it without force.

Nuisance

A Nuisance is anything which unlawfully

annoys or damages another in his person or property. It may be public or private. The person injured may not bring a civil action in case of a public nuisance, unless he has suffered a private injury because of it. Authorities differ as to whether he may abate it; that is, remove or destroy the thing causing the nuisance.

A private nuisance may be abated by the person injured providing he does not create a riot, disturb, or destroy anything other than that constituting the nuisance. No one should take the law in his own hands unless security of life or property be in jeopardy because of its continuance, or unless he is suffering a real inconvenience. He should resort to a court for its abatement and for compensation for any damage suffered.

Branches and roots of a tree overhanging and extending into another man's land are private nuisances and may be abated by the owner of the land injured. The overhanging branches may be cut off, and the encroaching roots digged out, but the tree may not be cut down. Overhanging eaves from which water flows on the premises of another, corruption of the air with offensive odors, disturbance of the adjoining property holders by distressing noises, and similar annoyances may be abated as private nuisances. The obstruction or use

of a street or other highway so as to unreasonably impede traffic, and to render its use inconvenient or dangerous to travelers, may become a public nuisance.

Distraining for Rent

Another case in which the common law allowed a man to become his own avenger or to minister redress to himself was that of distraining cattle when trespassing upon his land, and distraining goods for nonpayment of rent or other duties. The owner of land upon which cattle were trespassing was permitted to take them in custody at once in order that he might know to whom they belonged, and to whom to apply for satisfaction for damages caused by them.

The right of distraining for rent was granted to landlords to protect them against the practice of their tenants who would hide property to escape paying rent. This privilege of taking possession of property for nonpayment of rent has been entirely abolished in many States and changed by statute in others.

The right to seize heriots due on the death of a tenant is similar to that of distraining cattle and goods, the main difference being that the thing itself must be taken. This right extends to certain franchises, such as waifs, wrecks, estrays, and deodands.

Goods thrown away by a thief in his flight to prevent being apprehended were called Waifs. Goods cast up by the sea after a shipwreck were known as Wrecks. A valuable animal, not wild, wandering from its owner was an Estray. Any personal chattel which had caused the death of a person was called a Deodand. If, for instance, a cart ran over a man and caused his death, the cart was forfeited to the king and applied to some pious use by his almoner. In other words the cart became a deodand and was given to God.

This practice never became a part of American law and has been abolished in England.

Accord and Arbitration

The remedies arising from the joint act of all parties are Accord and Arbitration.

Accord is a satisfaction agreed upon between the party injuring and the party injured, which, when performed, is a bar to all actions upon that specific account. If a man contract to build a house, or to deliver a horse, and fail to do so, his failure is an injury for which the person to whom the promise was made is entitled to bring an action at law. But if the injured party accepts a sum of money or other thing as a satisfaction, the law considers his wrong to be redressed. His right of action is lost by that agreement.

Arbitration arises when the party injuring and the party injured submit all matters in dispute concerning a personal chattel, or personal wrong, to the judgment of one or more arbitrators for decision. The decision is called an Award, and when it is delivered the question is as fully settled and the rights as completely transferred as they would have been by an agreement of the parties or by judgment in a court of justice. If the procedure of arbitration has been according to law, its provision will be enforced. When improper or illegal if brought before a court it will be set aside.

Retainer and Remitter

The remedies for private wrongs effected by mere operation of law are Retainer and Remitter.

A Retainer is the right of an executor or administrator to retain money from the estate to pay a debt due to himself before other debts are paid. Without this privilege an executor or administrator is in a worse condition than the other debtors, because he cannot bring suit against himself to compel payment of his claim. One executor cannot retain his own debt to the prejudice of a coexecutor, nor may an executor of his own wrong in any case be permitted to retain.

A Remitter is one who has a true property in

land but is out of possession, and before he gains possession by an action at law has the freehold cast upon him by a defective title. The law *remits,* or sends him back to his true and ancient title by annexing the right of entry which came to him by a bad title, to his own inherent good one. If, however, the subsequent estate or right of possession is gained by his own act or consent, he is not remitted; nor can there be a remitter to a right for which there lies no action at law.

All private remedies are additional weapons put into the hands of persons when natural equity, or peculiar circumstances, require a more expeditious remedy than the formal process of a court can furnish. They do not, however, preclude an action for damages suffered in the several cases. One may defend himself or his relations from external violence, and also may bring action for assault and battery. Though he take his goods by recaption, he is not debarred from action of trover or detinue; he may either enter on his land, or he may demand possession by a *real* action; he may abate a nuisance, or he may call upon the law to do it for him; and he may distrain his neighbor's cattle, or he may bring an action of trespass to secure satisfaction for damages they have caused to his property.

Actions

An action at law is a judicial proceeding for the enforcement of rights, the redress of wrongs, or the punishment of public offenses. A civil suit or action is one between persons in their private capacity not involving prosecution for crime. Civil actions are of three kinds: Personal, Real, and Mixed.

A Personal action is used (1) when a man claims a debt, a personal duty, or damages in lieu thereof; (2) when he claims satisfaction in damages for an injury done to his person or property. The first class is based upon a contract and includes all actions on contracts of debts and promises. The second class is based upon a tort or wrong, and includes all actions for trespass, nuisances, assault, defamatory words, and the like.

Real actions concern real property only, and formerly included all disputes concerning real estate.

Mixed actions are suits partaking of the nature of both personal and real; that is, where real property is demanded as well as personal damages for a wrong sustained.

Civil Injuries

Civil injuries are of two kinds: (1) without force or violence, as slander, or breach of con-

tract; (2) coupled with force and violence, as battery and false imprisonment.

The negative system of wrongs corresponds with the positive system of rights, and is divided into two classes: those which affect the rights of persons, and those which affect the rights of property. As the absolute rights of persons are personal security, personal liberty, and the right of private property, so the wrongs against a person must in some way affect his personal security, liberty, or ownership of property. An injury affecting the personal security of another must be committed against his life, limbs, body, health, or reputation. Those affecting the life of a person will be treated under the head of Crimes in the succeeding chapter.

An injury to the body and limbs of another may be committed in the following ways:

1. By threats and menaces of bodily hurt, which through fear of harm interrupts a man's business. The menace alone is not sufficient, there must be some consequent inconvenience or suffering. The remedy for this wrong is in pecuniary damages recovered in an action of trespass *vi et armis;* that is, trespass with force and arms.

2. By assault, which is an offer to beat another without touching him; as if one lifts his cane or fist in a threatening manner, or

strikes at him and misses him. Leveling a gun at another within a distance which, if loaded, would be dangerous, is an assault. This manner of threat is called an inchoate violence, is considered higher than bare threats, and gives the injured party a right to damages.

3. By battery, which is an unlawful beating of another. The least touching of another's person willfully, or in anger, is considered a battery because the law does not distinguish between degrees of violence. Assault and battery may be committed by striking one's cane while in his hand; striking the skirt of a coat which one is wearing; spitting upon another; striking a horse which one is riding and causing him to be thrown; willfully striking at another with the intention of harming him; or by any act proceeding from want of reasonable care and foresight.

4. By wounding, which is an aggravated battery, and consists of hurting another to a degree that is dangerous to life.

5. By mayhem, which consists of violently depriving another of the use of a member proper for his defense in fight. The members necessary for personal defense are the legs, arms, a finger, an eye, a foretooth, and some others. The loss of an ear, or the nose, was not mayhem at common law, for they were considered of no especial use in defending oneself,

but has been made so by statute in some States.

For injuries of assault, battery, wounding, and mayhem, the offending party may be indicted and an action brought to recover damages.

Health

Injuries affecting health are caused by any unwholesome practice of another person, or persons, by which one suffers apparent damage in his vigor or constitution. Such practices may be the selling of bad provisions, of impure foods, of tainted wine, the exercise of a noisome trade which infects the air of a neighborhood; the unskillful management of a physician, surgeon, or druggist. The common law holds *mala praxis,* that is, bad practice, to be a serious misdemeanor whether it be for curiosity and experiment, or whether it is merely neglect of duty. This is true because it tends to the injury of the patient, and also to destroy that faith which it is essential a physician should inspire in his patients. The law implies contract for the discharge of duty in a skillful and attentive manner on the part of medical men as well as those of other professions. If a patient is injured through the ignorance or neglect of his physician he may obtain redress by an "action on the case." This remedy is used whenever

a special injury arises which the law cannot foresee and provide for in the ordinary course of justice. It does not require "force and arms," which must be proved in the action of "trespass vi et armis."

A physician is liable in this civil action, if guilty of negligence or want of skill, but not for a mistake of judgment.

Reputation

The reputation of a person may be injured (1) by malicious, scandalous, and slanderous words; (2) by printed or written libels, pictures, and the like; (3) by procuring malicious indictments or prosecutions against him.

The utterance of that which constitutes a slander in law may take the form of impeaching one of some heinous crime, as that he poisoned another, is perjured, and the like; of charging him with an infectious disease which would exclude him from society; of impairing his trade or profession, as calling a tradesman a bankrupt, a physician a quack, a lawyer a knave. An injury of this nature entitles the person so injured to an action on the case whereby he may obtain damages commensurate with the injury proven.

Many words not slanderous when applied to private persons become so when applied to one in an official capacity if the words impute a

defect of understanding, ability, or integrity. If the words thought to be slanderous are proven true no action will lie against the person uttering them.

A person is libeled when printed words, pictures, signs, etc., tend to put him in an odious or ridiculous light and thereby diminish his reputation. The printer or publisher, as well as the writer, is liable in an action for damages. If the publisher can show that the matter published was true and used with a good motive, he will have presented, generally speaking, a sufficient defense in a criminal prosecution.

The reputation of a person may be injured by procuring the arrest, malicious indictment, or prosecution against him with improper motives and without probable cause. This is sometimes done under pretense of justice and a desire to serve the public interests. The remedy for this injury is an action of conspiracy, if more than one person is guilty of the offense; or by the special action on the case for malicious prosecution. The latter will not be sustained unless it can be shown that the malicious prosecution was instituted without justifiable cause; that the motive prompting it was malicious, and that the defendant or person injured had been previously acquitted of the offense charged against him.

A corporation having no personal character can recover in a suit for malicious prosecution only by proving some special damages to its property.

Personal Liberty

An injury to the right of personal liberty is effected by false imprisonment, which consists of an actual and unlawful detention of a person. This may be accomplished by words, acts, or by both words and acts, operating upon the will of the person imprisoned; and may be with or without personal violence, malice, or ill-will. It may consist of a confinement in a private house, in a common prison, or by forcible detention in a public street. It may also arise from executing a lawful warrant or process at an unlawful time.

The remedy for false imprisonment is twofold: the writ of Habeas Corpus for removing the injury; and the action of trespass with force and arms for obtaining damages.

The writ of Habeas Corpus is the most celebrated writ in English law. It was brought to this country by the colonists and was incorporated in the law of every State as well as in the Federal Constitution. The latter declares: "The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in case of rebellion, or invasion, the public safety may

require its suspension." The oppression of an obscure individual gave birth to this famous writ in the time of Charles the Second, and it has ever since been considered another Magna Charta of the kingdom.

By the provisions of the Habeas Corpus writ, a complaint and request in writing on behalf of any person held in illegal or unjust confinement shall issue immediately from the court inquiring into the circumstances. It not only liberates the subject from unjust and illegal imprisonment in public prison, but it may extend its influences to remove every unjust restraint of personal freedom in private life which may be imposed by a husband, father, or other members of the family.

The action of trespass with force and arms is brought for damages in case of false imprisonment because the charge of assault and battery usually accompanies that of false imprisonment.

Relative Rights

Wrongs which affect the rights of persons as members of society are classed under the following heads: (1) injuries to the relation of husband and wife; (2) of parent and child; (3) of guardian and ward; (4) of master and servant.

The law takes notice in these relative injuries

only of the wrong done to the superior party, either for the breach and dissolution of the relation itself, or for advantages accruing from such relation. This seeming injustice was based upon the idea that the inferior party having no property in the company, care, or assistance of the superior could suffer no injury.

