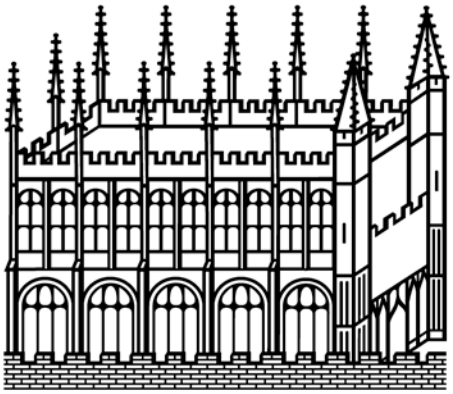

AN ABRIDGMENT

OF

Blackstone's Commentaries

ON THE

LAWS OF ENGLAND,

IN

A Series of Letters

FROM

A FATHER TO HIS DAUGHTER,

CHIEFLY INTENDED FOR

THE USE AND ADVANCEMENT

OF

FEMALE EDUCATION.

---

* * * * * "Of Law, no less can be acknowledged, than that her seat is the bosom of God, her voice the harmony of the world: all things in Heaven and Earth do her reverence; the very least, as feeling her care, and the greatest as not exempt 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." *Hooker's Eccl. Polity, Book* I.

BY A BARRISTER AT LAW,

F.R. F.A. AND F.L.S.

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Abridgment

OF

BLACKSTONE's COMMENTARIES.

LETTER I.

ON THE STUDY OF THE LAW.

My Dear E——,

It is not unlikely, that many persons, who have never opened Blackstone's Commentaries on the Laws of England, will think that I am unreasonable in requiring a young lady to read a book, which treats of a subject apparently uninteresting and probably unintelligible. Believe me, those who have formed this opinion, have adopted it without sufficient consideration: If the nice distinctions, which regulate the law

of property, and all that various and complicated knowledge, which the longest life of our most illustrious lawyers has scarcely been able to attain; if an acquaintance with all the Acts of Parliament, which are annually passed, with the learned decisions of our Courts of Justice upon their construction; if, in short, the line of education, which those who study the law as a profession pursue, were the objects I had in view, in abridging these Commentaries for your instruction, then indeed I should be wasting your time in an unprofitable pursuit; and I should in vain hope to afford you such amusement or advantage, as would repay either of us for our labour.

Nothing however is farther from my intention: because, even if I succeeded, I should be induing you with that species of knowledge, from which you would not derive any practical advantage; and I should be wasting in an unprofitable pursuit, that time, which at best is seldom employed to the greatest benefit. I should moreover be making you a learned pedant in petticoats, which, next to a mere fine

lady, is the most insufferable of companions; and I should be drawing your attention away from those instructive and feminine pursuits, which will fortify your mind, equally against the pleasures, as against the miseries of life.

Whilst therefore I would avoid in female education, the two extremes of pedantic learning, and of mere superficial accomplishments, I would wish to adorn your mind with useful knowledge, and with such literary acquirements, as will eventually render you a cheerful companion, and an accomplished woman. It was with this view that you have been instructed in the Latin language; not to make you a Latin scholar; but to improve your knowledge of your native tongue, and to give you that readiness and elegance in English, which can alone be obtained from the learned languages.

It is for a similar purpose, that I intend to send you, in a Series of Letters, so much of the Commentaries on the Laws of England, as I think are adapted to your understanding, as well as necessary to be known by every gentlewoman. I can safely pronounce, that with some

exceptions, relating to professional and legal points, all the historical parts of the Laws of England are within the reach of any capacity; and you will find, in the course of this correspondence, that most of those subjects which I shall explain to you in *detail*, will be recognized by you, as interwoven in the history of your country, and of which you have had already *general* ideas.

The science, to which I wish to introduce you, is that of the constitution of your country, founded upon those laws, which the virtue of our forefathers enacted for the public good, and which the wisdom of ages has sanctioned and approved. As the bonds of society became more intricate, new laws have been from time to time enacted; new restraints, and new rules of action have been gradually laid down, till at last a body of laws has been slowly and imperceptibly compiled, which has become the support and ornament of this happy kingdom. A competent knowledge of these laws is the proper accomplishment of every gentleman and scholar, and is not only an useful, but an

essential part of a liberal and polite education. It is useful to all persons *generally*, because all are interested in the preservation of the laws; and because it is a duty incumbent on all, to be acquainted with those obligations with which they are immediately concerned. It is useful to some in *particular*, because birth, fortune, and situation in life, have given to them advantages, not only for the benefit of themselves, but also of the public: and who can, in any station of life, discharge properly his duty either to the public or to himself, without some degree of knowledge in the laws?

Of this number are gentlemen of independent estates and fortune, the most useful and considerable body of men in the nation; who, if ignorant in this branch of education, would not only be deficient in an elegant acquirement, but would be exposed frequently to fraud and imposition. All gentlemen of fortune also, are occasionably called upon to dispose of the lives and properties of their fellow creatures as jurors, to distribute justice as magistrates, and to enact laws as Members of Parliament; and

thus to be the guardians of the constitution, the interpreters of the laws, and the dispensers of justice. How much will that magistrate be an object of contempt from his inferiors, and of censure from those to whom he is accountable for his conduct, if through ignorance he mistakes, or through passion he abuses, his authority! How unbecoming in a legislator to vote for a new law, when he is utterly ignorant of the old!

What is said of gentlemen in general, may be applied still stronger to the nobility; for they are the hereditary counsellors of the Crown, and judges upon their honors, of the lives and properties of their fellow subjects. Their sentence is final, decisive, and irrevocable: and to their decision, whatever it be, inferior courts of justice must conform.

There is no person, let his rank, fortune, or profession be what it may, but will derive at once amusement, instruction, and advantage, from the knowledge of those laws, under which he enjoys the blessings of protection, and of impartial justice; and in proportion as he is

conversant with that glorious constitution, which has become the envy and admiration of the world, so will he be inclined to support the government in Church and State, increase in affectionate loyalty to the King, in zeal for the liberty of his fellow creatures, in a sense of real honor, and in well-grounded principles of religion, and become, at the same time, a better subject and a better christian.

It is the peculiar exemption, and, I may say, advantage, of the Female sex, to be relieved from all those cares and anxieties of public life, which begin with our earliest age, and end not, but with the close of our existence. You will be never called upon to take a part in those awful responsibilities, to which the juror, the magistrate, or the legislator, are constantly liable; and even in those acts, relating to which the laws have laid down positive enactments, if you are not protected by the law itself from feeling the evils of your own imprudence, you have a father, a brother, or a husband, to assist, advise, or control you. To you, therefore, a knowledge of the laws and constitution

of your country may not be so indispensably requisite; and you may pass through life, often without inconvenience, and generally without reproach, if you are ignorant of the institutions under which you live. But I need not impress upon you, that all knowledge must be advantageous, which renders you better informed, and improves your mind and your heart; which affords materials for reflection, and opens an additional source of mental occupation and improvement: If however, that knowledge is on a subject of every day occurrence; if it gives you an insight into those institutions, customs, and regulations, which are constantly presenting themselves to your notice; if it explains satisfactorily, what otherwise would be confused; and exposes in genuine simplicity, what otherwise would be clothed in darkness and mystery; then indeed you will have obtained an acquisition, which will be an inexhaustible source of pleasure and profit; and the benefit of which, will be felt in all the concerns of life; it will teach you to be just to others, as you require justice yourself;

to pity and assist your fellow creatures; to make allowances for their failings; and to thank God, that you are removed from those temptations and trials, to which others, less fortunate than yourself, are so often exposed, and so often fall miserable victims.

These are some of the grounds, on which I wish you to become acquainted with the laws of your country; and I will, as leisure permits, from time to time, send you a chapter of Blackstone's Commentaries, abridged in the best manner I can.

I remain,

Your affectionate Father.

LETTER II.

ON THE NATURE OF LAWS IN GENERAL.

If we consider the humblest plant that trails upon the ground, or the loftiest cedar upon the mountains; if we examine the minutest insect that creeps, or the most enormous monster that roams in the forest; we shall find, that, from the first moment of their existence, through all their stages of growth, maturity, and decay, they are not left to chance, but are guided by unerring rules laid down by the great Creator. If we turn from animate to inanimate matter, we shall find certain principles impressed on that matter, from which it can never depart, and without which it would cease to exist. Law, therefore, in its *general* sense, signifies a rule of action prescribed by a superior, and which the inferior is bound to obey. But however usage may have applied the term of

laws to motion, gravitation, or to those instincts by which all animals are governed; yet, the Creator having formed the animate and inanimate creation by such laws as he chose to prescribe to himself for his guidance; those laws became the qualities or properties of the thing created, and became inherent and identified with their very nature and essence.

Law therefore in its true sense, and the one in which I shall consider it, denotes not the rule of action in *general*, but of *human* action only; and lays down those precepts, by which man, as a free agent, is commanded to make use of his faculties for the general regulation of his conduct.

As man, however, depends absolutely on his Maker for every thing, he must conform in all points to his Maker's will. This will is called the *Law of Nature*, which, being ordained by God out of his infinite wisdom and goodness, is founded on those relations of justice, which have existed prior to all positive commandments. Such as "*to live virtuously, to hurt nobody, and to give to every one his due.*"

The law of nature therefore being coeval

with mankind, and dictated by God himself, is of course superior to every other obligation. In order, however, to apply this law to the exigencies of every individual, it is necessary to have recourse to *Reason*, to discern her directions towards effectually securing our happiness. Our reason however being imperfect, and our understanding full of ignorance and error, Divine Providence interposed to discover and enforce its laws by direct *Revelation*.

Upon these two foundations, the law of nature or *Morality*, and the law of revelation or *Religion*, depend all Human laws. For although there are many regulations and rules of conduct, not provided for by the laws of nature and revelation, and which vary in different countries according to circumstances; yet the laws of all nations must not be contrary to the great fundamental principles of the Divine and Natural law. Thus murder, theft, and perjury, crimes expressly forbidden by the laws of God, however we cannot *add* to their heinousness by any punishment, which human laws inflict, yet neither can we *diminish* their

atrocity by any enactment we may choose to pass for their excuse or justification. But in matters which are in themselves indifferent, and have no moral turpitude, but are required by the welfare of the state, such as the exporting of wool into foreign countries, there the law has power to make that unlawful, which before was not so.

I come now to the principal subject of this Letter, the law by which particular communities or nations are governed, and is known by the name of *Municipal Law*. Municipal, properly denotes the particular laws, by which any *municipium* or free town is governed; but it now, in common speech, is applied to any one state or nation, which is governed by its own laws and customs.

MUNICIPAL LAW, is a rule of civil conduct, prescribed by the supreme power in a state, commanding what is right, and prohibiting what is wrong.

First,—It is a rule;

Not applicable to a particular person, for

then it would be a sentence and not a law; but it is permanent, uniform, and universal. It is also called a *rule*, to distinguish it from advice or counsel, which we are at liberty to follow or not, as we think proper; whereas our obedience to a law, depends not upon our approbation, but upon the will of the legislature. It is also called a *rule*, to distinguish it from a contract or agreement; the language of an agreement being *I will*, or *I will not*; that of a law is, *thou shalt*, or *thou shalt not*.