The injuries offered to the husband are principally three: abduction, or taking away his wife; adultery, or criminal conversation with her; beating or otherwise abusing her. The old English law was so strict that if a married woman missed her way upon the road, she dared not enter the house of another man unless she was benighted and in danger of being lost. A stranger was permitted to carry her behind him upon his horse to the nearest justice of the peace for the purpose of securing a warrant against the husband.

The principal injury to a parent or guardian is the abduction of a child or ward. The law provides means by which the child may be recovered, or a recovery of damages for loss of its services. The injuries incident to the relation of master and servant are: retaining another's servant before his time has expired, and beating or confining him in a manner which prevents him from performing his work. These injuries are based upon property which the master has acquired, by contract, in the labor

of his servant. Both were recognized in the law of ancient Athens.

Personal Property

The right of personal property in possession may be injured in two ways: (1) by depriving the owner of possession; (2) by damaging the property while the possession continues in the legal owner.

If a person takes goods from another's actual or virtual possession without a right to do so he has committed a wrong for which an action at law will lie although he may not have intended to steal them. The law endeavors to safeguard the right of private ownership from unjust and fraudulent invasion, in order that industry and commerce may be encouraged and stimulated.

The remedies for damages done to property in possession as hunting another man's deer, shooting his dogs, poisoning his cattle, or any act which takes from the value of his chattels, are two: the action of trespass by force and arms, and the special action of trespass on the case. The former is generally used when the act is immediately injurious. The latter is most often used when the act itself is indifferent, but an injury results without a breach of the peace. The plaintiff, or party injured, in both suits must prove the extent of injury that he

sustained in order to recover damages from the defendant; that is, the person responsible for the injury.

Injuries Arising from Violation of Contract

Injuries may arise from the violation of contracts either express or implied. An Express contract may be in the form of a debt, covenant, or promise.

A Debt is a sum of money due by certain and express agreement. Or, in a larger sense, a Debt is all that is due a person under any form of obligation or promise; as a lien upon an estate secured by pledge, pawn, mortgage, or money loaned without any security. The nonpayment of a debt is an injury for which the law provides a remedy in a special action by which the performance of the contract may be compelled, and the sum due recovered.

A Covenant is a written promise in a deed to do or not to do a definite act. The breach or violation of a covenant is a civil injury for which the remedy is by writ of an action in covenant.

A Promise is an offer, oral or written, made by one person and accepted by another, to do or not to do a particular thing. If the promise is to do an explicit act for which there is a consideration it becomes an express contract,

subject to all advantages and restrictions of the law.

Implied Contracts

An Implied contract is one dictated by reason and justice, and which the law presumes a person has contracted to perform. This may arise (1) from the express determination of a court that a party pay a sum of money by way of damages; (2) from the positive direction of a statute, as a fine imposed by the laws of a corporation upon its members; (3) from the just construction of law that every man must do what duty or justice requires.

If one person spends his own money at the request of another for the benefit of the latter, the law implies a promise of repayment. If one employs another to perform certain work, the law implies a promise to pay a reasonable price for the work done. If one purchases goods in a store without expressly agreeing upon the price, a contract to pay the real value or a reasonable amount for them is implied. And in contracts of sale the law implies that the person selling the goods has the right to dispose of them.

There is also an implied contract that a common carrier is answerable for the goods he carries; that a blacksmith shoe a horse without laming him; that a tailor or any other workman

perform his duty in a workmanlike manner; that an innkeeper entertain all persons who apply; that one who accepts an office will perform its duties with skill, diligence, and integrity; that goods be of a merchantable quality. Indeed, the nonperformance of contracts, express or implied, includes every kind of injury to personal property which is in action merely and not in possession.

Injuries to Real Property

The common law commands as an absolute duty a respect for the property of others, but bases the remedies for its violation upon possession rather than upon ownership. Possession, in a legal sense, is the present enjoyment, or right of enjoyment, of certain definite property with a purpose of holding or exercising such property for the benefit of the holder. Mere temporary physical control does not necessarily constitute possession in its legal sense.

The most common injuries to real property are: trespass, waste, and nuisance.

Trespass

Trespass is the wrongful disturbance of another man's lands or goods. The disturbance may consist of physical entry on lands, seizure of goods, or of any exercise of ownership over

them inconsistent with the owner's possession. It may be committed by a person, by animals, or even by inanimate things.

An entry upon the land of another is not trespass, unless it is unjustifiable. The law permits one to enter upon the land of another for the preservation of life or property, for preventing the spread of fire, and the like. Entry upon land without permission of the occupant, or by authority of law, is a trespass for which the injured party has a remedy at law.

Waste

Waste is injury done or suffered by the owner of the present estate in lands tending to destroy or lessen the value of the inheritance. It has been held to be waste to pull down houses, outbuildings, walls; to remove wainscots or floors, and to build up old doors and windows. It is waste also to change one kind of building into another; as to turn a water mill into a windmill, a corn mill into a malt mill. Damages are allowed by law for such injuries on the same principle as for trespass, and in proportion to the injury sustained.

Nuisance to Real Property

A Nuisance to real property is an annoyance which works inconvenience to a man's lands or tenements. The pollution of the water in a

stream flowing over a man's land, diminishing the volume of water, or causing it to accumulate so as to cause damage or inconvenience; stopping ancient lights, corrupting the air with noisome odors, setting up and exercising offensive trades, keeping hogs or other unclean animals so near the house of another that the stench makes the air unwholesome or interferes with the comfort of the inmates; these and other acts in themselves lawful, but which if done in that particular place tend to damage another's property, are nuisances which may be abated by act of the injured party, or by a suit at law.

A court of equity will grant an injunction to prevent a threatened injury, to abate an existing nuisance, or otherwise to effect justice, when circumstances warrant it.

Negligence

Negligence is the failure to observe, for the protection of the interests of another, that degree of care, precaution, and vigilance which the circumstances demand. The question of negligence is determined by what would have been the conduct of a reasonably prudent man under like circumstances. It is a question of fact for the jury.

CHAPTER XI

Public Wrongs or Crimes

The infirmities of the best among us, the vices and ungovernable passions of others, the instability of all human affairs, and the numberless unforeseen events, which the compass of a day may bring forth, all teach us that to know with precision what the laws of our country have forbidden, and the deplorable consequences to which a willful disobedience may expose us, is a matter of universal concern.

The discussion of the general nature of public wrongs, called crimes and misdemeanors, and the method of their punishment constitute the code of Criminal Law.

Criminal Law treats (1) of the nature of crimes and punishment; (2) of the person capable of committing crimes; (3) of their several degrees of guilt as principals or accessories; (4) of the various kinds of crimes; (5) of the means of preventing their perpetration; (6) of the method of inflicting punishments which the law prescribes.

The law of public wrongs should be founded upon principles that are permanent, uniform, and universal; should be conformable to the dictates of truth and justice, the feelings of humanity, and the inalienable rights of man-

kind. Crimes should be accurately defined, accusations and trials public, and penalties certain. Rules should not be continued when the reasons upon which they are based no longer influence the mind of men. Blackstone cites as an illustration of this fault laws then in force making it a crime punishable by death to break down the mound of a fishpond and let the fish escape, to cut down a cherry tree in another man's orchard, and to be seen for one month in the company of gypsies. The number of crimes punishable by death was one hundred and sixty. The fact that the death penalty is imposed now only for treason and murder shows how much the law has been influenced by the development of conscience and the refinement of the manners of mankind.

The General Nature of Crimes

A crime is an act committed or omitted, in violation of public law either forbidding or commanding it, on the ground of public policy, and under pain of punishment imposed by the State. It is prohibited because of its injurious effect upon the public and not because it is morally wrong.

The term Crime includes both felonies and misdemeanors, but is often used to denote felonies only. A Felony is generally a crime punishable either by death or imprisonment in

State prison. All crimes less than felonies are called Misdemeanors.

Public wrongs, or crimes, are violations of the rights or duties due to the whole community considered in its social capacity. Private wrongs, or civil injuries, are infringements of the civil rights belonging to individuals, as individuals.

An injury to a community is an injury to the individual members of the community, but the individual must show a special injury to himself or property in order to recover damages. A wrong which injures an individual particularly, and other members of the community only slightly, is a private or civil injury, and not noticed by the State. The maxim reads, "The law does not notice trifles." For instance, if a field is withheld from its rightful owner, the act is a civil injury and not a crime. It is immaterial to the State which one of its citizens has possession of the land.

To take the life of another, and to steal his property, are made crimes for the reason that aside from the injury sustained by the individuals such acts strike at the very root of society itself. Murder is an injury to the life of an individual, but the law considers principally the loss sustained by the State in being deprived of a citizen, and the pernicious example that its commission sets to others. Rob-

bery is an injury to private property, and a civil satisfaction in damages may atone for the injury suffered by the individual. The public mischief is considered of much greater consequence. In England, at one time, robbery was a capital offense.

When injury to the public is not marked and the punishment not severe, the distinction between crimes and torts, as civil injuries are called, is slight. If the wrongful act partakes of the nature of both, the wrongdoer may be liable to a civil action for damages or compensation to the party particularly injured, and to a criminal proceeding by the State. The two proceedings are distinct, neither being a bar to the other.

The law has two objects in view: (1) to redress the party injured by restoring his right, or by giving him its equivalent; (2) to secure to the public the full benefit of laws established for its protection by preventing a violation of them.

Punishment

Power of punishment is vested in the sovereign with the right of making laws. Its object is to deter men from offending, rather than to wreak vengeance upon them for unlawful acts. It is now used to reform the criminal and make a good citizen of him if possible.

The infliction of punishment should be proportioned to the particular purpose it is meant to serve. Society has outgrown the once extolled "law of retaliation"; it is no longer considered a proper measure of justice. It may have been, in a past age, a sufficient satisfaction for a peasant to return the blow of a nobleman who had struck him; but was it much of a satisfaction for the man deprived of his one remaining eye to know that the offender lost one but kept full use of the other? The injustice of punishment for this particular crime was remedied in the laws of Solon by the following decree: "He who strikes out the eye of a one-eyed man shall lose both his own in return." There remained, however, many crimes which could not be punished by retaliatory measures; such as theft for theft, forgery for forgery, defamation for defamation, and the like. Murder has been universally punished by death, not in order to make the life of one man pay for that of another, but because taking life is considered to be the greatest punishment that can be inflicted; and, further, because of the belief that severe punishments tend to the security of society.

The manner of punishment is left to the discretion of the legislative power, except that a few principles drawn from the nature and circumstances of particular crimes are followed

in allotting penalties. Violence of passion, or temptation, sometimes alleviates what would otherwise be a heinous crime. Theft, in case of hunger, is worthy of more consideration than when committed through avarice, or to supply one's luxurious excesses. To kill a man upon a sudden and violent resentment is less criminal than upon cool and deliberate intention. The age, education, and character of the offender; whether it is a first offense; the time, place, and company where it was committed; and many other things aggravate or extenuate a crime.

Crimes which should be most severely punished are those most destructive of public safety and happiness; and those most easily committed and most difficult to guard against. For this reason in England it was a species of treason for a servant to kill his master, but only murder for him to take the life of another servant. To steal a handkerchief, or other trifle above the value of twelve pence privately from another's person, was a capital offense; while carrying off a load of corn from another man's field, which perhaps was of fifty times more value, was punished only by transportation. It was a trespass, and not a felony, to steal an ox or a horse in the Isle of Man, because of the difficulty of secreting them; but to steal a pig, fowl, or other animal easily concealed was a felony punishable by death.

Society is beginning to realize that punishments of unreasonable severity, especially when indiscriminately inflicted, have less effect in preventing crimes than those more merciful in general, but which are graded according to the enormity of the acts committed. The maxim says, "Crimes are more effectually prevented by the certainty than the severity of punishment."

Persons Capable of Committing Crimes

The law excuses no one from punishment for a voluntary disobedience of its decrees except those who are exempted by the law itself. An involuntary act has neither claim to merit nor power to induce guilt. Human actions are rendered praiseworthy or culpable by a concurrence of the Will; therefore to complete a crime the act must be accompanied by the will to act. An overt act, or some evidence of an intended crime, is necessary in order to demonstrate the depravity of the Will before a person is liable to punishment. Neither a vicious will without an unlawful act, nor an unwarranted act without a vicious will, makes a crime.