Secondly,—It is a rule of *Civil conduct*;

The law of nature is a rule of Moral conduct; and the law of revelation is a rule of faith, and points out our duty to God and our neighbour, considered as *individuals*. But Municipal law, regards us as *citizens*, bound to observe certain duties which we are enjoined to perform, in return for the benefits of the common union.

Thirdly,—It is a rule of Civil conduct *prescribed*;

A bare resolution, without being notified,

can never properly be a law. How this resolution should be notified, whether by Proclamations; by being publicly read in Churches; by writing or printing, as is the general course of our Acts of Parliament, is of no consequence: But when *it is notified* or *prescribed*, it is our business to be acquainted with it; for if ignorance might be pleaded in excuse, the laws would be of no effect, but might always be eluded with impunity.

Fourthly,—It is a rule of civil conduct prescribed, by the *Supreme power in a state.*

For legislature being the greatest act of superiority, it is the very essence of a law, that it is made by the Supreme Power, wherever that power is lodged. How the several forms of government, which we see in the world, began, is a matter of great uncertainty, and of very little consequence. By what right soever they do subsist, there must be in all, a supreme absolute authority, in which the rights of Sovereignty reside. By the Sovereign power is meant, the making of laws; whether it is lodged in the people at large, which is called a

democracy; or in the hands of a few, selected for their wisdom, valour, or property, called an aristocracy; or in the hands of a single person, thence denominated a monarchy.

With us the legislature of the kingdom is entrusted to three distinct powers, acting as one, each entirely independent of the other, and each being armed with a negative voice;—the king, the nobles, and the people: and thus being compounded of the three usual species of government, is so admirably tempered, that it partakes of the advantages of each.

Fifthly,—It is a rule of Civil Conduct prescribed by the supreme power in a state, *commanding what is right, and prohibiting what is wrong*.

In order to do this effectually, it is necessary that the bounds of right and wrong should be established and defined by law. When this is done, it follows of course that it is the business of the law, to enforce those rights and redress those wrongs. In order to do this, every law consists of several parts:—*Declaratory*, or laying down the rights to be observed, and

the wrongs to be avoided:—*Directory*, or ordering the subject to observe those rights, or to avoid those wrongs:—*Remedial*, or shewing how those rights are to be recovered, and those wrongs redressed; and *Vindicatory*, or declaring the penalty for transgression, and neglect of duty.

First, Declaratory;

Those rights, which the law of nature and revelation have established, such as life and liberty; and those crimes and misdemeanors, which are forbidden by the laws of God, such as murder and theft, acquire no additional strength or turpitude from being granted or forbidden by those human laws which are prescribed and published in subordination to the Great Lawgiver; but with regard to things in themselves indifferent, and which have become right or wrong, just or unjust, as the welfare of society demands, the case is widely different. The law of God enjoins obedience to superiors; but who those superiors shall be, it is the province of human laws to determine.

The law of God declares the taking of another's property to be a theft; but the law of man draws the distinction between such a seizure being a theft, or a justifiable taking by a landlord for rent.

Second, Directory

Virtually includes that part of the Municipal Law, which is the *Declaratory;* for the law that says, thou shalt not steal, implies a declaration, that stealing is a crime.

Third, Remedial

Is a necessary consequence of the former two. For in vain would rights be declared, or directed to be observed, if no remedy was offered to recover and assert them.

Fourth, Vindicatory

Is that part of the law, which lays down a punishment for a breach of it. It is the most efficient part of the law, and contains in its penalty, its main force and strength.

As the disobedience of any law must involve

in it, either Public mischief or Private injury; so obedience to the laws, is the first duty of every citizen: For penalties or punishments are never intended as an equivalent or compensation for the commission of an offence; but only that degree of pain or inconvenience supposed sufficient to deter men from breaking the positive enactment. Whether therefore the offence is morally wrong, or only made wrong by the Municipal law, passed for the good of the community at large, it is equally a breach of the law, and therefore becomes, as such, a moral offence, however readily the penalty be paid. For as the chief design of established government is the prevention of crimes, and the enforcement of the moral duties of man; obedience to that government, necessarily becomes one of the highest of moral obligations; and the principle of moral and positive laws, being precisely the same, they become so blended, that discrimination between them is difficult and impracticable.

Your's, &c.

LETTER III.

OF THE LAWS OF ENGLAND.

THE Municipal Law of England may be divided into two kinds:—The COMMON LAW, and the STATUTE LAW.

THE COMMON LAW, is that part of our laws, which were originally enacted by the Supreme Power in the state, in the infancy of civil government, and had in those early days the same force as our Acts of Parliament. How these laws were then *notified* or *prescribed*, is impossible now to determine, as from their great antiquity, all trace of their origin is lost. Hence they are called *Unwritten* laws, to distinguish them from those laws, which are of comparatively more modern date, and are certified and *written* as the deliberate acts of the legislature. They are in fact, however, as much the *written* laws of the land,

as any of those of later enactment; being settled and determined by the decisions of our courts of justice. Thus the reports of the cases determined by the judges may be called the Statutes of the *Common law*, as our Acts of Parliament are the Statutes of the *Written law.*

The common law is distinguished into three kinds:—*General Customs*, *Particular Customs*, and *Particular Laws*.

First, General Customs,

Not set down in any written statute or ordinance; but depending on immemorial usage for their support, are adopted and recognized as the law of the land, and their validity established by the judges in their several courts of justice. Such as, that the eldest son alone is heir to his father; that any man may dispose of his personal property by will; that breaking the public peace is an offence, and punishable by fine and imprisonment. The decisions of courts of justice being therefore the evidence of what is *Common law*,

are held in the highest regard, and are the histories of customs for the direction and guide of those, who are selected to be the guardians and expositors of the laws.

Second, Particular Customs;

These affect the inhabitants of particular places only, and are therefore local. Such as the custom of *Gavelkind*, which ordains, in contradiction to the *general* custom, that not the eldest son, but all the sons shall succeed to the father. Such is the custom of *Borough English*, that the youngest son shall succeed to the father. These customs are contradictory to the general law of the land, but being good by special usage, become part of that law.

In order to establish any particular custom, and exempt it from the operation of general custom, *proof* of its existence, its *legality* when proved, and the method of its allowance, must be specially produced. In order to make a particular custom good, the following are the necessary requisites:—

First,—It must have been immemorial; *i. e.* its commencement must have been out of the memory of man.

Second,—It must have continued without interruption of the *right*.

Third,—It must have been peaceable and acquiesced in.

Fourth,—It must be a reasonable custom.

Fifth,—It must be certain, not liable to vary, or undefined as to the thing to be done.

Sixth,—It must be compulsory; not left to the option of any man.

Seventh,—All customs must be consistent with each other, and not contradictory.

Third, Certain Particular Laws;

These are the *civil* and *canon* laws. These laws, as far as they are consistent with, and not repugnant to, our laws, are adopted by our several courts of justice in England; such as the Ecclesiastical courts, the Military courts, the courts of Admiralty, and the courts of our two Universities.

The *civil* laws are the civil or municipal laws of the Roman empire.

The *canon* law is the Roman ecclesiastic law.

I shall not dwell upon this branch of the common law of England; but only remark, that it is part of the Unwritten or Common law, sanctioned by custom, and recognized by our superior courts of justice.

Statute Law.

The second branch of the municipal law is the Statute Law; and consists of all those Acts of Parliament which have been passed from time to time by the King's Majesty, by and with the consent of the House of Lords, and the House of Commons.

The manner of making these Acts of Parliament, I shall reserve for a future Letter, when I explain to you the constitution of Parliaments. At present, I shall notice only the different kinds of Statutes, which are two, *General*, and *Special*.

They are *General* when they affect the whole community; such as statutes imposing taxes; and therefore they are *public*.

They are *Special*, when they affect only

individuals, as an Act of Parliament to change a name, and are therefore *private*.

Our Municipal laws, thus composed of the Common Law, and the Statute Law, have effect and jurisdiction over the kingdom of England including the principality of Wales. For though, by the common law, neither Wales, Scotland, nor Ireland, were subject to their jurisdiction; yet Wales having been annexed to England, and incorporated with it by the 27th of Henry VIII. has become subject to the same laws, with only some immaterial peculiarities. Scotland was united to the Crown of England in 1707, and is governed by its own municipal laws as before, unless specially altered by Act of Parliament. The same may be observed of Ireland, the Isle of Man, Jersey, Guernsey, Alderney, and our adjacent as well as distant Colonies. Our Statute law is no ways binding upon them, but as they are specially mentioned, but leaves them to their own municipal laws, sanctioned and confirmed to them as appendages of the British Empire.

The kingdom of England, which is the immediate subject of the Municipal laws, comprehends Wales and all parts of the sea; the high seas being part of the realm of England, whereon our courts of Admiralty have jurisdiction, though not subject to the common law.

The territory of England is divided into two divisions; *Ecclesiastical* and *Civil*.

The *Ecclesiastical* division consists of two provinces; Canterbury and York. The former includes twenty-one dioceses or bishoprics; York three: each diocese is divided into arch-deaconries, and each arch-deaconry into parishes. A parish is that circuit of ground, which is confided to the care of a parson. There are about 10,000 parishes.

The *Civil* division consists of counties, and each county is divided into hundreds; each hundred into tithings or towns. The word *town* has become a general term, comprehending *cities*, *boroughs*, or *common towns*. A city is a town incorporated, and either is, or has been, the see of a bishop. A borough is a

town, either corporate or not, that sends burgesses to Parliament. Other towns which are neither cities, nor boroughs, but which have the privilege of markets, though some have not, are still towns in Law. These towns originally had but one tithing or parish, but from increase of inhabitants are now divided into several parishes. The hundred has a high constable presiding over it; a parish, a headborough or constable; and a county, a sheriff. There are counties called corporate, which are certain cities, which are counties of themselves, and are governed by their own sheriffs and magistrates, as London, York, Coventry, &c.

I am aware that the foregoing explanations will not afford you much amusement; and that you will be in danger of losing the little relish you may have for so dry a subject, as that of the law. But before you entered the Temple of Justice, it was absolutely necessary that you should have a general view of that glorious edifice, which is the admiration and envy of the world. I have now brought you

to the threshold; and we will examine together those various parts of the interior, which are at once the supports and ornaments of the whole. You must recollect that in every science and pursuit, it is necessary to understand many preliminaries, which in themselves may be of little interest, but without which you would in vain endeavour to obtain success. Had you any pleasure in the French or Latin Grammar, and did they afford you the entertainment which you have since received from Molière and Virgil? certainly not: but they were the instruments to open those scenes of mental amusement, which would otherwise have been closed from your view. Were we to be deterred from any of our pursuits, because they could only be obtained by labour and study, then indeed we should not only be foolish, but wicked; as we should be tacitly arraigning Providence, for not creating us equal to his own perfection. Be not deterred, therefore, because the key of knowledge, is not knowledge itself; but strenuously endeavour so to improve yourself, that you

may be able to use this key to the greatest advantage; and to unlock all those treasures of wisdom and knowledge, to which you are offered the readiest and most uncontrolled access.

Your's, &c.

LETTER IV.

OF THE ABSOLUTE RIGHTS OF INDIVIDUALS.