The Will is considered absent to an extent that excuses a crime:

1. When there exists a defect of the understanding. There can be no choice without discernment, and when choice is impossible there

can be no act of the Will; for Will is nothing more than a determination to do or not to do a particular thing. This is the case in infancy, lunacy, and idiocy.

2. When both understanding and will reside in the party but are not called forth or exerted at the moment the act is committed; as offenses committed by accident. The Will is then neutral, neither concurring with nor disagreeing to the act. This is the case in misfortune and ignorance.

3. When the action is constrained by some outward force and violence. Here the Will counteracts the deed which the person is compelled to perform. Such is the case when a wife acts under the compulsion of her husband; when a person acts under *duress per minas;* when a person is compelled to choose between two evils, deciding upon the one least pernicious.

There has been much speculation as to whether a person may be excused for stealing to satisfy his necessities when in extreme want of food or clothing. It was disputed by the Romans, who ruled thus: "Every one must bear his own inconvenience rather than detract from the convenience of another." And the old Jewish law declared: "If a thief steal to satisfy his soul when he is hungry, he shall restore sevenfold, and shall give all the substance of

his house." The King or sovereign was not liable to punishment nor held to the same obedience to the law of the realm as his subjects, because of the old maxim which says, "The King can do no wrong."

Principal and Accessory

The law distinguishes between various degrees of guilt among persons capable of violating its provisions. A crime may be committed by several persons thus: (1) by one or more actually doing the act; (2) by others standing by and urging them on or abetting it; (3) by those having commanded it, though absent when committed; (4) by others assisting the guilty parties to escape.

Persons concerned in the commission of felonies are Principals or Accessories according as they are present or absent when the crime is committed. All parties engaged in committing a misdemeanor are treated generally as principals. A party to the crime may be either a principal in the first or second degree.

A Principal in the first degree is one who actually perpetrates the deed either by his own hands or those of an innocent agent. A Principal in the second degree is a party actually or constructively present aiding and abetting the commission of the deed. It has been held by some courts that when several persons com-

bine to do an illegal act, and each performs his allotted part, all are guilty as principals though but one was present when the crime was committed. The punishment of principals in the second degree is usually the same as that accorded principals in the first degree.

An Accessory is one not present at the performance, but who is in some way concerned therein, either before or after the act is perpetrated. Accessories are of two classes.

An Accessory *before* the fact is one who was absent when the act was committed but who procured, counseled, commanded, or abetted the principal or the actual doer of the deed.

An Accessory *after* the fact is one who receives, relieves, comforts, or assists another, knowing that he has committed a felony. The maxim reads, "The accessory follows the condition of his principal." The punishment of accessories has been changed by statute in most States.

The old Gothic constitution distinguished three kinds of thieves and made them all guilty. It reads: "He who plans a robbery, he who commits it, and he who receives and conceals the stolen goods, are each liable to an equal degree of punishment."

Offenses Against Religion and Morals

Acts in open transgression of the precepts

of the national conception of religion were punished in England as well as in most ancient countries. The perversion of a Christian to Judaism or Paganism was punished in the time of Constantine by confiscation of his goods; in England an apostate was burned to death. In the reign of William the Third a statute was enacted declaring: "If any person educated in, or having made a profession of the Christian religion, shall, by writing, printing, teaching, or advised speaking, deny the Christian religion to be true, or the Holy Scriptures to be of divine authority, he shall upon the first offense be rendered incapable of holding any office or place of trust; and for the second, be rendered incapable of bringing any action, of being guardian, executor, legatee, or purchaser of lands, and shall suffer three years' imprisonment without bail." If the delinquent repented within four months after conviction and publicly renounced his error in open court, he was relieved from all disability.

A heretic, or "One who doubts concerning the Catholic faith, and who neglects to observe those things which the Roman Church has appointed, or ordained," was punished by death by burning. The writ authorizing that cruel punishment was abolished in the reign of Charles the Second. This reign was notable also for delivering land from the slavery of

military tenure, and for the enactment of the great habeas corpus act.

Witchcraft, conjuration, enchantment, and sorcery were all capital offenses at common law. A statute of George the Fourth declared: "All persons pretending or professing to tell fortunes, or using subtle craft, means, or device, by palmistry or otherwise to deceive and impose on any of his Majesty's subjects, are rogues and vagabonds." Religious impostors, and persons attempting to bring religion into ridicule and contempt, were punished by fine, imprisonment, and infamous corporal punishment.

Proper observance of the Sabbath has been required by law from time immemorial. Statutes exist in most States forbidding ordinary labor on Sunday, and although the constitutionality of these laws has been challenged, they have been universally sustained as dealing with the Sabbath as a civil and political institution, and not affecting or interfering with religious belief in worship, faith, or practice. The reason given by Blackstone for observing the day is appropriate to the present time:

"The keeping of one day in seven holy, as a time of relaxation and refreshment as well as public worship, is of admirable service to the state, considered merely as a civil institution. It humanizes, by help of conversation and so-

ciety, the manners of the lower classes, which would otherwise degenerate into a sordid ferocity and savage selfishness of spirit; it enables the industrious workman to pursue his occupation in the ensuing week with health and cheerfulness; it imprints on the minds of the people that sense of their duty to God so necessary to make them good citizens, but which yet would be worn out and defaced by unremitted continuance of labor, without any stated times of recalling them to the worship of their Maker."

Drunkenness was punishable by fine and by sitting six hours in the stocks. The presumption was that the offender would have regained his senses and would be less likely to do mischief to his neighbors after a time of reflection. Drunkenness is still an offense against public order. All acts of immorality, and anything tending to injure public morals are misdemeanors.

Offenses Against the Law of Nations

Governments, like individuals, cannot exist without law to regulate their mutual relations. The United States recognizes the following offenses: (1) accepting and exercising, by a citizen, a commission to serve a foreign state against a country at peace with the United States; (2) fitting out and arming, within the limits of the United States, any vessel for a

foreign country to cruise against another country at peace with the United States; (3) increasing or assisting within the United States any force of armed vessels of a foreign country at war with another country with which the United States is at peace; (4) setting on foot within the United States any military expedition against a country at peace with the United States; (5) suing forth or executing any writ or process against a minister or his servants, the writs being declared void; (6) violating a passport, or in other way infracting the law of nations by violence to an ambassador or foreign minister, or their domestics; (7) forging or counterfeiting, within the United States, notes, bonds, and other securities of foreign governments.

The crime of Piracy, that is, robbery and depredation upon the high seas, is an offense against the law of nations and the universal law of society. An act of the National Congress declares: "Every person who on the high seas commits the crime of piracy, as defined by the law of nations, and is afterward brought into, or found in the United States, shall suffer death."

Offenses Against the Government

Treason signifies a betraying, treachery, or breach of faith. It is the highest civil crime

which a person, as a member of a community, can commit. The Federal Constitution defines treason against the United States: "To consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort"; and, "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

Congress has enacted that treason shall be punished by death, or at the discretion of the court by imprisonment at hard labor for not less than ten years, and a fine of not less than ten thousand dollars. A person convicted of treason is not permitted to hold any office under the United States.

Misprision of treason is a concealment of the knowledge of treasonable acts on the part of another person and failure to report it to the proper authorities. The punishment of misprision of treason is fine and imprisonment.

Other crimes against the United States government are: (1) seditious conspiracy for the purpose of destroying the government by force; (2) to prevent, hinder, or delay the execution of the laws; (3) to recruit soldiers or sailors within the United States for the purpose of engaging in war against the government; (4) to enlist or engage within the United States with the intention of serving armed hostility against the government; (5) to incite or aid in a re-

bellion; (6) to correspond with foreign governments for the purpose of influencing their controversies with the United States government; (7) to attempt to defeat the measures of the United States government; (8) to intentionally or negligently obstruct the transmission or delivery of mail; (9) to inclose letters with printed matter; (10) to detain or destroy letters; (11) to post obscene books; (12) to counterfeit stamps; (13) to commit larceny, robbery, or to embezzle from the mails; (14) to receive articles stolen from the mails.

Illegal voting is a crime at common law and is regulated by Acts of Congress and by statutes in all the States. It is also an offense to offer violence to voters, to bet at an election, and to usurp an office to which one has no claim.

Offenses Against Public Justice

Crimes committed against public justice and authority may be felonies or misdemeanors. Perhaps that meriting greatest condemnation is Obstruction of Justice, particularly when it interferes with a criminal process. Resisting an officer who is endeavoring to perform his official duty is a crime at common law, and is made more criminal by statute in many States. Tampering with witnesses, or preventing their attendance at court is a crime.

Escape of a prisoner arrested upon criminal

process from custody of the officer is a crime. The officer who voluntarily permits the escape is involved in the offense and is liable, generally, to the same punishment as the escaped prisoner.

Prison Breach is breaking and going out of the place of confinement by one who is legally imprisoned. This crime was punished at common law by imprisonment and three times whipping.

Rescue is a forcible delivery of a prisoner from lawful custody by one who knows he is in custody.

Misprision of felony is a criminal neglect to prevent a felony from being committed, or a failure to bring the offender to justice after it has been committed.

Theftbote, or compounding a crime, consists in knowing that a crime has been committed and agreeing for a certain consideration or reward, with the person stealing the goods not to prosecute him. This perversion of justice was punished very severely in ancient times. The maxim is, "Consider him who would conceal a theft and secretly receive a compensation for it without the knowledge of the judge, in the same light as the thief."

Common Barratry consists in exciting and stirring up suits at law or other quarrels. Maintenance is an officious intermeddling in a suit that in no way belongs to one by assisting

either party, with money or otherwise, to prosecute or defend it. Champerty is a bargain by one to bear the expense of a suit at law if the party to the action will divide the land or other matter in controversy with him in case such party is successful.

These three foregoing crimes were considered infamous by the Romans and were punished by forfeiture of a third of the goods of the offender and perpetual infamy. Many of our American courts, however, refuse to recognize them as crimes.

Embracery is an attempt to influence a jury by promises, persuasion, entreaty, money, or entertainment to bring in a verdict favorable to a certain party.

Perjury is committed when a person in a judicial proceeding, upon a lawful oath or equivalent thereof, gives false testimony material to the issue or point in question. Subornation of Perjury is the offense of procuring another to take such false oath. This crime was punished at common law by death, cutting out the tongue, forfeiture of goods, and transportation for a term of years. The Twelve Tables of Rome declared, "The divine punishment of perjury is death; the human, disgrace." The modern punishment is generally fine or imprisonment.

Bribery is corruptly tendering or receiving

a price for official action. It may be committed by a public officer or a private party. The laws of Athens prosecuted him who offered as well as him who received a bribe. In England bribery was so heinous a crime that judges and officers of the King, upon conviction, forfeited treble the amount of the bribe, were punished at the King's will, and discharged from his service forever. One chief justice was hanged for the offense. The punishment is now regulated by statute in the different States.

It is a Malfeasance or Misconduct in office for a public officer in the exercise of, or under color of exercising his duties, to do any illegal act, or abuse any discretionary power with which he is invested by law, for an improper motive. Malfeasance may take the form of extortion, oppression, fraud, or breach of trust.

Offenses Against the Public Peace

Offenses against the public peace include all acts affecting the public tranquillity. They are:

Affray; a fighting of two or more persons in a public place to the terror of the people.

Riot, Routs, and Unlawful Assemblies; an assembling of three or more persons with the intention of committing a crime by open force, and actually doing some unlawful act, either with or without violence.

Forcible entry; the entrance of a person upon

land occupied by another with menaces, force, and arms without authority of law.

Libels on private persons; a malicious defamation of another made by printing, writing, signs, or pictures intended to expose him to hatred, contempt, or ridicule.

Offenses Against the Public Health

Anything which tends to endanger life, generate disease, or affect the health of the community; to shock the public morals and sense of decency; to outrage the religious feelings; and tends to the discomfort of a community, is generally considered by law to be a public nuisance.

To manufacture or keep gunpowder in a way to endanger life; to sell or expose for sale putrid, diseased, or unwholesome food; to pollute drinking water; to maintain a tannery, distillery, or slaughter house in a populous community; to exhibit disgusting or indecent books or pictures; and indecent and public exposure of the person; public use of profane language, and singing ribald songs; keeping disorderly houses, gambling dens, or other unpleasant surroundings have been punished as crimes because of interfering with the public health, comfort, or safety.

The intent of the person maintaining a nuisance dangerous or offensive to the public is

entirely immaterial. The gist of the offense is its effect on the public.

Offenses Against the Person

Offenses against the Person are treated under the head of public wrongs because they are usually accompanied by a breach of the peace, and their commission threatens the subversion of organized society. This tendency was recognized in early times. The old Gothic constitution inflicted a threefold punishment; (1) for the private wrong to the injured person; (2) for the offense against the King, by disobeying his laws; (3) for setting an evil example.

Homicide

The greatest offense against the person of another is to deprive him of life. Homicide is the taking of one's own life or that of another. It is Justifiable (1) when the person committing it is not in fault, but kills in the performance of legal duty; (2) Excusable, when the offender is to a degree at fault, but the circumstances are such that he does not deserve punishment; (3) Felonious, when one kills another human being without legal justification or excuse.

Justifiable homicide may be illustrated by the act of a legal officer executing criminals condemned to death by law; in suppressing riots

and preventing felonies; by one person taking life in defense of his own life or a member of his family; and by a person in preventing forcible and unlawful entry into his house.

Excusable homicide is the result of accident, or is committed in self-defense in a sudden affray to save one's own life or that of another whom he is bound to protect.

Murder, one form of felonious homicide, is the unlawful killing of another with malice aforethought; or willful suicide. Malice may be expressed or implied. It does not mean hatred or ill will toward the person killed. It is a kind of unlawful purpose which, if persevered in, must produce mischief. Aforethought means that malice existed at the time the act was committed.

Suicide is murder at common law and was punished in England by forfeiture of goods and an ignominious burial. It is no longer a crime in many jurisdictions.

Manslaughter is the lawful killing of a human being without malice. It is Voluntary when the act causing death is committed in the heat of passion aroused by provocation. It may be excusable when done in great anger. Manslaughter is Involuntary when caused (1) in the intentional commission of an unlawful act not amounting to a felony nor likely to endanger life; (2) by culpable neglect of legal duty in

performing a lawful act, or by neglecting to perform an act required by law.

Parricide, the murder of one's parents or children, was punished more severely by the Roman law than any other kind of homicide. The guilty person was scourged, sewed up in a sack with a live dog, a cock, a viper, and an ape, and cast into the sea.

Mayhem

By the ancient law of England he that committed Mayhem, that is, deprived another of a member useful in defending his person in case of violence, was sentenced to lose the same part of his own body. Later the punishment was reduced to fine and imprisonment.

Rape

Rape is a felony, and generally defined as the act of having unlawful carnal knowledge of a woman by force and against her will. This crime was punished by death under the old Jewish law when the woman was betrothed to another man. If she was unmarried, and not betrothed, she was compelled to marry the man who committed the crime without the privilege of divorce; and he was required to pay her father a fine of fifty shekels.

Inferior offenses against the person are assault, battery, wounding, false imprisonment,

and kidnaping. These were described in the preceding chapter under the head of civil injuries. But they are public wrongs too, and the person guilty of any one of them may be prosecuted in the criminal courts. The old Jewish law reads, "He that stealeth a man, and selleth him, or if he be found in his hand, he shall surely be put to death." The civil law also punished kidnaping by death.

Offenses Against the Habitation

Crimes against the habitation or house of an individual are Arson and Burglary.

Arson is the malicious and willful burning of a house or outhouse of another person. The crime is of great malignity, for it not only destroys the house of a family, but often results in the crime of murder, and frequently involves more in the calamity than the incendiary had originally planned. For this reason the civil law punished with death a person setting fire to a house in town, or to a house close to other buildings. The law read, "Those who have fire carelessly about them shall be beaten with whips or sticks." The crime was punished by burning and hanging in England. It is dealt with more mildly by the statutes of the various States.

Burglary is a breaking and entering the dwelling house of another in the nighttime with

the intention of committing a felony therein. The common law considered nothing more sacred, or more inviolate, than the house of a citizen. The law of Athens respected the homes of its citizens so highly that burglary was punished with death. The statutes covering this crime generally include the breaking into warehouses, shops, railroad cars, and other buildings in the daytime as well as at night.

Offenses Against Property

Crimes against property are attended by a breach of the peace or are injurious to the rights of property.

Larceny is a felonious taking and carrying away by one person of the goods of another with the intention of converting them to his own use. The crime has been punished by death in most European countries. Ancient Saxon laws made it a capital offense if the value of the article was more than twelvepence. The offender was permitted to redeem his life by a pecuniary ransom or by a certain number of cattle. Old English law punished a person guilty of stealing personal property to the value of twelvepence by hanging. The penalty for petit larceny was whipping, imprisonment, or transportation for a term of seven years.

Compound larceny at common law is the taking of property from another's house or person

and is known as larceny from the house, or larceny from the person. This has been considerably changed by statute.

Embezzlement

Embezzlement is a statutory crime differing in the various States, but may be defined in a general way as the unlawful appropriation of property to his own use, by a servant, a clerk, a trustee, a public officer, or other person to whom possession has been intrusted, by or for the owner. The gist of the offense is a breach of trust, and implies a relation of confidence between the person appropriating the property and the owner of the property so appropriated.

Cheating at Common Law

Cheating is fraudulently obtaining another's property by means of some false token, and possibly by illegal practices which may affect the public, and against which common prudence cannot guard. The symbols or tokens may be false measures, false weights, false marks of weights, false stamps, counterfeit orders, etc. Such an offense must affect the public generally and not be merely an injury to one or more individuals.

Obtaining money or property by false pretenses is a crime by statute and consists in acquiring the property of another by a false

representation, believed and acted upon by the person defrauded.

Robbery

Robbery is an aggravated form of larceny, but is treated as a distinct crime. It consists in taking, with intent to steal, the property of another from his person, or in his presence against his will, by violence or intimidation. Receiving stolen goods from a thief is also a crime when the person receiving and holding them knows them to be stolen.

Malicious Mischief

There is much conflict of opinion among authorities as to the crime of Malicious Mischief. But it may be defined in a general way as any willful physical injury to property from ill will or resentment toward the owner, or from mere wantonness.

Forgery

Forgery is a false and fraudulent making or altering of an instrument which would, if genuine, apparently impose a legal liability upon another, or change his legal liability to his prejudice. The instrument may be written with pen or pencil, printed or engraved, as a railroad or theater ticket. Forgery may be committed by another's mark as well as by signing his name.

The subject of forgery may be a deed, a mortgage, a check, a note, a bill of exchange, an order for goods, a recommendation, a testimonial of good character, entries to account books, receipts, or any other printed or written document of legal efficiency.

The civil law punished forgery with banishment and sometimes with death. A statute enacted in the reign of Elizabeth punished a person for committing forgery with the purpose of affecting a right to real property, by payment to the injured party double the costs and damages; forfeiture of the profits of his lands to the crown; standing in the pillory with his nostrils slit and seared and his ears cut off; or by perpetual imprisonment.

Uttering a forged instrument is to declare or to assert, directly or indirectly by words or actions, that such instrument is good.

CHAPTER XII

Courts and Their Process

The courts are the common ground on which the State and the citizen meet together, the one to exert, the other to submit to, that supreme political authority which is expressed in the enactment and enforcement of the laws; . . . they are the source from which the lawyer and the citizen must derive their knowledge and imbibe the spirit of obedience to the law.—*William C. Robinson.*

A court is a tribunal created by the state for the decision of controversies concerning legal rights, and for the prevention, redress, and punishment of legal wrongs.

Courts have certain inherent powers conferred upon them by the state. Failure or abuse of its process is thus prevented. The most important of these powers are: (1) to establish, enforce, suspend, and repeal rules for the conduct of business brought before them; (2) to appoint, supervise, and remove clerks, attorneys, and other officers; (3) to make, preserve, correct, and replace records of their proceedings; (4) to preserve order during sessions; (5) to enforce decrees; (6) to punish for contempt, or refusal to obey their decrees. Courts represent the state in its sovereign capacity, and to refuse to conform to their

mandates is an offense against such sovereignty, deserving severe punishment.

The functions of a court are exercised only while in actual session at the time and place prescribed by law. The period during which it is in session is called a Term. A term begins on the first day of the period prescribed by law, at the hour the court is organized and opened for the transaction of judicial business, and continues until it is adjourned *sine die,* that is, without a day named for reassembling. They are divided into two classes, courts of record and courts not of record.

A Court of Record is a tribunal exercising judicial functions independently of the person of the magistrates directed to hold it, and proceeding according to the course of common law. Its acts are recorded for a perpetual memorial, and for testimony against which no plea or proof can be admitted to the contrary. The record implies absolute verity.

A Court not of Record is a tribunal exercising judicial functions, but whose proceedings are not recorded by a sworn officer. Its acts, if questioned, are matters of fact to be tried and determined by a jury. Originally, in England, the King's courts were all courts of record and the inferior courts were courts not of record. Courts are classified in America by the statute creating them.

Courts are again divided into (1) courts of inferior jurisdiction; (2) courts of superior jurisdiction.

A court of Inferior jurisdiction is one whose judgments are open to review by a higher court because of some error or upon an appeal. A court of Superior jurisdiction is one whose judgments are final and whose jurisdiction over all matters brought before it is presumed until proven to the contrary. Its jurisdiction is intermediate between the inferior courts and those of last resort.

An Appellate court is a superior court before which is brought a decision of an inferior court for reexamination and adjudication.

A Civil court is one created for the prevention or redress of wrongs of private parties who apprehend or have already suffered injury.

A Criminal court is one before which the state prosecutes, in its own name, persons accused of public wrongs or crimes.

A Provisional court is a temporary tribunal established by military commanders in conquered territory before the organization of state courts.

Parties

A court has three distinct elements: (1) the Plaintiff, who seeks protection or complains of the injury done; (2) the Defendant, who must

answer or make satisfaction for the injury; (3) the Judge, who examines the accusation, determines the law in the case, and applies the remedy.

Courts of justice were established in remote times because of the difficulty of obtaining that which a person was entitled to, rather than to decide the right or wrong of the controversy. The ancient Hindu book of Narada describes the mechanism of a court and its procedure with all the Oriental lavishness of expression. Ancient tribunals were not purely judicial in character, but exercised political and legislative functions as well. Such were the Themis of the Homeric period and the Witenagemot of our Saxon ancestors.

The maxim, "The King is the fountainhead of justice," speaks of a time when administration of justice was the prerogative of the monarch. As late as the reign of Edward IV in England, the King sat on the bench. After regular tribunals were established, some judicial power was held and exercised by the King as late as James I. Since then the courts have taken their law directly from Parliament in England, and from the National and State Legislatures in the United States.

Early English Courts

Prior to the Norman Conquest in 1066 A. D.,

the administration of justice was local, each county having (1) the Court Baron, which sat in the Manor House once in two weeks, and determined all controversies relating to rights of land within the domain of that Manor; (2) the Hundred Gemot, or Wapentake, having more jurisdiction than the Court Baron, sat once in four weeks—in it were tried civil, criminal, and ecclesiastical causes; (3) the Trithing, the Lathe Court, and the Court Leet, all similar to the Hundred Court but trying different cases; (4) the Court of Piepoudre, which had jurisdiction over fairs and markets; (5) the County Court, the most ancient and important in the kingdom. It was held once a month and was called the Sheriff's Court. It heard appeals from all local courts.

The Witenagemot, or "assembly of wise men," was both legislative and judicial, resembling a great council rather than a court of justice. The Anglo-Saxon courts were frequently held in the open air, and as one writer says, "were not surrounded with such visible majesty of the law as in our times, nor were they furnished with any obvious means of compelling obedience."

William the Conqueror changed this system of self-government for one which became highly centralized. The ancient council of wise men was superseded by one Supreme Court and

a supreme officer of justice. This new court was called Aula Regis, or Royal Court. It was held in the King's palace and was administered by the King in person. William Rufus, son of the Conqueror, built Westminster Hall for the Royal Court in 1099. It dispensed justice for the entire kingdom until overcrowded with suitors. Henry II, in the year 1170, appointed justices to go about the country and hear complaints from his subjects. The Great Charter, adopted in 1215, caused the Royal Court to remain permanently at Westminster and not to follow the person of the King as it had done hitherto. It gradually developed into the three distinct courts of the present time—the Exchequer, the Common Pleas, and the King's Bench.