THE Municipal Law of England, being a Rule of civil conduct, commanding what is *right* and prohibiting what is *wrong*, it follows of course that the primary and principal objects of the law, are *Rights and Wrongs*. I shall therefore, in the following letters, divide the subject into four parts:—

THE RIGHTS OF PERSONS,

AND

THE RIGHTS OF THINGS;

PRIVATE WRONGS, OR CIVIL INJURIES,

AND

PUBLIC WRONGS, OR CRIMES.

The Rights of Persons are of two sorts; *Natural*, or such as the God of Nature hath given us; and *Artificial*, or such as are created by human laws for the purposes of society and government.

The Natural Rights of Persons are also of two sorts; Absolute, or such as belong to particular men as individuals; and *Relative*, or such as are incident to them as members of Society, and standing in various relations to each other.

The ABSOLUTE Rights of Man, considered as a free agent, are denominated the Natural liberty of mankind. This liberty consists in acting without any restraint or control, but such as is imposed upon him by the law of Nature. But when men entered into society, and became united either in one family, or in one government, this uncontrolled liberty in all, became subversive of all order, harmony, and concord; and as every one had the power of doing what he pleased, there was no security in any of the enjoyments of life. Hence it was found necessary for each to resign a portion of his natural liberty, in order to secure

he remainder from violence, and oppression; and thus by submitting to the control of such laws and regulations, as the good of the community required, to receive in return protection and security.

Political Liberty therefore is nothing more, than Natural Liberty, so far restrained by human laws, as is necessary for the advantage of the public; and leaves the subject entire master of his own conduct, except in those points, wherein the public good requires direction and control. This liberty, therefore, being founded in nature and reason, is coeval with all forms of Government. For though in some states we find it overwhelmed and depressed by overbearing tyrants; in others so uxuriant, as to tend to anarchy and rebellion; yet in our free government, however for a time oppressed by tyrannical princes, or exceeding its proper boundaries by the arts of designing demagogues; yet it has always been delivered from its temporary embarrassment, and restored to its proper level, as soon as the dangers which surrounded it, have disappeared.

Whenever, therefore, our civil liberty has been in danger, or actually encroached upon, we find that the principles which first established it, have been asserted in Parliament, and at last recognised by those who were attempting to overturn it. The first recognition of it, was the *Great Charter*, obtained from King John, in the year 1215. This Charter contained very few new grants, but was declaratory of the fundamental laws of England, and was declared part of the law of the land in the time of Edward the First, and by many corroborating statutes passed from time to time, as occasion required. The *Petition of Right* which was a parliamentary declaration of the liberties of the people, received the assent of Charles I. in 1628. Then came the *Habeas Corpus* Act of Charles II; the *Bill of Rights*, delivered by the Lords and Commons to the Prince and Princess of Orange, in 1688; and lastly the *Act of Settlement*, whereby the Crown of the Kingdom was limited to the House of Hanover. These rights, thus defined by these several statutes, were either the remains of Natural

liberty, which were not required to be surrendered for public convenience; or were those civil privileges, which society had engaged to provide, in lieu of the Natural liberties already surrendered.

These Rights may be divided into three principal articles:—

THE RIGHT OF PERSONAL SECURITY,
THE
RIGHT OF PERSONAL LIBERTY,
AND
THE RIGHT OF PRIVATE PROPERTY.

First,—The RIGHT OF PERSONAL SECURITY, consists in the legal enjoyment of *life*, *limbs*, *body*, *health*, and *reputation*.

Life, being the immediate gift of God, is a right inherent in every individual.

Limbs and *Body* are also the gift of the allwise Creator, to enable man to defend himself from external injuries. Whatever he does therefore to save himself from external injuries, is looked upon as done in his own defence, and

if death ensues, it is murder in the aggressor, and justifiable homicide in himself. So far indeed is this natural right of self defence recognised by the law, that if under the fear of the loss of life, or limbs, or of bodily harm, a man is induced to execute a deed, or do any other legal act, such acquiescence so extorted, is not considered obligatory.

Health, is a right to be protected from whatever may prejudice or wrong it; and, lastly,

Reputation, or the good name of every man, is a right to be secured from the arts of detraction and slander; since, without these, it is impossible to have the full enjoyment of any other rights.

Secondly,—THE RIGHT OF PERSONAL LIBERTY. This consists in the power of changing our abode, or moving one's person to whatsoever place our inclination may direct, without imprisonment or restraint, unless by due course of law: These rights are strictly natural, nor have the laws abridged them without sufficient

cause. No man can be imprisoned at the mere direction of a magistrate, without the express permission of the laws. For besides the Great Charter, and the other Acts before mentioned, passed for the preservation of this Natural right, the *Habeas Corpus Act* (so called from its being the two first words of the writ issued by the Courts of King's Bench, or Common Pleas, directing the Sheriff *to have the body* of the prisoner before them on a certain day) was expressly passed to secure the liberty of the Subject, and to prevent his being detained in custody without giving him an opportunity to arraign the justice of his detention. If therefore at any time a man is deprived of his personal liberty in an illegal and arbitrary manner, he may apply for this writ in order to his being brought before the Judges, who are bound to determine whether the cause of his imprisonment be legal, and "*thereupon do, as Justice shall appertain.*"

In Constantinople, a subject is liable, at the caprice of the Grand Signior, to be imprisoned for life, or for years, to have his head cut off at

a moment's warning, or be sown up in a bag and thrown into the sea. In Russia, an offender against the laws, or against the will of the Emperor, after undergoing the knout, is sent into Siberia, imprisoned for life between impassable mountains covered with eternal snows. In France, previous to the Revolution, *lettres de cachet* were issued at the pleasure of the King to immure within the walls of the Bastile, the victims of public justice or private vengeance; and in most countries, where the liberty of the subject is unprotected by the law, the will of the Supreme Power in the state is the only measure of its existence. But in England, our liberties have always been the birthright of Englishmen; and though occasionally encroached upon by ambitious Princes, yet the words of the Great Charter, which declared that no man shall be imprisoned but "by the judgment of his Peers, and the law of the land," have always regained their ascendancy, after the temporary convulsions which threatened them, have passed away; and have become the rock, on which our liberties have been founded and preserved.

Third,—THE RIGHT OF PROPERTY. This consists in the free use, enjoyment, and disposition of our acquisitions without any control or diminution, except only by *the law of the land*. This Right of Property, is founded in Nature; and though the methods of preserving, or disposing of our own, are entirely derived from society; yet this is one of the many instances where we are called upon to surrender part of our natural rights, that we may more perfectly enjoy the remainder. The law therefore has prescribed certain forms to be observed in the *manner* of alienating property, but has not touched the inherent *right* of doing so. As the right of possession with all its accompaniments, is thus preserved to the subject; so neither can he be dispossessed of this right without due course of law, or his own consent. In the former case, if the good of the public demands the alienation of any ground or building belonging to him, for the purpose of public benefit, as for canals or roads, then the law forces him to acquiesce, at the same time allowing him a fair and just equivalent; not stripping

him in an arbitrary manner, but by giving him a full indemnification. In the latter case, he pays no taxes and demands levied on him for the maintenance and expenses of the State, but to which he has assented through the voice of his Representatives, in the House of Commons; all taxes, loans, gifts, benevolences, or by whatever name they may be called, being illegal, if without the consent of Parliament.

In order that these Rights of Personal Security, Liberty, and Property, may be secured inviolate; the Constitution has provided other auxiliary Rights to protect and maintain them in their full and perfect enjoyment:—

The Powers and Privileges of Parliament.

The Limitation of the King's Prerogative.

The different Courts of Justice for redress of injuries.

The Right of petitioning the King, and either House of Parliament for redress of grievances; and

The Right of wearing arms for defence.

In these several articles, consist the *Rights*, or, as they are emphatically called, the *Liberties*, of Englishmen. They are our birthright to enjoy entire, unless where the laws of our country have laid them under necessary restraints; restraints in themselves so moderate, and so gentle, that they have increased and strengthened rather than fettered or diminished them; and by protecting them from the licentiousness of those who consider all laws as inimical to Freedom, have rendered them equally favorable to the stability of the Throne, and to the happiness of the People.

Your's, &c.

LETTER V.

RIGHTS OF PERSONS.

OF THE PARLIAMENT.

THE RELATIVE rights of persons, are those which are incident to them, as members of society, and standing in various relations to each other.

The most public Relation, by which men are connected together, is that of government; as magistrates and people. In all despotic governments, the right of making and enforcing laws, is vested in one and the same person. Wherever this is the case, there can be no public liberty; because whatever such person wills to do, he has the power of executing. In England, the Supreme Power is divided into two branches; the *Legislative*, or the Parliament, consisting of King, Lords, and

Commons; and the *Executive*, consisting of the King alone.

THE PARLIAMENT, or General Council of the Nation, is coeval with the kingdom itself. In early times indeed its powers and importance had not arrived to the extent, which it has now attained. But as early as in the time of the Heptarchy, we find this General Council held under the name of the Wittenagemote, or assembly of wise men. Such a meeting was recognised by Alfred, and by our succeeding Saxon, Danish, and Norman monarchs. How these general councils were then composed, it is impossible at present to determine; but it is agreed, that the Constitution of Parliament, as it now stands, was marked in the great Charter of King John A. D. 1215; and it has subsisted in fact from the 49th of Henry III. A. D. 1266; there being extant writs of that date, to summon knights, citizens, and burgesses.

First,—The time and manner of its assembling.

It is a branch of the Royal Prerogative, that

no Parliament can be convened by its own authority, or by the authority of any, except the King alone. It is therefore summoned by the King's writ issued out of Chancery, at least forty days before it begins to sit. By several Acts of Parliament it is declared to be one of the rights of the people, that Parliaments ought to be held *frequently:* and this indefinite term is reduced to a certainty, by the 6th of William and Mary, which enacts, that a new Parliament shall be called within three years after the dissolution of the old one. But as many particular and necessary Acts are now passed for one year only, and which must be renewed annually, this necessity has virtually repealed these Acts, and Parliament must be summoned every year.

Second,—The constituent parts of Parliament.

These are the King, and three Estates of the Realm; the Lords Spiritual, the Lords Temporal (who with the King sit in one House), and the Commons, who sit by themselves. The King is thus made a branch of the legislative power,

in order to preserve the balance of the Constitution. For if the legislative power was entirely in the hands of the two Houses of Parliament, they would continually be encroaching upon the rights of the Executive. To hinder this, the King is himself a part of Parliament; and that share, which the Constitution has wisely placed in his hands, consists in the power of *rejecting*, rather than in *resolving*. The King therefore cannot begin any alteration in the established law, but may approve, or disapprove of the alterations suggested. Neither can the two Houses of Parliament alter the existing laws, or enact new ones, without the consent of the Supreme Power. Each is thus a check upon the other, it being necessary that all laws should receive the consent of each of the branches of Parliament.

The *Spiritual* Lords are the two Archbishops, the twenty-four English, and four Irish Bishops. They hold, or are supposed to hold, ancient Baronies under the King, which being unalienable from their dignities, give them their seats as Peers of Parliament.

The *Temporal* Lords, consist of all the Peers of the realm, by whatsoever title distinguished: as Dukes, Marquisses, Earls, and Barons. Some of these sit by descent, as all ancient Peers; some by creation, as all new made Peers; and some by election, as the sixteen Peers for Scotland, and the twenty-eight Peers for Ireland. The number of Peers is indefinite, and may be increased at the will of the Crown.

The *House of Commons* consists of such a number of persons, as have been chosen by the several districts or places, which return Members to Parliament, to represent them in the House of Commons. For however in a small state, the people, in their collective capacity, might be admitted into their share of the legislature without inconvenience; yet, in a large and extensive territory, such popular deliberations would become tumultuous. With us, therefore, the people do that by their representatives, which they cannot perform in person. The proprietors of land elect members for counties; and the mercantile or trading

part elect for cities and boroughs. The number of English representatives is 513; of Irish, 100; of Scotch, 45.

Third,—The Laws and Customs of Parliament.

The Supreme sovereign power in the State being lodged in the King, Lords, and Commons, it follows of course, that as no Act can pass into a law without the consent of all three, so every Act that receives that assent, is absolute and despotic; and that whatever Parliament shall think proper to enact, is binding and uncontrollable. In order, therefore, to prevent those mischiefs that might arise from placing this extensive authority in hands either incapable or improper, certain rules and orders have been adopted by both Houses for their internal regulation. I will briefly enumerate the most important parts of the Constitution of Parliament, without leading you into an intricate and unnecessary detail; intending only to give you a general outline, to be filled up whenever your leisure or curiosity shall induce

you to make further researches.—No man can sit in Parliament unless he be twenty-one years of age.—No Member can sit in either House till he has taken the Oath of Allegiance, Supremacy, and Abjuration.—Aliens also, though naturalized, are incapable of sitting in Parliament; and whatever matter arises concerning either House of Parliament, is to be examined and adjudged in that House to which it relates, according to the laws and usages of Parliament. With respect to the Privileges of Parliament, they are the privileges of speech, and of person from arrest on civil suits, but not in criminal. These in a peer are for life; in a commoner for forty days after the prorogation, and forty more before the first meeting; which in fact is as long as Parliament subsists, it seldom being prorogued for more than eighty days at furthest.

Fourth.—The Laws and Customs relating to the House of Lords in particular.

They are attended in Parliament by the Judges, Serjeants at law, who are King's Counsel, and Masters in Chancery. One Lord

may be proxy for another; but not in committees, or in questions of guilty or not guilty. Each Peer has a right to enter a protest with his reasons, when a vote passes which he disapproves. All Bills which affect the right of Peerage must commence in the House of Lords, and suffer no changes in the House of Commons.

Fifth.—The Laws and Customs relating to the House of Commons.

These relate principally to the raising of taxes, and the election of their own members. All money bills must originate in the House of Commons, though the Lords have the power of rejecting, but not of altering or amending. The true reason of this is, that the Lords, being a hereditary and permanent body, are supposed to be more influenced by the Crown than the temporary and elective body, nominated by the people. In the election of Members of the House of Commons, consists the democratical part of our Constitution; for in a democracy there can be no exercise of sove-

reignty but by suffrage: the exercise of this sovereignty consists in the choice of representatives, and this power is regulated by several salutary provisions, which may be reduced to three heads:—

The Qualification of the Electors,

The Qualification of the Elected,

The Proceedings at Elections.

The Qualification of the Electors:

This, for the election of members for a county, depends upon property, in order to exclude persons, who, having no property of their own, are supposed liable to the influence of those who have. Thus an elector for a county must have a freehold, unincumbered, of the annual value of forty shillings; he must be twenty-one years of age; must not have been convicted of perjury; cannot vote for a freehold given him merely to enable him to vote, but where the interest in the property is still in the grantor: the property in question must have been assessed to the land tax.

The qualification for the electors of members for a city or borough, depends upon the customs and charters of each. It is either by birth, marriage, servitude, or residence. Many populous and flourishing towns, to which writs for returning members are sent, have now fallen into decay, and are either reduced to a few inhabitants; or to ruins, as Old Sarum; and many towns also, formerly of no note, but now of the highest importance in the state, as Birmingham, Leeds, and Manchester, return no Members to Parliament; their size and importance, having arisen since new writs of summons have ceased to be issued.

The Qualification of the Elected.

Some of these qualifications depend upon the customs of Parliament, and some upon certain statutes. Thus they must not be aliens born, nor minors; not one of the twelve judges, nor one of the clergy, nor attainted of treason or felony. No sheriff, mayor, or bailiff of a borough, can be returned for the county, city, or town, over which he presides,

he being the returning officer. No person concerned in the management of taxes, created since 1692, with certain exceptions; nor any person who holds an office of profit under the Crown, created since 1705. Also if any Member accepts any office of profit under the Crown, which existed prior to 1705, his seat becomes vacant, though he is again eligible; thus giving his constituents the option of continuing him their representative. No person having a pension for term of years, or during pleasure; his independence being supposed liable to be influenced by his interests. All members for counties must have freeholds of £.600 per annum, and for boroughs and cities £.300, excepting the eldest sons of Peers, and of qualified persons, and also the members of the two Universities. With these exceptions every subject in the realm, is eligible of common right.

The Proceedings at Elections.

As soon as Parliament is summoned, or during its sitting, when a vacancy occurs, the

Chancellor sends his warrant to the clerk of the Crown, who issues the writ to the Sheriff, who sends his precept to the returning officers of the cities or boroughs within his county, and himself attends the election of the members for the county. In order that all elections may be free and uninfluenced, all soldiers must withdraw from the place where the election is held. All undue influence by rioting, bribery, treating or giving money to particular persons, or to the particular place, makes such election void. When the election is closed, the Sheriff returns the writ to the Crown office; and the members returned by him are the representatives elected, until the House of Commons should decide the contrary.

Sixth,—The method of making Laws :—

Each House of Parliament has a Speaker at its head. The one in the House of Lords, is the Lord Chancellor, who, as a Lord of Parliament, can give his opinion and vote. The other in the House of Commons, is chosen by the House out of its own body, and approved

of by the King, but cannot give an opinion nor vote, unless the votes are equal. In each, the majority binds the whole. The first stage of an Act of Parliament is a Bill brought in, in either House by one of its members; and this must be read three times in each, before it can pass through the House into which it is introduced. It is then read, and passed to the other House, where it undergoes the same forms: and finally receives the assent of the King, either in person, or by his commissioners.

Seventh,—The manner in which Parliament may be *adjourned*, *prorogued*, or *dissolved* :—

An *adjournment* is a continuance of the sitting from day to day, or from week to week, and is the Act of the House itself.

A *prorogation*, is an end of the sitting or session, and is ordered by the Royal authority alone, either in person, by commissioners, or by proclamation.

A *dissolution*, is an end of the Parliament itself, and is effected in the same way as a

prorogation. It may also be effected by the death of the King; but then by an Act passed for that purpose, it may sit for six months after such demise of the Crown, unless sooner dissolved. It may also be effected by its having reached the end of the term, for which by law it can only sit, *viz.* seven years; but it is seldom allowed to reach this term, and is generally dissolved at the end of six years.

Your's, &c.

LETTER VI.

RIGHTS OF PERSONS.

OF THE KING AND HIS TITLE; OF THE KING'S ROYAL FAMILY; OF THE COUNCIL BELONGING TO THE KING; AND OF THE KING'S DUTIES.

OF THE KING, AND HIS TITLE.

THE grand fundamental maxim, upon which the right of succession to the throne of these kingdoms depends, is this: that the Crown is *hereditary*, and this in a manner *peculiar to itself*; but that the right of inheritance may from time to time be *changed* or *limited by Act of Parliament*; under which limitations the Crown still *continues hereditary*.

First,—It is *hereditary* or descendible to the next heir. All regal governments must be hereditary or elective, and had our ancestors chosen to have made our monarchy elective, there is no doubt but they could have done so. But they chose to establish originally a succession by inheritance. And they wisely did so; for if the individuals, who compose the State, could always continue true to first principles, uninfluenced by passion and prejudice, unassailed by corruption, and unawed by violence, then indeed an elective government would be as much to be desired in a kingdom, as in inferior communities. But as elections are too frequently brought about by undue influence, partiality and violence; the chance of choosing the most proper person to fill the throne, would at least be doubtful. Added to this, in disputes respecting the election of the chief magistrate, there would be no superior power to refer to, to settle them, and allay the dissensions between one part of the nation and the other, but civil and intestine war. In order to prevent the periodical bloodshed, which would take place

at every fresh election, an hereditary monarchy has been established in this, and most of the kingdoms on the Continent.

Second,—It is hereditary in a manner *peculiar to itself*; it is descendible to the next heir in the same manner as that in which the common law has pointed out for the succession of landed estates, yet with one or two material exceptions. Instead of descending to all the females, in default of the males, it descends to the eldest female only, as was the case of Queen Mary, who succeeded to the throne by herself, and not in partnership with her sister Elizabeth. It also can descend to the nearest relation of the half blood, as in the instance of Queen Elizabeth; which land cannot.

Third,—The right of inheritance may be *changed or altered* by Act of Parliament. It is unquestionably in the power of the supreme legislative authority of the kingdom, the King, Lords, and Commons, to defeat this hereditary right, as, if this power was not lodged some-

where, the heir-apparent might be a lunatic, idiot, or otherwise incapable of reigning.

Fourth,—However changed or limited, it still *continues hereditary*. Hence in our law, the King, as the Supreme Power in the State, is said never to die; but the moment the *man* is dead, the *Crown* instantly vests in his heir. So that there can be no interval whatever between the demise of the Crown, and the assumption of it by the person, who is either his heir by common law, or to whom it has been limited or transferred by the Act of the Legislature. The instances in which the Parliament has exercised this right are two. The Revolution of 1688, when the throne having been declared vacant on the flight and abdication of King James II., the two Houses of Parliament, which represented all the estates of the people, settled the Crown, first on King William, and Mary his wife, and the survivor of them: and upon their children; and then upon Princess Anne and her children. When, however, towards the end of the reign of the

latter Princess, all hopes of a lineal succession were at end, the Parliament again exerted their authority, by limiting and settling the crown upon the electoral House of Hanover.

OF THE KING'S ROYAL FAMILY.

The first and most considerable branch of the King's Family is the Queen. She is either Queen Regent, Queen Consort, or Queen Dowager.

The Queen *Regent* is she who holds the Crown in her own right, and has the same prerogatives and rights as the King.

The Queen *Consort* has peculiar privileges, more extensive, and different from married women. For though still a subject, and in her capacity as wife, obedient to her husband, yet in her public character, she is exempt and distinct from the King. She has power to purchase lands, to convey them, and make leases; she can take a legal grant from her husband, which no other woman can; she can make a will: has separate officers, not only in matters of ceremony, but in law; and in all

legal proceedings she is considered as a single woman. Her person is as sacred as the King's; but if she is charged with treason, she is to be tried by the Peers of Parliament.

The Queen *Dowager* is the widow of the King, and enjoys most of the privileges of a Queen Consort, except that her person is not under the same protection.

The *Prince of Wales*, or heir-apparent to the Crown, has also particular privileges. His person and that of his wife are equally protected as that of the King. He is created Prince of Wales and Earl of Chester; and if the eldest born, is by inheritance Duke of Cornwall. But on the death of a Prince of Wales, though his next brother becomes Prince of Wales and Earl of Chester, yet he is not Duke of Cornwall by inheritance, as he was not the eldest son born.