The English judicial system was brought to America and became firmly established before the Revolution. It formed the basis of our present system, which is composed of various courts differing from one another in jurisdiction, methods of procedure, and in the nature of protection or redress they afford. Our system includes (1) Courts of Common Law; (2) Courts of Probate; (3) Courts of Admiralty; (4) Extraordinary Courts; (5) Courts of Equity.

Common Law Courts

There are usually four grades of jurisdiction

with their separate tribunals in the common law courts of the States. These are:

Justices of the Peace, which have jurisdiction over all petty offenses and over civil suits for trifling sums of money. They conduct preliminary hearings in cases of grave criminal offenses, committing the accused when there is a *prima-facie* proof of guilt, for trial by a higher court. They are conservators of the peace, and correspond to the Mayor's Court in a city.

The County Court hears appeals from Justices of the Peace, and from Mayors' Courts. Its jurisdiction is one step higher than that of the Justices. Civil cases involving considerable sums of money come before it, and some criminal cases.

Superior Courts hear appeals from the county, municipal, and all inferior courts generally. They have original jurisdiction of a general character in both civil and criminal cases.

Supreme Courts, in most States, have only appellate jurisdiction, hearing appeals alike from superior and inferior courts, excepting those involving trifling offenses and small sums.

No suit can be brought in the common law courts until the injury has been sustained. They afford no protection against threatened injuries. Their jurisdiction is limited almost entirely to controversies between two parties arising out

of a breach of contract, a dispossession of lands and goods, forcible or consequential injury of persons or property, and the like.

Probate Courts

Courts of Probate are special courts established for the settlement of estates of deceased persons. Jurisdiction over these matters was a prerogative of the ecclesiastical courts in England. In some of the States probate powers are conferred upon existing common law or equity courts. The functions of this court are: (1) to ascertain whether a will or testament is valid; (2) to superintend the carrying out of its provisions; (3) to dispose of and distribute property of the deceased when there is no will.

This involves the duty of interpreting and applying the law, of adjusting conflicting claims, and of enforcing judicial decrees. All property comes into this court in the course of time, and for that reason probate districts are generally small in territorial extent.

Admiralty Courts

Courts of Admiralty have jurisdiction over controversies arising out of maritime affairs relating to ships and cargoes. They are established with powers to administer justice between parties to a maritime controversy regardless of

the countries to which the parties belong. Their rules have been accepted by one nation after another until now they furnish the law of commerce on all seas.

These rules were first collected and promulgated by the mariners of Rhodes, nearly one thousand years before Christ. The Admiralty code rests on the common consent of all commercial states, and is presumed to be binding upon every vessel. Only those waters affected by the tides were formerly within the jurisdiction of Admiralty courts; but their jurisdiction extends now to inland lakes and rivers not connected with the sea. The Federal Constitution has made all cases of admiralty and maritime jurisdiction cognizable by the United States courts.

A marine Tort is a wrongful action, or omission, occurring on the waters over which commerce is carried. A marine Contract is a contract concerning commerce itself.

Extraordinary Courts

Extraordinary Courts are known as Courts Martial, Military Courts, and Provisional Courts.

Courts Martial are tribunals established for the trial of offenses committed in violation of the provision of military law by persons connected with the army or navy. Military law is

prescribed by the state for the government of military forces as a separate community, and becomes operative as soon as a person enlists, or is conscripted into the public service. Courts Martial are composed of military or naval officers. Their action is subject to the approval of the commanding officer and sometimes of the President of the United States.

Military Courts are temporary tribunals organized to try offenses against Martial Law and the Laws of War in periods of public disturbance when ordinary courts are unable to perform their judicial duties.

Martial Law consists of a body of rules established by a military commander in a district where peace and order have been destroyed and the ordinary provisions of law cannot be enforced. It becomes binding on all persons in the district, and includes such rules as the military commander considers necessary for protecting the community, or for preventing acts of hostility against the state.

Laws of War are the provisions of international law controlling the conduct of military operations and the relations of an invading army to the inhabitants of a hostile territory into which the army has advanced.

Provisional Courts are temporary courts established by a conquering state in conquered territory occupied by its military forces for the

purpose of preserving order and of protecting persons and property until normal operations of civil government can be resumed. These tribunals resemble closely military courts, for they administer the laws of the military authority in control of the territory. But they respect and apply local and native law so far as is consistent with changed circumstances.

The Commander of an army of occupation is for a time a *de-facto* government whose acts are subject to reversal only by his military superior, or his National Government.

Equity Courts

Equity is the quality of being equal or fair. It is said to be the impartial distribution of justice, or the doing of that to another which the laws of God, of man, and of reason give one the right to expect. As a branch of jurisdiction it is the correction of the law wherein it is defective by reason of its universality.

Courts of Equity were a natural outgrowth of social conditions combined with the limited jurisdiction and methods of procedure of the common law courts. In early times there was a particular writ or action for every offense; and if appeal was made to a court for an injury for which there was no definite action, the injured party was without redress except by a

petition to the sovereign. The King turned the petitions over to a secretary called the chancellor.

In the reign of Richard the Second, 1377-99, the chancellor invented a writ of *subpœna* by which parties were commanded to come before his tribunal and compelled to remain in attendance upon it until his orders were obeyed. Thus the Court of Equity was established. Its purpose was to redress all civil wrongs for which the common law had no adequate remedy. Injuries which were threatened could be prevented, controversies in which two or more persons were involved adjusted, the specific performance of a contract or duty enforced, the execution of an unjust judgment of a court of common law enjoined, and many other injuries for which there was no legal redress, remedied by the "keeper of the King's conscience."

During the progress of centuries equity and law have largely combined. In many States the same courts exercise both equitable and common law jurisdiction, keeping only the procedure distinct. Equity courts are more simple than common law courts. Testimony is usually written, and decisions of fact as well as of law rest with the judge.

The Federal Courts are described in Chapter IV under the Judicial branch of the National Government.

The Process of Courts

The regular steps in conducting a suit at law are: (1) the Summons, (2) the Appearance of the Defendant, (3) the Proceedings, (4) the Trial, (5) the Judgment, (6) the Execution.

The Summons is a form of process generally used to institute a suit and to bring the defendant into court. Actual and personal appearance in open court either by the defendant or his attorney was originally necessary in civil cases, but is effected now by making a formal entry of appearance in the proper office. The plaintiff appears by instituting the suit, and when the defendant appears pleadings begin.

Pleadings are mutual altercations of parties to a suit expressed in legal form. They are still oral in criminal cases, but have been reduced to writing in civil actions. They are practically nothing more than affirming and denying in a formal manner those facts upon which are based the demand of the plaintiff and the defense of the defendant.

Every averment of fact implies a principle of law by virtue of which the statement of fact becomes a claim of right. The statement of the plaintiff is usually called a Declaration. Originally a declaration was a formal statement bristling with difficult words and phrases. The defendant was required to repeat the claim of

the plaintiff, and deny it word for word. If he missed a word, or stammered even, he lost his suit. The declaration closed with the words, "And therefore he brings suit and good proof."

The defendant usually defends by a flat denial of all that the plaintiff has averred. If the matter of the declaration is insufficient in law the defendant does not answer, but demurs to the declaration. The demurrer is not a plea, but is an excuse for not answering.

The declaration may be defective in law (1) in that no legal cause of action is stated; (2) in that it is not framed according to the rules of pleading. If the defendant does not demur the answer is a declaration by counter-averments of fact. His answer is called a plea.

Pleas are dilatory, peremptory, or in bar of action. The plea in bar is distinguished from all pleas of the dilatory class in that it denies the right of action altogether instead of seeking to delay proceedings, to suspend them, or to abate the particular writ. It denies all or some essential part of the averments of fact in the declaration, or it admits the allegation to be true, but alleges new facts which qualify or destroy the legal effects of the facts admitted. If he denies the statements he is said to *traverse* the matter. If he avers new facts it is a *confession* and *avoidance.*

If the defendant demurs, or traverses, a question is raised between the parties and they are *at issue.* The question itself is called the Issue. When the defendant demurs he tenders an issue in law; if he traverses, he tenders an issue in fact. These may be denied or demurred to by the plaintiff; but if there is no further answer, the pleadings are at an end and the issue is recorded.

The demurrer, or issue in law, has always been and still is decided by the judge after the arguments of the attorneys for both sides have been heard. The decision of the issue in fact is called a probation or trial.

Trial is an examination of the matter of fact in issue. It originally meant proof, or the observance of certain prescribed rules of procedure. Proof was required of one party to the controversy only. There were various modes of trial or methods of proving as: (1) Witnesses, (2) the Party's Oath, (3) with or without Compurgators, (4) the Ordeal, (5) by Battle.

Trial by Witnesses

Trial by witnesses is one of the oldest and most formal. Among the Anglo-Saxons sales were made, women were endowed, and charters executed before witnesses. If a controversy arose formal oath was taken of two or more

witnesses. They did not swear to tell the truth, but merely repeated a simple formula.

Trial by Oath or Wager of Law

Trial by Oath or Wager of Law is found in all northern nations, as well as among the Jews. The code of the latter reads as follows: "If a man deliver unto his neighbor an ass, or an ox, or a sheep, or any beast, to keep; and it dies, or be hurt, or be driven away, no man seeing it; then shall an oath of the Lord be between them both, that he hath not put his hand unto his neighbor's goods; and the owner of it shall accept thereof, and he shall not make it good."

The party adjudged to make the proof produced a certain number of witnesses, usually eleven, to make oath in his favor. The number required varied according to the rank of the parties, the value of property in dispute, and the nature of the suit. They swore to the truthfulness of the party who made the oath that the accused was innocent, and not to the facts in controversy. The oath was a simple set formula in small matters; but in criminal cases it was so intricate that it could be repeated only with great difficulty. If a mistake was made in repeating it, the adversary won the suit.

This wager of law was in existence though

seldom used until the year 1833, when it was abolished by an act of Parliament.

Trial by Ordeal

Trial by Ordeal was the typical English trial and was used frequently in civil as well as criminal cases. The last recorded case was held in the year 1214. It was adopted and consecrated by the church, but was repudiated in 1215, and after that year gradually fell into disfavor with the people. The three ordeals were by fire, water, and the sacred morsel, or corsned.

Fire-ordeal was performed by taking in the hand a piece of red-hot iron weighing one, two, or three pounds; or by walking barefoot and blindfold over nine red-hot plowshares laid lengthwise at unequal distances. If the accused escaped unhurt he was adjudged innocent. It may be presumed that the law was not often cheated.

Water-ordeal was performed by plunging the bare arm up to the elbow in boiling water, or by casting the accused party into a river or pond of cold water. If he were not burned by the boiling water, and if he sank in the cold water, he was thought to be innocent and was acquitted. If he floated without the act of swimming he was adjudged guilty. These two ordeals are of very ancient origin and were

practiced by most nations in some form. A relic of them still exists in our mode of speech when we say one would pass "through fire and water" to accomplish his purpose.

Swallowing a piece of bread which had been consecrated by a form of exorcism was a practice of the Dark Ages. If the morsel stuck in the throat of the accused and choked him, he was considered guilty.

Trial by Battle

Trial by Battle was brought to England by William the Conqueror. It was used in the court of chivalry, in appeals of felony, and upon issue joined in a writ of right. It did not meet with favor and was called the Frenchman's mode of trial. It had its warrant in the combat between David and Goliath.

After the glove was thrown and the challenge accepted, each party brought his champion to the ground set apart for the fight. The judges in their scarlet robes were on one side accompanied by the attorneys. The champions were introduced at sunrise. They were dressed in a coat of armor, with red sandals, barelegged from the knee downward; bareheaded, and arms bare to the elbow. Their weapons were batons or staves and a four-cornered leathern target. In the military courts the sword and lance were used. An oath against sorcery and

enchantment was taken by each champion as follows:

"Hear this, ye justices, that I have this day neither eat, drank, nor have upon me neither bone, stone, nor grass, nor any enchantment, sorcery, or witchcraft, whereby the law of God may be abased or the law of the devil exalted. So help me God and his saints."