The *Royal Family* in a general sense means the Protestant descendants of the Princess Sophia of Hanover, to whose issue the Crown was limited by 12th and 13th of William and Mary. In a more confined sense, those who

are immediately related to the reigning Prince. They take precedence above all Dukes, and all officers of state, according to their degree of kindred to the King. They cannot marry without complying with the regulations of the Royal Marriage Act, passed in the 12th year of George III. to prevent their intermarrying with a subject.

OF THE COUNCILS OF THE KING.

These are, the high Court of Parliament.—The Peers of the realm, who are by birth hereditary Counsellors of the King, and may be called together by the King to impart advice in all matters of importance. It is also the right of each particular Peer, to demand an audience of the King, and lay before him such matters as he shall judge important to the public good.—The Judges for law matters.—The Privy Council. This is constituted of such men, as the King wills to be members of it. They attend only when summoned for any particular purpose specified. His Majesty's Ministers are always of this body, and are

summoned also for each meeting to consult on the important matters of state, and the arduous discharge of the executive authority. Privy Counsellors are made by the King's authority alone, and upon taking certain oaths, they are Privy Counsellors during the life of the King. Their duty is to advise the King to the best of their power; to advise him for his honour; and the good of the public. To keep the King's council secret; to help and strengthen the execution of what shall be resolved; to withstand those who would attempt the contrary; and, lastly, to do every thing which a good counsellor ought to do. The *power* of the Privy Council is to inquire into all offences against the Government, and to commit the offenders to safe custody to take their trial. It is also a court of justice in particular cases, to hear appeals before the King in council, when there must at least be three counsellors present. The *privileges* of the Privy Council consist principally in the security which the law has given them for the protection of their persons. The *dissolution* of the council depends upon the

King's pleasure, as he may discharge any particular member, or the whole of them, whenever he thinks proper.

OF THE KING'S DUTIES.

The principal duty of the King, is to govern his people according to law, being bound by his oath at his Coronation "to govern according to law, to execute judgment in mercy, and to maintain the established religion." This oath is solemnly and clearly pointing out those duties, which were equally binding upon him on his accession to the throne by the fundamental principles of the monarchy.

Your's, &c.

LETTER VII.

RIGHTS OF PERSONS.

OF THE KING'S PREROGATIVE.

One of the principal bulwarks of the British Constitution, is the limitation of the King's prerogative, by bounds so certain and notorious, that it is impossible he can ever exceed them, without the consent of the people, or without a violation of that compact, which originally, as well as by his Coronation oath, he has solemnly undertaken to observe. This limitation of the royal authority was a first and essential principle of all the Gothic systems of government established in Europe; and however from violence, or any other cause, it has been overborne in many of the kingdoms of the

Continent: and although with us, it has sometimes been encroached upon by wicked or ambitious Rulers; yet the restrictions of the King's Prerogative, were always a part of that Constitution, so peculiarly adapted to uphold the power of the King, and the liberties of the people.

The word Prerogative, signifies that special pre-eminence, which the King *alone* has above all other persons, in right of his regal dignity. For if a Prerogative could be held in common with a subject, it would cease to be a particular exception any longer. It is therefore that law in the case of the King, which is law in no case of the subject.

The Prerogatives of the King may be divided into three:—His *Royal Dignity*; His *Royal Authority*; and His *Royal Income*.

OF THE ROYAL DIGNITY.

Under every monarchical Government, the King ought to be distinguished from his subjects not only by outward pomp and decorations of Majesty, but by ascribing to him certain quali-

ties, as inherent in his regal capacity ; he ought to be looked upon as a superior being, and to receive that awful respect, which may enable him with greater ease to carry on the affairs of Government.

First,—The law ascribes to him the attribute of *Sovereignty*, or pre-eminence, as the Supreme head of the realm in matters both civil and ecclesiastical, inferior to no man upon earth, dependent on, and accountable to no man. Hence it follows, that no action can be brought against the King in civil matters, because no court can have jurisdiction over him. Hence also his person is sacred, because no jurisdiction has power to try him in a criminal way. Should, however, his subjects be aggrieved either by private injuries or public oppressions, the law has provided a remedy in both cases. In the former, they may petition the King in his Court of Chancery, where his Chancellor will administer right, as a matter of grace. In the latter, as the King cannot misuse his power without the advice of

evil counsellors, and the assistance of wicked ministers, the Constitution has provided, by means of indictments and impeachments, a punishment for those of his servants, who shall dare to assist the Crown in contradiction to the laws of the land. Hence the King is said to *do no wrong* himself, because it would be absurd to call that wrong, where there was no possible redress; and therefore as he cannot be punished for any wrong, his ministers and advisers are made responsible for him.

Second,—The law attributes to him in his political capacity, absolute *perfection*. For he is supposed not only incapable of *doing* wrong, but of *thinking* wrong. By which is to be understood, that however the Crown might do any thing prejudicial to the Commonwealth, or to a private person, yet the law supposes that he never meant to do any improper thing, but was deceived, and upon that ground, the Act is declared void. In addition to this, the law has determined that in the King there can be no negligence, and therefore no delay will

bar his right. He cannot be a minor or under age, and therefore all his assents to Acts of Parliament are good, though he has not attained the legal full age of manhood. Wherever the heir-apparent has been very young, a Guardian, Protector, or Regent, has been appointed for a limited time; which provision demonstrates the truth of the maxim, that in the King there can be no legal minority, and thereupon has no legal Guardian.

Third,—A third attribute of the Royal Majesty, is his *perpetuity*. The royal dignity of King is instantly, on the death of the reigning Prince, vested in his successor. This is emphatically called the *demise* of the Crown, which signifies a transfer of property from one to another.

OF THE ROYAL AUTHORITY.

In addition to these peculiar attributes of Majesty the King is also invested with many Prerogatives in which exist the Executive part of the Government. These respect the nation's

intercourse with foreign nations, and its own domestic government and civil polity.

Respecting our Intercourse with Foreign Nations.

First,—The King, as representative of his people, has the sole power of sending Embassadors to foreign states, and receiving Embassadors at home. These Embassadors being representatives of the Supreme Power of the State from which they are sent, have various privileges attached to their office, as long as they hold it. Such as protection for themselves and servants from arrests; and though in criminal cases, instances may be met with in our history where their office afforded them no protection from the penalty of the law; as in the case of the Portuguese Embassador, in the time of Oliver Cromwell, who was hanged for murder; yet it seems to be consonant to the true spirit of the laws of nations, to preserve their inviolability, and to call upon their own laws to punish them on their recal.

Second,—It is the King's Prerogative to make treaties, leagues, and alliances with foreign states. Whatever contracts he engages in, no other power in the kingdom can legally delay, resist, or annul. But, lest this power should be abused, our Constitution has opposed a check by Parliamentary impeachment for the punishment of such ministers who advised them.

Third,—He has the sole prerogative of making war and peace. Whatever hostilities are committed by private citizens, they do not affect the state, unless the state by countenancing and encouraging them, makes itself a partner to them. It is necessary, therefore, that War and Peace should be proclaimed by the King's authority, that all parts of the contending nations may be bound by it, Besides the check of Parliamentary impeachment in beginning, conducting, or continuing a war, there is another of still greater importance,—the power of the House of Commons of refusing the pecuniary supplies to carry it on.

Fourth,—The King has the power of granting letters of marque and reprisals, which are a part of the preceding power, and are merely synonymous to that of proclaiming war. They are meant as a speedy commencement of hostilities, to prevent the losses, which individuals might sustain from the enemy in the interval between the aggression on one side, and the proclamation of war on the other.

Fifth,—The King has the power of granting letters of safe-conduct. No individual of a nation, at war with another, can enter into each other's territory, without the danger of being seized, unless he has letters of safe-conduct. Passports under the King's sign manual, or licenses from his Embassadors abroad, are now more usually obtained.

Respecting our domestic Government, or civil Polity.

First,—It is the constituent part of the Supreme Legislative Power, to have the Prerogative of rejecting such Bills, which the Par-

liament shall present, and which the King shall judge improper.

Second,—The King is the first in military command, and has the sole power of raising and regulating the Fleets and Armies. This power includes the direction of all fortified places, of all Sea-ports, and Havens, Beacons and Light-houses; of prohibiting the exportation of Arms and Ammunition, and of issuing a Writ out of Chancery, to prevent any of his subjects from leaving his kingdom. This is now generally done by issuing a Proclamation, laying an embargo on all Shipping at any particular port or place; the writ to prevent any person from leaving the kingdom, being now generally considered as the first process out of Chancery in an action, similar to a Writ of Arrest in Civil causes.

Third,—He is the Fountain of Justice. That is, he is not the author or original, but the dispenser of it according to the laws. He does not sit in person, but delegates his autho-

rity to the Judges of the land, and other subordinate Magistrates. In all Criminal Proceedings he is considered the Prosecutor; as all offences however directly against individuals, are indirectly against the King's Peace, Crown, and Dignity.

Fourth,—The King is also the Fountain of Honour, Office, and Privilege; not as the dispenser only, but as the author of them, as he may create titles, honours, and privileges, on whom, and when, he pleases.

Fifth,—He is the Arbiter of Commerce. Not only of Foreign Commerce in conjunction with Parliament, but in Domestic Commerce, such as the establishment of Marts, Markets, and Fairs; the regulation of Weights and Measures; of the Coining of Money; and of the Materials of which it shall be made; and of the Value and Stamp it shall bear.

Sixth,—He is the Supreme Head of the Church; and in virtue of his authority convenes

or dissolves all Ecclesiastical Synods and Convocations. He has the sole right of nominating Bishops, and other Ecclesiastical Dignitaries; and to him in Chancery an appeal lies in all Ecclesiastical causes.

Your's, &c.

LETTER VIII.

RIGHTS OF PERSONS.

OF THE KING'S REVENUE.

HAVING, in my last Letter, explained to you those branches of the King's Prerogative, which contribute to his Royal Dignity, and to the Executive Power of the government; I now proceed to those Prerogatives, which regard his *Revenue*, and which the British Constitution has vested in his person, in order to support that dignity and power. This Revenue is either *ordinary* or *extraordinary*. The former is that which has subsisted in the Crown from time immemorial. The latter is that which has been granted by Parliament by way of purchase for such Hereditary Revenues as they took in

exchange, or granted in addition, in order to support the dignity of the Throne, and the expenses of the State.

THE ORDINARY REVENUE.

This in many cases is merely nominal; and I shall therefore very cursorily enumerate it, and then proceed in my next letter to the second Branch of the King's Revenue, by far the most extensive and important.

First,—The custody and enjoyment of the *temporalties* of Bishopricks, when vacant. This was formerly a source of wealth to the Sovereign, who kept the appointment vacant, in order to obtain the Revenues. This, however, is now merely nominal, as, when the Bishop is consecrated and confirmed, the temporalties are always restored to him.

Second,—The Right of sending one of the King's Chaplains to be maintained by the Bishop, till he receives a benefice. This has fallen into disuse, but is probably the origin of

the right which the Crown possesses, of presenting to the living, vacated by the Bishop on his being elevated to that Dignity.

Third,—A Right to *Tithes* in extra-parochial places ; this exists no longer.

Fourth,—A Right to the *first fruits*, or to one year's profits ; and to the tenths, or to a tenth of the annual profits of all Spiritual Preferments. This tax was paid by the Clergy to the Pope during the time that the Roman Catholic Religion was the religion of the land, until the beginning of the Reformation in the time of Henry VIII. when our King being the Supreme Head of the Church, received the first fruits and tenths in that character. Many alterations in the law were enacted to exempt livings under a certain value from paying this tax ; till at last by a statute of Queen Anne, all the first fruits and tenths, were given up by the Crown, and appropriated as a fund, to increase the poor livings of the Clergy, and is generally known by the name of Queen Anne's bounty.

Fifth,—The profits of the *Demesne Lands* of the Crown. These were originally very great; but are now almost nothing, being granted away to private individuals.

Sixth,—The Profits arising from *Military Tenures*, such as the right of having Provisions and other necessaries at an appraised valuation; of forcibly using the carriages and horses of the subject whenever the King wanted them. All these rights are now abolished, and an equivalent settled on the Crown in lieu of them.

Seventh,—The Profits arising from *Wine Licenses*; also abolished.

Eighth,—The Profits arising from *Fines and Amercements* in the King's Courts of Justice, and certain fees in a variety of legal matters. These are granted to private individuals, or appropriated to particular uses.

Ninth,—The Profits arising from the *King's Forests*: chiefly consisting of fines, levied on

offenders against the forest laws. These are now abolished.

Tenth,—The Right to *Royal Fish*, such as Whale and Sturgeon, caught or thrown upon the coast; a very ancient, though now merely a nominal Prerogative.

Eleventh,—The Right of Property in *Shipwrecks*. This right is supposed to be for the purpose of protecting such property for the legal owner; for by the law, the Sheriff is bound to secure it from pillage, and if not owned for a year and a day, it then belongs to the King. This rarely happens, as the owner generally claims it within that time. Many statutes have been since enacted to protect property from being plundered, in consequence of shipwreck.

Twelfth,—The Right to *Mines*; this has its origin from the King's Prerogative of coining money, as affording him materials for that purpose. It extends only to Silver and Gold.

Thirteenth,—Treasure trove, or the right of all Treasure hidden *in* the earth, unless the original owner claims it. All Treasure found *on* the earth belongs to the finder, till the owner also claims it. And the reason of this distinction is this; Treasure hidden *in* the earth is not supposed to be abandoned; therefore the King takes it for safe custody till the owner is found; whereas all Treasure found *on* the earth is either lost, or entirely abandoned, in which case the fortunate finder may retain it as his property, till claimed by the owner of it.

Fourteenth,—Waifs, or goods stolen, *waived* or thrown away by the thief in his flight. These belong to the King, till the owner claims them.

Fifteenth,—Estrays; or such animals as are found wandering or straying about. These belong now to the Lords of the Manors, where they are found.

Sixteenth,—Forfeitures of Lands and Goods for offences. The reason of this is, that as property is originally derived from Society, if any Member transgresses those laws, and that contract which is supposed to have been entered into on the formation of civil Society; it is just that his property should revert to the original fund from which he received it. One species of these forfeitures, however, does not result from crime, though frequently from negligence or misfortune. As when a person is killed by the negligent or accidental conduct of another: in such case the instrument or immediate cause of the death of the person is forfeited to the King, to be used for pious purposes, and it is thence called a *Deodand*, or thing *given* to the service of *God*.

Seventeenth,—Escheats of lands; which take place when no heirs are found to succeed to an inheritance. This is on the same principle as forfeitures for offences, the King being considered in law, as the original proprietor of all the lands in the kingdom.

Eighteenth,—The custody of Idiots and Lunatics. This is under the care and management of the Lord Chancellor, not as Chancellor, but under the special authority of the King, who might delegate the authority to any person he pleases. Thus upon every change of the great Seal a special authority is given to the Chancellor under the King's sign manual.

These are the *ordinary* Revenues of the Crown, which, though formerly of importance, and might have been increased to a formidable extent, yet owing to improvident management, and other unfortunate causes, are sunk to nothing; being almost all of them alienated, lost, or disused: to make up therefore this deficiency, and to enable the King to support his dignity, and to carry on the affairs of government, a Revenue is granted to him by the Commons of Great Britain in Parliament assembled, which will be the subject of my next Letter.

Your's, &c.

LETTER IX.

RIGHTS OF PERSONS.

OF THE KING'S REVENUE.

THE EXTRAORDINARY REVENUE of the Crown consists of taxes, imposed by the Commons in Parliament assembled, and which, having received the assent of the House of Lords and the King, constitute those supplies which are raised for the expenses of the State. These supplies are either *annual* or *perpetual.*

The *annual* taxes are those upon Land and Malt.

First,—The Land Tax has superseded all the ancient methods of rating Property, and Persons in respect of Property. This

formerly was effected by persons paying a certain proportion of their goods to the use of the King. The money thus raised, were either tenths or fifteenths, subsidies on land, hydage, scutage, or talliage, which were different names for the sums of money, raised on persons holding by different tenures, and were all certain and ascertained proportions of property, due from each person towards defraying the expenses of Government. All these, however, were entirely incorporated about the year 1693, into one general tax, called the Land Tax, and which has continued to the present time an annual charge on the subject. Its amount is four shillings in the pound on all lands in the kingdom, payable to Commissioners annually appointed to receive it.

Second, — The other annual tax is the Malt Tax, which has been raised by Parliament since 1697, by imposing a duty on every bushel of Malt, and also a proportionable sum on Cyder and Perry, to

prevent their introduction instead. This is under the management of the Commissioners of Excise, and is, in fact, an annual excise.

The *Perpetual Taxes* are

First,—The *Customs*, or duties payable on Merchandise imported and exported by authority of Parliament. These taxes, though payable immediately by the Merchants, yet are ultimately paid by the Consumer, for the duties are confounded with the price of the article, and become part of its cost. Hence it is clear that the higher is a duty, the dearer will be the commodity according to its intrinsic value, as all those persons, through whose hands it passes, expect a profit from it: and, therefore, these imposts, if too heavy, will be a cramp and check upon trade, and give rise to smuggling and other illicit practices.

Second,—The *Excise* Duty. As the Customs are a tax upon the Merchant who imports, so this is an inland imposition on the consumption of the commodity, paid some-

times on its consumption, and sometimes on the retail trade of it. It is impossible to enumerate all the articles which are liable to the Excise Duty. It was first established in 1693, and from a few articles, that were at first subject to it, the list has increased to such an extent, that it has included almost all the luxuries, and most of the necessaries of life.

Third,—The *Salt Duty*.—This was originally temporary, but is now, by Act of Parliament, made perpetual.

Fourth,—The *Post Office* Duty, for carriage of letters; a very profitable, and the cheapest of all taxes.

Fifth, — The *Stamp Duty;* which is a duty on all Parchments and Papers, whereon any legal proceedings are written; upon newspapers, licenses, cards, and a long list of other articles.

Sixth,—*The Duty upon Houses and Win-*

dows, and taxes upon an infinity of other articles, known under the general name of Assessed Taxes.

Seventh,—A Duty on Pensions and Offices. —The clear net produce of these taxes, after the charge of collecting and managing them is paid, are appropriated to the expenses of the Government. The first, principal, and greatest charge is the payment of the interest on the National Debt, called the Funds. This debt arose from the impossibility of the Government raising by taxes within the year, such a sum of money as would defray the annual expenses of Government. To remedy this, sums of money were borrowed from individuals for the current service of the State; and in return, Government gave those individuals an acknowledgment, that it owed them the money borrowed; which acknowledgment or security, bore a certain interest, payable half yearly to the holder of it. Such taxes, therefore, as were sufficient to defray this annual interest, were alone imposed upon

the People; by this means converting the principal debt or sum borrowed, into a new species of property, transferable from one person to another, at any time, and in any quantity. This was the foundation of the National Debt; a debt which has arisen from a comparatively trifling sum, to the enormous amount of Eight hundred milllions of pounds sterling; and which is due from the nation at large, to such persons as have lent sums of money for the above purposes; or, to such as having bought the securities, stand in the same situation and are entitled to the annual interest. As long as these securities, or national promissory notes, are transferable, and Government pay the interest, (for the principal sum only exists on paper,) so long will the National Credit be maintained; and, consequently the Funds, which are supported only on public faith and parliamentary security, will rise or fall accordingly.

The next expense charged on these taxes, are to defray the King's Civil List, which are those expenses that relate in any shape to

civil Government. Such as the expenses of the Household, salaries of the Judges, all salaries to Officers of State, and to the King's Servants, &c. &c.

The remainder of the produce of the taxes are applied to the different expenses of the nation in carrying on the Government. The surplus beyond the charges of the State, is vested in a Fund called the *Sinking Fund*, because some of those securities, which Government had given for money borrowed, are bought with it, and by the Nation's thus repaying some of its debt, the quantity of what is left is *sunk* or diminished: but, as money is often borrowed, and instead of being paid off, is not unfrequently added to the Funds, the National Debt has still increased, notwithstanding that large securities have been cancelled by the Sinking Fund.

Your's, &c.

LETTER X.

RIGHTS OF PERSONS.

OF SUBORDINATE MAGISTRATES.

In treating of the Powers and Duties of the Subordinate Magistrates of the State, I shall not now inquire into the power and authority of the Lord Chancellor or the Judges, because they will be noticed when I explain to you the nature of the Criminal Law of the Land; nor shall I enter into a disquisition respecting the rights and duties of Mayors and Aldermen, as these are often rights depending on the constitution of their respective Charters. But, I shall consider those Magistrates, who are general throughout the kingdom; such as Sheriffs, Coroners, Justices of Peace, Constables, Surveyors of the Highways, and Overseers of the Poor. Their Antiquity and Origin, their

Appointment and Removal, and their Rights and Duties, will be the subject of this Letter.

Sheriffs.

The office of Sheriff is of great antiquity, being the deputy of the Earl, who formerly had the entire care of the County, and conducted all the King's business in it. Now, the Earl's office is only nominal, and in the name of the Sheriff alone; and by his authority, every civil process is conducted. He is appointed by the King in Council; and is one of three names proposed to the King for his nomination, which have been previously selected by the Judges, Chancellor of the Exchequer, and some of the Privy Council, on a day annually appointed for that purpose. Sheriffs continue in office for one year only, or until the appointment of their successor; and, they cannot serve the office a second time within three years of their first appointment, if there be others sufficient within the county. A Sheriff now never fills the office twice; it being a duty attended by great expense and trouble.

In his *judicial* capacity, he is head of the County Court, in which causes are tried, to recover a certain limited value. This he does by deputy. He returns the Members for the County, Coroners, and Verderors, and decides the qualification of voters.

As Keeper of the King's Peace, he is the first in rank in the County, excepting the Lord Lieutenant, who is head of the Military Power. He has all the powers of a Justice of the Peace in apprehending and committing for offences against the King's Peace. But, if himself a Justice of the Peace, he cannot, during the continuance of his office as Sheriff, act in criminal cases, or in the ordinary capacity of a Magistrate. He must defend his county against all the King's enemies; and, for this purpose, may summon all the people in the county, under the degree of a Peer, to attend him; and, every person so summoned, is bound to obey. This is called the *Power of the County*, or *Posse comitatûs*.

In his *ministerial* capacity, he executes all processes issuing out of the King's Courts of

Justice. In all causes he serves the writ, he arrests, and takes bail; summons the Jury, and sees that the Judgment of the Court is carried into execution. In criminal matters, he arrests and imprisons, returns the Jury, has the custody of the prisoner, and executes the sentence of the Court.