The battle continued until the stars came out in the evening unless one of the champions was conquered before that time. The one worsted cried "craven" and was ever after an infamous man. If the champion of the plaintiff held out until the stars came out, he was accounted victor and won the suit. This form of trial was not abolished until 1819.

Trial by Record

Trial by Record was a method used when one party to a suit asserted the existence of a record and the other party denied it. The court awarded a trial by inspection and examination of the record. The party was then bound to produce the record whose existence he had affirmed upon a certain day. If he failed to produce it at the appointed time, judgment was given to the other side.

Trial by Jury

Trial by Jury was established as a right by

Henry II, who compelled the suitors to accept it in lieu of the old established proofs. It had been long known among the northern nations.

The proceedings of a trial by jury take place before the presiding judge, or judges, who decide the points of law which arise during the progress of the trial. After hearing the evidence of witnesses, the addresses of the attorneys, and the charge of the judge, the jury pronounces its unanimous verdict in general terms "for the plaintiff," or "for the defendant." If judgment is not arrested by one of the various means allowed by law within a certain time, the verdict is entered upon the roll or record of the court.

During the trial of a case the court decides (1) what facts constitute the case; (2) what other facts properly belong to the case as evidential of such main facts; (3) in what manner the main facts and the evidential facts may be presented. It is controlled in these decisions by rules of evidence which come into service after the pleadings have shown the facts constituting the case; the facts admitted as true by both plaintiff and defendant; and the facts in dispute.

If a person accused of a crime pleads "Guilty" to the facts charged against him there is no need for witnesses or for a jury.

There remains nothing except to sentence him according to law. If he pleads "Not guilty," the facts must be determined as nearly as possible before the law can be applied.

There are two classes of questions to be determined in every case, Questions of law and Questions of fact.

Questions of law do not arise except upon and after the determination of questions of fact. They involve an application of the principle of a statute, or common law, by the judge for the instruction of the jury. It is the duty of the judge (1) to superintend the course of the trial; (2) to decide upon the admission and rejection of evidence; (3) to decide upon the use of books, papers, documents, cases, or works of authority which are offered by either side; (4) to decide upon all collateral and incidental proceedings; (5) to confine the parties and counsel to matters within the issue.

A Question of fact is the existence or non-existence of a certain state of things. In every case brought to trial the existence of certain things is affirmed by one party and denied by the other. Evidence being offered by both sides, the jury, or the judge where the question of fact is one to be decided by the judge, determines, upon the strength of such evidence, what the facts really are.

Burden of Proof

The burden of proof is fixed by the pleadings upon one of the parties. If the plaintiff allege certain facts which are denied by the defendant the burden of proof, that is, the necessity of proving those facts whether affirmative or negative, is upon the plaintiff in order to win his case. If the plaintiff allege certain facts which the defendant admits but alleges other facts as a defense, the burden of proof then shifts to the defendant. The plaintiff in this instance is no longer required to prove his case, for all the facts he asserted have been admitted by the defendant.

Presumptions

There are certain rules of law called Presumptions, which affirm an inference as universally applicable to a particular subject; that is, that courts shall draw a particular inference from a particular fact, a set of facts, or from particular evidence. These presumptions are numerous and interesting. The following are a few examples: (1) Absence of a person for seven years with a total lack of communication with those who would naturally hear from him if alive is presumptive evidence of his death. (2) Possession of personal property with no evidence explaining the nature of such possession is *prima-facie* proof of ownership. (3) A

child born in wedlock is presumed to be legitimate. (4) A child under the age of seven years is conclusively presumed to be incapable of committing a crime. (5) Every person is presumed to be sane until the contrary is shown. (6) A person is presumed to be innocent until his guilt is proven beyond a reasonable doubt. (7) Public officers are presumed to perform their duty and not to exceed their lawful authority.

Confession

A Confession is an admission of guilt by a person accused of crime. Confessions, when voluntary, are admissible as evidence. It seems impossible that any person accused of crime would ever make a false confession, but there are many cases when the circumstances are such as to make a confession seem desirable. Any element of judicial compulsion will render a confession involuntary and therefore inadmissible as evidence.

Hearsay Evidence

Statements made by persons not parties to the suit, and not witnesses therein, are not admissible to prove the truth of facts stated except (1) where they are necessary because of the difficulty of getting other proof; (2) where the circumstances under which they are made furnish some guaranty of their reliability,

other than the mere fact of having been made. Statements in proof of a material fact in issue are admitted as circumstantial evidence. Proving the market-value of a thing in dispute, establishing the reputation of a person in the community, the declarations of a testator as to the contents of a will lost or destroyed, statements as to pedigree, declarations concerning ancient ownership, and testimony of a person as to his own age are evidence admitted under certain circumstances.

Witnesses

The tendency of all American courts is to enlarge the privilege of testifying. The old maxim says: "No one is believed in court except upon his oath." Therefore all persons are required to swear that they will tell the truth before they are permitted to testify. Formerly all persons not Christians were excluded, but statutes have abolished that disqualification in all States. The husband or wife may testify, but may not disclose private or confidential conversations or communications.

A person incapacitated to the extent of being unable to understand the subject upon which he is called to testify is not competent. At common law a person convicted of an infamous crime was not permitted to testify, but that has been changed by statute in all the States in

the face of evidence affecting his credibility. A person accused of crime is absolutely privileged from testifying against himself.

Courts are limited in their investigations by certain rights of the public and of the individual. These rights include state secrets, professional communications, and matter tending to self-incrimination.

Examination

A direct examination is the first examination of a witness by the party calling him. This must cover all the facts which are to be brought out. Questions suggesting the answer wanted are called leading questions. They are not permitted on material facts in direct examination, but are used in cross-examination. Every witness is subject to cross-examination by the opposing party after the direct examination has been completed. Further examination of his own witnesses by a party to a suit after cross-examination is usual, and is called reexamination. It is made for the purpose of strengthening the witness, not to add new testimony.

Judgment

Judgment is a sentence pronounced by a court upon matter contained in the record of the trial, and is of four kinds: (1) Where the facts are confessed by the parties and the law deter-

mined by the court, as judgment upon a demurrer. (2) Where the law is admitted by the parties and the facts disputed, as judgment on a verdict. (3) Where both fact and law arising thereon are admitted by the defendant, as judgment by confession or default. (4) Where the plaintiff becomes convinced that either fact or law, or both, are insufficient to support his action and abandons or withdraws his prosecution, as judgment upon a nonsuit.

Judgment does not depend upon the caprice of the judge. It is based on settled and invariable principles of justice. It is the remedy prescribed by law for the redress of injuries. The suit or action is the instrument for administering such remedy.

Final judgments put an end to the action by declaring that the plaintiff has shown himself, or not shown himself, to be entitled to recover the remedy sued for.

The maxim says, "He who loses the suit pays the costs thereof to the successful party." Costs on both sides are decided by the proper officer of the court and laid upon the unsuccessful party. After judgment is entered, execution immediately follows, unless the case is appealed to a higher court.

CHAPTER XIII

International Law

As it is impossible for the whole race of mankind to be united in one great society, they must necessarily divide into many, and form separate states, commonwealths, and nations, entirely independent of each other, and yet liable to a mutual intercourse. Hence arises a third kind of law to regulate this mutual intercourse, called "the law of nations," which depends entirely upon the mutual compacts, treaties, leagues, and agreements between these several communities.—*Blackstone.*

International Law is defined as rules determining the conduct of the general body of civilized states in their dealings with one another. This branch of the law, beginning among Christian states, was influenced by the principles of the Christian religion. It is now used by all civilized nations. Several of them were not influenced by Christianity, but they understood and acted upon ethical and moral principles common to all. Originally it was known as the Law of Nature and the Law of Nations.

This development of International Law is divided into three periods: (1) including the time preceding the Roman empire; (2) from the establishment of the Roman empire to the

Reformation; (3) from the Reformation to the present time.

The law during each of these periods grew out of certain fundamental principles evolved one after another. Ancient and primitive societies were built upon the fact of blood relationship; and this principle was enforced with regard to tribes and states as rigidly as with individuals composing the tribes and states. In pursuance of this theory, tribes having no blood relation were under no obligation to each other. Those connected by the tie of kinship owed certain mutual rights and obligations to one another. Among the ancient Greeks, for instance, all human beings outside the Greek tribes were called Barbarians and considered fitted only for slaves. From remote times certain enforced obligations existed due from one tribe to all others. These observances on the sea furnished rudiments for the legislation of the next period. On land each tribe respected the right of passage through its territory of those attending the public games; and certain other regulations were recognized by all Greeks in common.

When Rome became mistress of the world the idea of universal sovereignty took possession of the minds of men. During the supremacy of the Roman empire, all differences arising between states were referred to Cæsar.

His command was law among nations as between their citizens. With the passing of the sway of Rome the idea of territorial sovereignty displaced that of universal sovereignty; and the individual state asserted its right to a voice in deciding questions which involved its own interests. At the time of the Reformation European nations broke away from the ascendancy of the Roman Catholic Church, which had succeeded to much of the power of the Roman empire, and the way was opened for the application of a new principle. This principle, that states have mutual rights and obligations to be respected in their dealings with one another, marked the transition to the third period.

Hugo Grotius formulated the principles of this mutual obligation existing between States in his *De Jure Belli ac Pacis,* in 1625, for which service he is called the founder of International Law. He borrowed largely from the practice of the preceding Roman period. Many of the rules laid down by him were adopted by statesmen and jurists. Others have been ignored altogether and new rules have been added as occasion demanded. But the Grotian system still commands obedience on general principles, and probably will do so for many generations.

Subjects of International Law

Subjects of this branch of the law are indi-

viduals combined in groups, and not individuals considered as units. They are: (1) Sovereign States. (2) Part-sovereign States. (3) Belligerent Communities, not being states. (4) Privileged Corporations.

A Sovereign State is a political community possessed of supreme authority in ordering its own civil affairs and in the administration of its government. It exercises Internal sovereignty when it directs the affairs of its own citizens; and External sovereignty when dealing with other states. Although International Law considers all independent political communities alike in which the supreme authority speaks for the whole state in dealing with other states, still custom has divided Sovereign States into two classes, the Great Powers of the world and Ordinary Independent States.

The Great Powers of the world at the present time are Austria-Hungary, France, Great Britain, Germany, Italy, Japan, Russia, and the United States of America. Ordinary Independent States possess all the rights granted to Sovereign States, but do not share the authority claimed by the Great Powers in supervising and altering international usage.

A Part-sovereign State is a political community in which part of the powers of external sovereignty is exercised by the home government, and part may be vested in, or controlled

by other political bodies. Such states come under International Law only with regard to that portion of their external affairs exercised for themselves. They also go by the name of Client States. The island of Cuba is a good illustration. It is an independent state, but has given to the United States government a right to acquire naval stations on the island, and in some other respects has restricted its own power of dealing with other nations.

Belligerent Communities not being states are communities endeavoring to assert their independence by war, and not yet recognized by other states. After obtaining a recognition of their Belligerency, they are placed under the obligation of independent states as to the conduct of hostilities. That is, the Belligerents are considered combatants, and not bandits. They have no other rights among the family of nations until their government is fully established and they are recognized by the Powers. They are permitted to take supplies for their armies without being called robbers. Their ships are lawful cruisers, not pirates. Their blockades are respected, and their captures are good prize if made in accordance with maritime law.

Privileged Corporations are trading companies permitted by the government under which they were incorporated, to acquire terri-

tory in other lands. They are granted the power of trading with the native tribes and of exercising general dominion over the land which they own. They come under International Law only as regards their dealings with the natives. Many such companies have been chartered by the European governments to colonize and trade in Africa. The United States was settled originally by such companies chartered by the government of England and other European states.

New subjects are admitted to the benefits of International Law in three ways: (1) by a formal act of states already members of the World Federation; (2) when a new state is formed by civilized men in an unorganized district; (3) when a civilized community separates from the body to which it formerly belonged, establishes an independent government, and receives Recognition of Independence from other states. An illustration of the first method was the admission of Turkey by the Treaty of Paris in 1856; of the second by the recognition of the Republic of Liberia, founded by American philanthropists; and of the third method in the separation of Norway and Sweden in 1905.

Recognition of a new state is express when accomplished by treaty; and implied by negotiating conventions and assigning diplomatic

representatives. It is generally absolute, but in rare cases has been conditioned on an act of the new power. The Treaty of Berlin, 1878, entered into by the Great Powers recognized the independence of Montenegro, Servia, and Roumania on condition of granting to their citizens religious liberty.

A New community is not generally recognized until possessed of definite and permanent territory, and an established government meeting the requirements of the present state of civilization. Sometimes a state is recognized *de facto* only. That is, its government is recognized as existing without inquiry being made into its right to exist. The government of Mexico is asking a *de facto* Recognition from the United States now. The Great Powers are cautious about recognizing a province or colony which has revolted from its mother country, while the conflict is in progress. But when the colony has established and maintained a stable government its recognition is a mere matter of time. No one power can bind others to an act of Recognition; but when the Great Powers agree to admit a new member, the Ordinary States soon follow their example.

Sources of International Law

Writers on International Law name five sources from which the present code is derived.

They are: (1) The works of the great Publicists. (2) Treaties. (3) Decisions of Prize Courts, International Commissioners, and Arbitral Tribunals. (4) State Papers, other than Treaties. (5) Orders and Instructions issued by a government to its own citizens.

Writings of Great Authorities have the same value as similar works have on other branches of legal science. They enunciate principles and cite applications in cases serving to establish authority for reference when similar conditions arise. Their opinions are in no sense obligatory, and the practice of states often sets them aside altogether.

A Treaty is a formal agreement or compact, duly concluded and ratified between two or more nations. In a monarchy, the power of making treaties is vested usually in the sovereign. The Constitution of the United States empowers the President to negotiate treaties, but they must be ratified by the Senate before they become operative. When completed they are part of the law and are authoritative in the States of the Union individually, as they are upon the Federal Government. Treaties are often named from the place where they are ratified; as the Treaty of Ghent, 1814; and the Treaty of Washington, 1871.

Treaties are of several kinds:

1. Law-Making treaties are of recent origin,

and form a large portion of the law of nations. They are assented to by all civilized states, and when adopted alter or add to existing law. Such treaties are: the Declaration of Paris of 1856; the Geneva Convention of 1864; the Hague Conference of 1899, and of 1907.

2. Treaties declaratory of the Law are rare, but become a source of law when their interpretation is generally accepted.

3. Treaties signed by a few states only provide certain rules for their own use. If the practice adopted is found conducive to better understanding and freer intercourse between the contracting parties it is adopted by other states and thus acquires a universal character. Such was the Treaty of 1650 between Spain and the Netherlands, introducing the new rule that goods of an enemy were not subject to capture on board neutral vessels unless known to be contraband of war.

4. Treaties containing no rules of international conduct, but settling the matter in dispute between parties to them. These do not have much, if any, influence on the development of law.

Prize Courts

A Prize, in International Law, is property such as a vessel and cargo, captured by a belligerent nation at sea in conformity with the

laws of war. Property of an enemy captured on land is termed Booty.

A Prize Court is a court sitting for adjudicating prize causes. All civilized nations establish prize courts in their territory to decide questions concerning captures taken by their own cruisers. The Federal Courts, as courts of admiralty, have exclusive jurisdiction as prize courts. Prize courts may sit in the territory of an ally in war, but may not sit in neutral territory. The government is responsible for their acts, and in fact their procedure is more of an inquiry by a government than a trial of causes between litigants.

The Hague Conference of 1907 provided for the establishment of an International Court before which Neutrals may take an appeal from prize courts of the belligerent nations upon certain questions. The article of the Convention providing for the court has not yet been ratified by any great Power. As the sentiment of the people is rapidly growing in favor of universal peace, and opposed to the horrors of war, it is probably but a question of time until an International Prize Court will be a branch of a permanently established International Court for the adjudication of all differences arising between nations.

Decisions of judges of prize courts are often of much value and sometimes become a source

of International Law. Principles are applied to new situations in a manner enlarging their scope and making them more adaptable to similar situations arising later. When the International Prize Court is permanently established, its decisions will be paramount in settling all questions of international import. Decisions of all kinds of International Tribunals, Commissions, and Boards of Arbitration, tend to the development of this branch of law.

State Papers not Treaties, become a source of International Law when they decide unusual and difficult questions. An illustration of this kind is the British Memorial of 1753, in the Silesian Loan Controversy. The doctrine was set forth in this agreement that a state may not make reprisals upon money lent to it by citizens of another country.

Orders and Instructions issued by a government to its own citizens are sometimes concerned with matters of International Interest. If the rules laid down are practical they may be adopted by other nations and thus add to the swelling stream of international usage. Such was the Instruction for the Guidance of the Armies of the United States in 1863. This Instruction became the basis of a code for the regulation of Land Warfare adopted by the Hague Conference of 1899.

Methods of Acquiring Territory

All states own property which is generally within their own territory, but may be outside; as buildings in a foreign country used as residences for diplomatic representatives, ships upon the open sea, etc.

Territorial possessions consist of land, water, and air. The last is a subject of legal consideration only since traveling in aeroplanes has become the fashion. The principles upon which the law governing the use of land and water are based will be expanded to cover the right of passage through the air; also the use of airships for throwing projectiles into the enemy's camp, and other practices which may develop.

A state is the legal owner of all land, lakes, and rivers within its boundaries; the bay, straits, and small islands along its coast; and the sea within a three-mile limit of its shores. The three-mile limit was adopted as the distance which a nation could protect itself by cannons. This limit will be lengthened, probably, as modern guns carry ten, twelve, and even fifteen miles.

A Strait not more than six miles in width, with both shores owned by the same nation, is part of the territorial waters of that nation. If the opposite shores are owned by different states, the waters are still territorial, but belong to the states bordering upon it. If a line drawn

across a bay from headland to headland is more than ten miles in length, the bay is usually classed as open sea, although there are exceptions to the rule.

A state, like an individual, acquires territory in different ways. By (1) Occupation; (2) Accretion; (3) Cession; (4) Conquest; (5) Prescription.

Title to territory open for appropriation is gained by Occupation and not by Discovery. The territory is first annexed by hoisting the national flag and reading a proclamation by officers commissioned by the state for that purpose. This is generally followed by a settlement within its borders of civilized inhabitants; as a colony, a few private persons, or an officer and his staff. The settlement must be continuous, or at least the intention to continue it must be clearly expressed. Otherwise the territory will be considered abandoned and open to occupation by another nation. Certain definite rules adopted by the Great Powers in the recent settlement of the continent of Africa promise to become general in their application. There is also a growing inclination to consider the rights of natives and to treat them with justice; a tendency which indicates some progress of the human race toward a realization of the Christian ideal.

A state acquires territory by Accretion, when

land is added by the action of water; when new land is made by an embankment or other means; and when islands are formed within a reasonable distance of its shores.

Title is acquired by Cession when one state formally transfers territory to another state by sale, gift, or exchange. One government sometimes cedes territory to another at the termination of war as part of the price of peace.

Territory is acquired by Conquest when it is retained by a state during war and a Proclamation issued setting forth the intention of exercising all the powers of sovereignty therein. Transvaal and Orange Free State in Africa were thus acquired by Great Britain in 1900.

Title is acquired by Prescription when territory has been held a long time with no other ground of title than possession. No fixed period has yet been decided upon by International Law as necessary to complete title gained by possession alone.

Right Over Land

A state not only owns property in fee simple, like an individual, but it also may hold territory under certain conditions over which it exercises only partial sovereignty. The methods are: (1) As a part of its Dominions. (2) As Leased Territory. (3) As a Protectorate. (4) As a Sphere of Influence.

An illustration of owning territory as a part of its Dominions is that of the sovereignty exercised conjointly by Great Britain and Egypt over the Soudan, in Africa, under the Convention of 1899.

An International Lease is a cession of territory to another state for a term of years. It is similar in character to a lease of a tract of land by one individual to another. The lessor retains the legal title, but the lessee has the use and profit of the land during the time specified in the lease. A notable instance of leasing territory is that of the lease of the city of Port Arthur to Russia by China, in 1898. As a result of the war between Russia and Japan, Port Arthur was transferred to Japan without China, the legal owner of the territory, being a party to the agreement.

A Protectorate is control exercised by a state over territory inhabited by people who have no organized government; at least according to the present standard of civilization. In Colonial Protectorates the protecting state exercises all powers of external sovereignty, but leaves internal affairs largely to the local chiefs. The right of protection is recognized by all other states, and no interference between the natives and the protecting power is permitted by usage of International Law.

A Sphere of Influence is more a creature of

private agreement than of public law. By means of an agreement between the states interested, a state acquires control over a certain carefully defined district in which it may or may not exercise control in external or internal affairs, but which prevents other states securing a hold upon it, the Protecting Power being free to establish colonies or protectorates if it chooses. The agreement creating a Sphere of Influence binds only the parties to it, other states merely respecting the agreement. One example is the agreement entered into by Great Britain with France and Germany in 1890, and with Italy and Portugal concerning their relations in Africa in 1891.

A Sphere of Influence may become a Colonial Protectorate, and a Colonial Protectorate tends to develop into a colony, which in its turn may become an independent state begging admission into the family of Nations.

Sovereignty Over Waters

The claims of states to control the Waters of the earth have given rise to many questions and much discussion. During the Middle Ages the maritime states claimed sovereignty over the open sea whenever it served their convenience and so far as they could support their claims. At the present time International Law holds the sea open for the use of all nations, restricted

only by territorial rights over narrow channels separating large bodies of water. These channels are subject to the Right of Innocent Passage which precludes the levying of toll by the owners. They are open to the passage of merchant vessels and ships of war at all times, excepting those belonging to a state at war with the Powers bordering upon them. Passage through the Suez Canal and through the Panama Canal, both oceanic canals, is regulated by treaty stipulations.

The right to fish in the open sea is conceded to all. But when valuable fisheries exist within the territorial waters of a state the right is confined to the citizens of that state. The right of navigation on great rivers flowing through the territory of one or more nations has been the subject of special agreements, but it is now pretty well settled that they are free waters for all kinds of navigation. Each state retains control over all persons and things on board its vessels wherever they may be sailing.

Piracy is robbery, forcible plunder, or murder, committed by marauders on the high seas. Robbery in or upon a vessel in a roadstead, bay, harbor, or tidewater river has been made Piracy by a statute of the United States. When committed upon the high seas it is a crime against all nations, and the offenders may be

punished in the courts of any state which succeeds in capturing them.

War

War is defined as a contest between nations or states, or between different parties in the same nation, carried on by force and arms either for defense, for avenging insults and redressing wrongs, for the extension of commerce and acquisition of territory, or to obtain and establish the supremacy and dominion of one state over another.

War is carried on by slaughtering troops or taking them prisoners, and seizing or destroying property, towns, and ships of war. When war is prosecuted between two nations it is called International War; between citizens of the same nation it is Civil War. It has been said that "War in defense of national life is not immoral, and war in defense of independence is an inevitable part of the discipline of nations." However true that statement may be, it is a fact that no nation has reached its maturity without waging many wars. The actual necessity of them all we have no means of deciding, but war seems to belong to a certain stage in the development of individuals and of nations.

War is no longer a conflict between mobs of individuals, but a contest of organized masses moving with intelligent cooperation under the

guidance of a single will. Weapons of warfare have been improved until they are very different from the clumsy axes and clubs of primitive man. They are now fragile guns, rapid in discharge and deadly in aim which must be manipulated by skillful fingers controlled by trained minds. Military organization is a modern science. It calls many men of the highest development from productive occupations to that which aims solely to destroy. It is a duty of the government of a state to provide for the training and practice of officers and men; and to oversee the application of their knowledge to the practical side of warfare.

Belief in the old adage, "All is fair in love and war," served to harden the conscience of men, and every kind of violence and unscrupulous dealing has been allowed on the part of nations at war. But as education refines the manners of men warfare is more and more humanized. The Hague Conventions are lifting this science of destruction to a place of humanitarian practice. It is the earnest hope of all lovers of mankind that this century will witness the disarmament of all nations, and that war will drop into that limbo of things that one reads about and wonders how man could be so blind as to think it ever to his interest; or how he could have been so lacking in love

and wisdom as to waste his talents in studied effort to destroy his brother man.