As the King's Bailiff, it is his business to preserve the rights of the King within his County or Bailiwick.

Under the Sheriff are many inferior officers, as Under Sheriff, Bailiffs, and Gaolers.

The *Under Sheriff* generally performs all the duties of the Sheriff, except those of Dignity and Parade, which the Sheriff executes himself.

The *Bailiffs* or Sheriff's Officers, are either Bailiffs of Hundreds or Special Bailiffs. Bailiffs of Hundreds, in general, summon the Juries, attend the Judges, and Justices at Sessions. The Special Bailiffs execute the writs, and make the arrests and executions.

Gaolers are the Servants also of the Sheriff,

and though appointed by him, are paid by the County. Their business is to keep in safe custody all Persons committed to them by lawful warrant. The Sheriff is answerable for their escape, and therefore, the Gaoler always gives bond to the Sheriff for the due execution of his duty.

Coroners.

There are particular Coroners for every County, generally four, and sometimes six. They are chosen for life, by the Freeholders in the County Court, and may be removed by holding the offices of Sheriff or Verderor, which are incompatible with their duty as Coroners. The duty of a Coroner is chiefly *judicial;* and consists in inquiring into the circumstances of the death of any person who has been slain, or killed accidentally. A Jury is summoned to view the body, and return such verdict as shall appear right from the evidence of the manner of his death. If a verdict of Murder or Manslaughter is recorded, he is bound to commit the accused to

take his trial. In his *ministerial* capacity, he is only the Sheriff's substitute, when the Sheriff, through personal interest, cannot act. On this ground it is, that a writ of arrest, issued against the Sheriff for debt, is served by the Coroner.

Justices of the Peace.

The Lord Chancellor, the Judges, the Sheriff, and many persons from their office, are general Conservators of the Peace, throughout the Kingdom. The Justices of Peace, by the Special Commission of the King, are those Gentlemen in a County, whose names are included in the Commission, and must have a qualification of the annual value of £.100, to enable them to act. Their office being conferred by the King, so it is determinable at his pleasure: and, it may be so by the demise of the Crown, or six months after, by express writ under the Great Seal, or by a new commission, which annuls the old one. This office is to preserve the King's Peace, by committing for a breach of it; in taking securities of the

Peace, or in apprehending, by his warrant, felons or other criminals. Two or more Justices may hear and determine felonies at the Sessions.

Constables

Are of two sorts, High Constables, and Petty Constables. The former are appointed at the Court Leets of the Hundred, to which they are appointed. The latter are inferior officers in every town and parish, and are appointed by the Justices. Their general duty is to keep the King's Peace, and to execute the warrants of the Justices.

Surveyors of the Highways.

All Parishes are bound, by Common Law, to keep their roads in good repair. The Surveyors of these roads are nominated by the respective Parishes, and appointed by the Justices; and their duty is to superintend the care of the roads, employ persons to work upon them, remove obstructions and nuisances, and collect the rates of the Parish for defraying the expenses.

The Overseers of the Poor

Are nominated by the Parish in Vestry assembled, and are approved by the Magistrates. Their office or duty is to collect the rate, assessed upon the Inhabitants of the Parish, for the relief of the Poor, and to relieve with it all those who are proper objects for relief and assistance. It is impossible and quite unnecessary to explain to you the very intricate laws relating to the Poor, and the various ways by which a Pauper becomes chargeable to any particular parish in preference to any other. I shall only add, that as long as any person *resides* in any particular parish, and wants relief, that parish is bound by law to support him; but, if such person, though he resides in one parish, yet shall, by one of the various means which the law has pointed out, have become a parishioner of another parish; then, the Overseers of the Poor in the parish where he resides, may take him before two Justices of the Peace, who may remove him to his own proper parish or place of settlement; and there he must remain, to be supported and

relieved according to the exigencies of his case. If the justices have mistaken the law, or through concealment of facts, have removed him to the wrong parish, the Sessions, on an appeal to them, will disannul the order of the justices, and the pauper must be again removed to the right parish.

I am, &c.

LETTER XI.

RIGHTS OF PERSONS.

OF THE PEOPLE.

THE most obvious division of the People is into Subjects, who, being born in England, owe a Natural Allegiance to the King; and into persons, who, being born in another country and under another government, yet as long as they continue in England owe the same allegiance to the King as his own subjects. All the people of England owe this allegiance to the King, from the very nature of the compact between them; and, although express words and forms of oaths have been enjoined to remind the subject of this previous duty, yet the obligation is not increased, but only strengthened by them. An *Alien*, therefore, owes a local and temporary allegiance to the King, as long as he resides

in his territory, which ceases as soon as he returns to his own. A *Native* owes a natural and perpetual allegiance, which can only cease with his life. The Rights also of natural born Subjects, and of Aliens, are different, inasmuch as those of the former are perpetual, those of the latter transitory; in the one case not to be destroyed but by their own misconduct, in the other terminable with their residence. Aliens, therefore, have not the same privileges as the King's subjects, as the very circumstance of their allegiance being temporary, and their rights being permanent, would be a contradiction. *A Denizen* is an alien, who, having come into the King's territory to remain, has obtained an Act of Parliament to *naturalize* him, or to give him all the rights of a native Subject.

The People, whether Aliens, Denizens, or Natives, are divisible into two kinds, the Clergy and the Laity.

First,—THE CLERGY.

The Clergy, till the Reformation, had,

under the Papal Supremacy of the Church, many privileges and exemptions, which have been lost or taken from them; for, under the Popish establishment, they grasped at so many more Rights than the law allowed them, that they lost most of those which they had already. Their personal *exemptions* indeed, for the most part, continue. Such as being excused from serving on juries, from serving many of the municipal offices, which the Laity are bound to fill. They have also some *disabilities;* for they cannot sit in the House of Commons, nor engage in any trade or merchandise. There are divers ranks and degrees in the frame and constitution of ecclesiastical Polity, which I shall consider merely as they are noticed by the laws of England, without intermeddling with the Canons and Constitutions by which the Clergy have bound themselves. And in doing so, I shall consider the Method of their Appointment; their Rights and Duties; and, the manner in which their office may cease and determine.

An Arch-bishop is elected by the Chapter

of his Cathedral Church, by virtue of a license from the Crown. The Crown having the power of nominating, accompanied by a letter missive, containing the name of the person to be elected; the election is, in fact, solely in the hands of the King. The Arch-bishop is the head of the Clergy in his diocese. On receiving the King's writ, he calls the Bishops and Clergy of his Province to meet in convocation. All appeals from inferior jurisdictions in his Province are made to him. He presents to all ecclesiastical livings in his province, if not filled within six months after they have become vacant. He has the privilege of crowning the Kings and Queens; and, he can grant dispensations in any case which are not contrary to the Holy Scriptures, and to the laws of God, where the Pope formerly used to grant them.

The Power of *Bishops* consists, principally, in inspecting the manners of the Clergy within their diocese; they have Chancellors, who hold their Courts under them, and other ecclesiastical Officers. They also ordain to Holy

Orders, institute, and direct induction to all ecclesiastical livings within their dioceses. Arch-bishopricks and Bishopricks become void by death and resignation.

A Dean and Chapter are the council of the Bishop, to assist him in affairs of Religion, and celebrate Divine Service in the Bishop's Cathedral. They are elected by license from the King, in the same manner as Bishops, and are themselves the nominal electors of the Bishops. Deaneries and Prebendaries may become void by death, resignation, or by being elected to higher dignities.

An Arch-deacon hath an ecclesiastical jurisdiction, originally derived from the Bishop, but independent of him. He visits the Clergy, and has his separate Court for punishment, by Spiritual Censures.

Rural Deans are very ancient, but almost obsolete officers of the Church; they were originally deputies of the Bishops, to inspect the conduct of the Parochial Clergy, to inquire into, and report the state of the Parochial Churches.

Parsons and Vicars.—A Parson is a Clerk in Orders, who has all the rights of the Church, and is the same as Rector. He holds all the tithes of his living, both great and small. *A Vicar* is a Clerk in Orders, who holds only the small tithes, the great tithes being still in the lands of the lay Impropriator. The method of becoming Parson or Vicar, is the same. They must be in Holy Orders; must be presented to the living, instituted, and inducted. They must be twenty-three years of age before they can be Deacons, and twenty-four before they can be Priests, or in full Orders. Their duties are the same, and are so numerous, that it would be impossible to recite them with accuracy and conciseness. I shall only mention one; *Residence* in their parishes. They are bound to reside in their parsonage, if there is one; if not, in their parish. Some, indeed, are exempted from residence, in cases where they have other duties to attend to of a more urgent nature; as Chaplains to the King, Heads of Houses, and Professors in the two Universities. There are various ways by which

a Clerk in Holy Orders may cease to be a Parson or Vicar; by death, resignation, or deprivation; and, also by taking another Benefice, unless they obtain a dispensation from the Arch-bishop.

A Curate is the least degree in the Church, being an officiating Minister, at a salary, to assist the Parson or Vicar. There are other Ecclesiastical Officers, of whom the Common Law takes notice, such as

Churchwardens, who are the Guardians of the Church, and Representatives of the Body of the Parish. They are appointed by the Minister, and by the Parish. Their office is to repair the Church, and make rates and levies for that purpose. They are also joined with the Overseers in the care and maintenance of the Poor.

Parish Clerks and *Sextons* have freeholds in their offices. They are generally appointed by the Incumbent, and sometimes by the Inhabitants.

Second,—THE LAITY.

The Laity may be divided into the Civil, the Military, and the Maritime.

The Civil State consists of all those, who do not come under the denomination of Clergy, nor Military, nor Maritime, and may be divided into the *Nobility* and *Commonalty*. Of the Nobility, consisting of the Lords Spiritual and Temporal, I have already treated in my Fifth Letter; I shall now only consider them according to their titles of honour.

THE NOBILITY.

A Duke, though inferior in antiquity, yet is the first in rank, being next to the Royal Family. The word is derived from *Dux*, which signifies a leader of Armies.

A Marquess is the next degree of Nobility. His office was formerly to guard the marches or frontiers of the Kingdom, from the word *Marche*, a limit.

An Earl is the most ancient title of Nobility. He was called by the Latins, *Comes*, from being the King's attendant; and was for some time after the Conquest, called *Count*;

but that name was soon dropped, though the shires, over which the Earls anciently presided, are still called *Counties.* The name of Earl is now a mere title, having nothing to do with the Government of the County, which has now entirely devolved on the Earl's Deputy or Sheriff, the *Vice Comes.*

The *Viscount* or Vice Comes, had no office appertaining to it; but proves how high and honourable the dignity of Sheriff was formerly reckoned, his name being thought an honourable title of Nobility.

A Baron is the most general title of Nobility. It is supposed to have been formerly the same with our Lords of Manors, whose Courts are called *Court-Barons* to this day. By degrees, the title was confined only to the greater Barons, or Lords of Parliament, and there were no other Barons among the People but these who were summoned by writ in right of their Baronies: but now it is conferred on divers persons by letters patent, which are the two ways by which Peers are now created.

There are many privileges and incidents

inherent to Peers, exclusive of those attached to them as Members of Parliament. They shall be tried in cases of treason and felony, by their Peers. If a woman noble in her own right, marries a Commoner, she still remains noble; though, if she has become noble by marriage, she loses by a second marriage what she gained by her first: a Peer or Peeress cannot be arrested in civil actions; a Peer gives his judgment not on oath, but upon honour; but when examined as a witness, he must be sworn. A Peer cannot lose his dignity, but by death or attainder.