International Law now demands that no nation shall begin actual hostilities against another without previous and explicit warnings in the form of a reasoned Declaration of War, or of an ultimatum with a conditional declaration of war. So soon as war is formally declared, all commercial intercourse between the contending parties is suspended. In olden times the enemy and all that he possessed was at the mercy of the successful party. But modern ideas of justice to all persons concerned demands that only the *resisting* power of the enemy be destroyed. Therefore quarter is given, prisoners are treated in a humane manner, and the wounded and sick are properly and even tenderly cared for.

Noncombatants, or persons adhering to neither of the belligerents, are exempt from personal violence if they submit to the regulations of the party in control. The inhabitants of towns captured by the enemy are protected from the violence of soldiers; and all who attend the sick and wounded are respected so long as they wear the red cross on the left arm. Buildings and crops are no longer burned, nor animals killed as in olden times, unless overwhelming military necessity demands it.

Passports and Safe-conducts through territory may be given by one of the belligerents to the citizens of another. The former is for a person, and the latter for persons and property of all kinds. A Flag of Truce is a white flag used as a signal when one party sends a message to the other. When peace is declared all private rights suspended during the war are revived.

A few states take no part in the wars waged all about them. Their territory is protected by an agreement entered into by the Great Powers which declared them permanently neutral. This neutrality was protected by International Law and they were safe from invasion by other states until the outbreak of the present European conflict. They are Switzerland, Belgium, Samoa, and also the Suez Canal. A fact which refutes the famous statement of Alexander Hamilton, "The rights of neutrality will only be respected when they are defended by an adequate power."

A Neutral power may not supply either belligerent with Contraband of War. The offense consists in carrying such supplies, not in selling the goods. Contraband of War varies, but it may be said always to include arms, ammunitions, military and naval supplies. During the Civil War General Butler declared that if a slave was a chattel, he was also a contraband

of war; and therefore could be protected against the claims of his former master.

Intercourse Between Nations

Polite intercourse which obtains between nations is termed Diplomacy. The word is derived from the French, and was first used by Edmund Burke in 1796. Diplomatic Intercourse, although as old as history in one sense, is yet a comparatively modern system. It was finally and permanently established by the congress of Vienna in 1815 and the congress of Aix-la-Chapelle in 1818. The preparation for a Diplomatic Representative must include a knowledge of all history as well as the law of all nations. During the French Revolution the European governments decided to make common cause in the work of looking after the "public peace, the tranquillity of states, the inviolability of possessions, and the faith of treaties." After this decision was declared every ambassador felt the strength of the whole body of public law back of him; that he was, in a real sense, its interpreter and guardian as well as the representative of a particular state.

The early conception of the duty of ambassadors, however, was far from that which obtains now. It found its expression in various definitions of the time. "An ambassador is an honest man sent to lie abroad for the good

of his country." And, "A prime article of the catechism of ambassadors, whatever their religion, is to invent falsehoods and to go about making society believe them." This principle was so universally followed for several centuries that it led the great Bismarck to say, "The best way to deceive is to tell the truth."

Aside from the duty of deceiving the government to which he was accredited in all important matters, the ambassador was expected to act the part of an "honorable spy." His instructions were to keep his own government informed on all that was taking place in the mind of the foreign sovereign, the council of ministers, and throughout the country. An ambassador was not, therefore, always a welcome visitor. In 1418 the government of Venice exacted a heavy fine, and banished any citizen who talked of the affairs of state with a foreign envoy. Charles V kept them at a distance from his Court. Francis I changed his residence frequently in order to elude them. Henry VII ordered his subjects to hold no intercourse with them and entertained himself by reading their mail. In spite of all this distrust, however, sovereigns of all states realized the great convenience of such a method of intercourse; and the system has been gradually perfected until now it is a body of usages as rigid as the rules of law.

Diplomatic agents are divided into four classes: (1) Ambassadors and Papal Legates; (2) Envoys Extraordinary and Ministers Plenipotentiary; (3) Ministers Resident accredited to the Sovereign; (4) Charge d'Affaires accredited to Ministers of Foreign Affairs. The members of these classes take precedence among themselves according to the foregoing list and the length of residence in the capital to which they are accredited.

There are but eight nations that send Ambassadors: Austria-Hungary, Brazil, France, Germany, Great Britain, Japan, Mexico, Turkey, and the United States of America. At social functions the ambassadors take precedence according to the length of service at the capital. The one having the longest time to his credit acts as Dean of the Diplomatic Corps. In signing documents of international import they sign in alphabetical order.

There is now no limit to the time an ambassador may remain in one capital. In the Italian republics, where diplomacy really originated, they were appointed for a few months only. No state may remain outside the realm of international intercourse, but each state has a right to decline to receive a particular person as a diplomatic agent if personally obnoxious to the sovereign, or hostile to the form of government to which he is accredited. A state may also

demand the recall of a representative upon sufficient reasons, and in extreme cases may dismiss him from the country.

Diplomatic agents, their families, and suites are protected in certain immunities. They may not be sued, nor their goods attached for debt. Neither may they be arrested and tried for crime. But if guilty of plotting against the government they may be expelled from the country. The residence, known as an Embassy or Legation, is exempt from taxation and their goods admitted free of duty.

Consuls are commercial agents sent abroad for the purpose of protecting the interests of traders, travelers, and mariners of their own nation. They live under the law of the country in which they are stationed, but their official papers are protected against seizure, and they may not be forced to serve in the native army or navy. In some Oriental countries the Consulates, in time of war or distress, have proved an asylum not only to fellow countrymen, but also to native refugees.

CHAPTER XIV

Common Law Maxims

The safety of the people is the supreme law.

So use your own powers and property as not unjustly to injure others.

The Act of God injures no one.

The King (sovereignty) never dies.

The sovereignty of the state over its citizens is supreme.

Between public and private rights, the public right must prevail.

The act of the law never inflicts a legal wrong.

The decree of a court shall prejudice no man.

Every presumption of the law must be in aid of justice.

Where there is a legal right there is also a legal remedy.

A fiction in law is always founded in equity.

Self-defense is the primary law of nature.

The rights of necessity are a part of the law.

No one can take advantage of his own wrong.

Amid arms, law is silent.

Ignorance of the law excuses no one.

The law does not recognize trifles.

Liberty to all, but preference to none.

The King should be subject to the law, for the law makes the King.

The lamb should not be trusted to the wolf.

He who is first in time is first in law.

The reason ceasing, the law itself ceases.

The law aids the vigilant, not the slothful.

An injury cannot be done to a willing person.

That is certain which can be made certain.

Goods in the custody of the law cannot be distrained.

For that which is without remedy is by that very circumstance strengthened if it be free from fault.

The court of justice is for the common people and is the theater of the power of the country.

Every man's house is his castle; even though the winds of heaven may blow through it, the King of England cannot enter it.

It is not just and right that he who exposes the faults of a guilty person should be condemned on that account; for it is proper and expedient that the offense of the guilty should be known.

The law compels no one to do anything which is useless or impossible.

No one can be made to testify against himself.

No one should be a witness in his own behalf.

A man may obey the law and yet be neither honest nor a good neighbor.

He who loses the suit must pay costs thereof to the successful party.

No one is heir to the living.

Every entry on lands without the owner's leave, or authority of law, is a trespass.

Necessity knows no law.

He who owns the soil has it even to the sky.

The vassal who has denied either his fee, or the condition by which he held it, shall be deprived of it.

A personal action dies with the person.

It is for the public good that there be an end to contention.

Eloquent Gaul hath instructed British lawyers.

No man shall be deprived of his property but according to the custom of our predecessors, and by the judgment of his peers.

Our ancestors would have no judge concerning the reputation of man, or even concerning the smallest pecuniary matter, unless it was agreed upon by the contending parties.

The proof lies on him who asserts the fact, not on him who denies it, as from the nature of things a negative is no proof.

Laws derived from the pure source of equity and justice must be founded on the consent of those whose obedience they require.

No one can expatriate himself.

No one is believed in court but upon his oath.

The sovereign, when traced to his source, must be found in the man.

No time runs against the King or government.

Every son is as great a gentleman as the eldest.

Wretched is the thralldom where the law is either uncertain or unknown.

The air of England is too pure for a slave to breathe in.

He who does not forbid a crime while he may, sanctions it.

Consent, not cohabitation, makes the marriage.

Relation by affinity ceases upon the dissolution of the marriage which created it.

It is not lawful to have two wives at the same time.

He is the father whom the marriage designates.

Paternal power should be in kindness, not in cruelty.

Malice supplies the want of age.

He who does a thing by another does it by himself.

Descent is a creature of statute, and not a natural right.

Water runs, and ought to run, as it was accustomed to run.

The offspring follows the condition of the mother.

Where there is no marriage there is no dower due.

A thing similar is not exactly the same.

The accessory does not precede, but follows the principal.

The right of survivorship, for the benefit of commerce, holds no place among merchants.

She who makes the division has the last choice.

A title is the just right of possessing that which is our own.

Not right but seizin (possession) makes the stock.

The inheritance never ascends.

He who could inherit from the father could inherit from the son.

The offspring of an illicit cohabitation are not reckoned as children.

He who becomes a soldier of Christ hath ceased to be a soldier of the world; nor is he entitled to any reward who acknowledges no duty.

That which belongs to no one is by natural reason granted to the occupant.

That which has no beginning has no end.

Nothing is at once invented and perfected.

It is the tenor of the deed which gives validity to the fee.

Measure gives validity to the grant.

What once is mine cannot be mine more fully.

Words should be servient to the intention.

He who confines himself to the letter goes but halfway.

For the commonwealth a man shall suffer damage; as for saving a town or city, a house shall be plucked down if the next one be on fire; and a thing for the commonwealth any man may do without being liable.

The happiness of the people is the happiness of the individuals which compose the mass.

Obedience makes government, not the name by which it is called.

They chose their Kings for their nobility, their leaders for their valor.

He is justified who acts in pure defense of his own life or limb.

No freeman shall be deprived of life but by the lawful judgment of his peers, or by the law of the land.

Let the consuls take care that the commonwealth receive no injury.

Bad grammar does not vitiate a deed.

Words should be taken most strongly against him who uses them.

No one should be twice harassed for the same offense.

An action cannot be founded on a barren or unconditional contract.

Neither disease, indigence, nor any evil of the same kind is more contrary to nature than appropriating or desiring to appropriate the property of another to our own use.

That few may suffer but all may dread punishment.

Those offenses should be most severely punished which are most difficult to guard against.

Crimes are more effectually prevented by the certainty than by the severity of punishment.

The punishment due to a crime of which one falsely accuses another should be inflicted upon the perjured informer.

It is allowable to kill a thief if he cannot otherwise be taken.

Agents and abettors are punished alike.

There is nothing more sacred, more inviolate, than the house of every citizen.

He who hath taken by force is the more iniquitous thief.

He who prefers a charge against another, however just it may be, will himself be unjust unless the accused be heard in his own defense.

He who decides a case without hearing both parties, though his decision be just, is himself unjust.

No one is obliged to betray himself.

No one is twice punished for the same offense.

Any one may relinquish a right introduced for his own avail.

The judge is counsel for the prisoner.

Let him who has nothing in his purse pay in his person.

Where the crime is, there the punishment should be also.

A madman is punished by his madness alone.

The King cannot confer a favor by the injury and loss of others.

We must judge by the laws, not by examples.

Law is nothing less than right reason drawn from the will of the gods commanding what is right and prohibiting the contrary.

Law is beneficence acting by rule.

In the court of chancery (equity) a man shall not be prejudiced by his mispleading, or defect of form, but according to the truth of the matter; for the decision should be made according to conscience and not according to the rigor of law.

It is not the rigor but the inexpediency of laws and acts of authority which makes them tyrannical.

Let not jailers torture or augment the punishment of those intrusted to their keeping; but let the sentence of the law be duly yet mercifully executed.

Everyone is presumed to be innocent until his guilt is established beyond a reasonable doubt.

Since there can be no greater glory for gods and men than this, Duly to praise forever universal law.—*Cleantes.*

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