The Commonalty.

Knights of the Garter; The first personal dignity, after the Nobility, is that of a Knight of the Garter.

Knight Banneret; A dignity which is conferred on one who is knighted by the King on the field of battle. As our Kings never now command their armies in person, this dignity is never conferred.

Baronet, a dignity of Inheritance, created

by letters patent; instituted by James the First, in order to raise a sufficient sum for the reduction of the Province of Ulster. Hence a Baronet bears in addition to his own achievement, the arms of *Ulster*.

Knights of the Bath, so called from the ceremony of bathing the night before their creation.

Knights Bachelors, the most ancient, though the lowest order. This dignity is not hereditary; it is conferred by the King's laying his sword on the intended Knight's shoulder, and telling him to rise, Sir A. B.

These are all the names of Dignity in the Kingdom. The next in rank are *Esquires*, though before them rank Colonels, Serjeants at Law, and Doctors in the three learned professions. No property, however great, gives a man the title of *Esquire*, but it must be attached to his name from his holding an office under the Crown, from his being the eldest son of a Knight, and from various other causes, too numerous to mention. All below an Esquire are called Gentlemen, Tradesmen, Artificers,

and Labourers; though every person now assumes the rank of an Esquire, if he has property to place him above actual labour.

Of the Military State.

This comprehends the whole of the Soldiery, or such persons as are peculiarly appointed among the rest of the people, for the safeguard and defence of the Realm. In former times all the lands in the Kingdom were divided into six thousand two hundred and fifteen portions; and each portion was called a *Knight's Fee*; for which a soldier was bound to attend the King forty days at his own expense. In process of time this personal attendance was compromised for money, till at last, this military part of the Feodal system was abolished. Besides this military force, every man was obliged, according to his estate and degree, to provide a determinate quantity of arms, in order to keep the peace. Whilst these regulations continued in force, Officers were sent into every county to muster and array the inhabitants of every district. These commissioners of

array were superseded by Commissioners of Lieutenancy, which in substance, continued the same powers as the old Commissioners of array. This is now the Militia of the County, under the command of the Lord Lieutenant. The men are raised by ballot, and are bound to attend; and to serve in any part of Great Britain and Ireland. In time of peace, the Militia is only called out for a certain number of days, to be exercised and trained. This is the constitutional security, which the laws have provided for the public peace, and for protecting the realm against external and internal enemies.

But when the Nation is engaged in war, more veteran and more disciplined troops are necessary; and therefore, an army is kept up under the authority of Parliament. In the time of Charles II. this army amounted to 5,000 men; it was increased by James II. to 30,000; and it was therefore made one of the articles of the Bill of Rights, that the raising or keeping a standing army, within the Kingdom, in the time of peace, unless by authority of Parliament, was against law.

It is necessary, however, even in the time of peace, for the safety of the Kingdom, and the defence of the various territories of the Crown, to keep up a standing body of troops under the command of the Crown. This body would be disbanded every year, unless continued by Parliament; and, therefore, an Act is annually passed at the commencement of every Session, called the "*Mutiny Act*," by which these troops are kept in order, and certain regulations are laid down for their Government.

Soldiers have certain privileges after their time of service is expired, as an encouragement and reward for their service. They have provision made for them if wounded or disabled, and may exercise any trade after they have served a certain time, in any town in the Kingdom, notwithstanding any charter or custom to the contrary.

The Maritime State.

The Royal Navy of England has always been its greatest defence and ornament; it is its ancient and natural strength, and has

accordingly, been assiduously cultivated from the earliest ages. I will not enumerate the various Acts which have been passed for its increase from Richard I. to the Navigation Act of Charles II., but I will mention a few of the laws for the supply of the Royal Navy with Seamen, their regulations, and their privileges.

The Supply; The Power of Pressing; which is founded in the Common Law, or immemorial Custom, and has been recognised by our Courts of Justice as part of the law of the land. The apprenticing by Parishes of their Poor to Masters of Merchantmen, with certain privileges; and the holding out great advantages to volunteer seamen, and to foreigners, who, by serving two years, become by such service, naturalized subjects.

Their Regulations are laid down by express laws and articles, so that every offence is set down with its punishment; an advantage which they possess over the military, whose laws are framed from time to time, at the pleasure of the Crown.

Their Privileges are the same as those of the Soldiers, being relieved and supported when disabled or superannuated.

Your's, &c.

LETTER XII.

RIGHTS OF PERSONS.

OF MASTER AND SERVANT;

OF HUSBAND AND WIFE;

OF PARENT AND CHILD;

AND OF GUARDIAN AND WARD.

HAVING explained to you the rights and duties of persons in their *Public* Relations of Magistrates and People: I shall now consider their Rights and Duties in their *Private* relations. The great relations in private life are, That of *Master and Servant*; that of *Husband and Wife*; that of *Parent and Child*; and that of *Guardian and Ward*,

THAT OF MASTER AND SERVANT.

The Law of England abhors, and will not endure, the existence of Slavery within this nation; and therefore it has decided that the moment a Slave lands in England, it will protect him in the enjoyment of his property and person. The service of a slave to his master must have been compulsory, inasmuch as from the very nature of his servitude, he could never have been possessed of the liberty of choosing, whether he would serve or not. It is therefore the chief ingredient, which makes a contract between a Master and Servant binding, that the servant has entered into it of his own free will and choice; determinable by either party, according to the terms of their agreement. There are several sorts of Servants acknowledged by the Laws of England, which, after the contract has been once entered into, has laid down rules and regulations for the reciprocal benefit of both parties.

First,—Menial Servants; so called from

being domestics, *intrà mœnia*; they are generally hired by Masters at a certain sum per annum: which hiring, implies therefore a service for a year, though not expressly mentioned; and either party are at liberty to put an end to the contract by giving a month's warning, or a month's wages.

Second,—Apprentices; from *apprendre*, to learn; these are generally bound for a term of years, by a contract in writing, to serve their masters, who in return maintain them and instruct them in their trade. These contracts can only be put an end to by mutual consent, or by the authority of a Magistrate on sufficient grounds.

Third,—Labourers; these are hired by the day, week, month, or year: and are regulated by certain laws passed for the especial purpose.

The Law of *Settlement*, or the way by which any of the foregoing description of Servants become parishioners of any particular place, in preference to any other, depends on

the terms, on which these several contracts have been entered into, and the manner in which they have been severally broken. I shall not enter into the intricate and voluminous laws on this subject, as it is quite foreign to the object of our correspondence. I shall, therefore, only add, that as long as the relation subsists between the Master and his Servant, so long does obedience on the one hand, and protection on the other exist; and it is on this principle, that the law allows a Master to defend his Servant, or bring an action against any one who beats or maims him: and enjoins the Servant to protect the Master against those who attack him, or his property. It also makes the Master answerable for the acts of his Servant, if what the latter does is done with his Master's consent, either expressed, or implied. The Master is also answerable for the negligence of his Servant, whilst he is on his Master's business; and although this responsibility may often be severe on an innocent man, yet it is founded on the principles of Public Policy, in order to induce Masters to be careful in the

choice of their Servants, and vigilant in watching their conduct whilst in their service.

THAT OF HUSBAND AND WIFE.

The second private relation of Persons is that of Marriage, which includes the reciprocal rights and duties of Husband and Wife.

The *Holiness* of Marriage is entirely left to the Ecclesiastical Courts, who determine on the validity and unlawfulness of a Marriage as a *Sin*; but the *Inconvenience* of Marriage, as a civil contract, is what alone is considered by our Temporal Courts, and as such they notice any breach of those laws which have from time to time been enacted for civil purposes. In this light, the law treats it as it does all other contracts, allowing it to be good and valid, if the parties are *willing*, *are able*, and actually *did contract*, in the proper forms and ceremonies required by law.

First,—How Marriages may be contracted.

Unless the parties are *willing*, it is perfectly clear that no marriage can be contracted; but

they must also be *able:* now in general, all persons are able to contract, unless they labour under some peculiar disabilities at the time of entering into the contract. These disabilities are of two sorts; *Canonical*, or such as have been laid down by the Canon Laws, and which the Ecclesiastical Courts alone take notice of; such as a pre-contract, consanguinity, or affinity. The second sort of Disabilities are those created by the *Municipal* laws, and which have been adopted for the better order and government of Society, and which render all those contracts entered into contrary to them, absolutely void, and of no effect. These are a *Prior Marriage*, still subsisting between one of the parties, and his or her wife or husband; in addition to this second Marriage being void, the party offending is liable to be transported or imprisoned.

Minority. This avoids generally all contracts, and therefore ought to avoid one of the most solemn and important.

Want of Consent of Parents or Guardians; by our laws, persons under age must have consent of their Parents or Guardians to be

married by license. But if they have not such consent, they may have the banns published in Church three times, and then, unless forbidden, their marriage will be legal.

Want of Reason: as Consent is necessary to Marriage, it is impossible that an Idiot or Lunatic can consent to what he cannot understand.

Parties must not only be willing and able, but must actually *contract* themselves in due form. There are various forms laid down by our laws to make a marriage legal. Such as, that the parties must be married by Banns or License; in a Parish Church or Public Chapel; the ceremony must be performed by a Clergyman in Holy Orders. Hence it appears that all marriages are good which are celebrated by a person in Holy Orders—in a Parish Church or Public Chapel—in pursuance of Banns or a License—between single persons—consenting—of sound mind—of the age of twenty-one, or under, with the consent of parents and guardians.

Second,—How Marriages may be dissolved.

This is by death or divorce; the Laws of England allow such divorces only, in cases of adultery, as will allow the parties to marry again, and these divorces can only be obtained by Act of Parliament. The Ecclesiastical Court allows divorces for cruelty or improper conduct on the part of the husband or wife; but these divorces are not a dissolution of the contract, only a suspension of it.

Third,—The legal Effects and Consequences of Marriage.

By Marriage, the husband and wife are one person in law, that is, the very existence of the wife and all her rights are incorporated and consolidated in those of her husband. He is bound to provide for and support her. All her actions, and even her very will, are surrendered to him; so that whatever debts she contracts are the debts of the husband; and her very crimes, excepting treason and murder, committed in his presence, are supposed to be done under his coercion. On this principle she cannot execute any deed during her life, nor devise

by will at her death; all her property belonging to her husband.

The husband, by the old Law, was supposed to be allowed to give his wife moderate chastisement; but this right has been doubted, and is now seldom exercised. Whenever it is, the wife may sue out articles of the peace against her husband, and she may be protected not only against actual ill usage, but even the threats of it.

OF PARENT AND CHILD.

The next and most universal relation in Nature is immediately derived from Marriage; that of *Parent and Child.* Children are of two sorts; *Legitimate*, or those who are born after the marriage of their Father and Mother; and *Illegitimate*, or such as are born without any previous marriage.

LEGITIMATE CHILDREN.

There are several duties from Parents to their Children, and from Children to their Parents, which I shall treat of in succession:

The *Duties of Parents* consist in the maintenance of their Children, which is enjoined by Natural Law as well as enforced by the municipal law of the land. Thus a Father and Mother, Grandfather and Grandmother, are compellable to support their children; and if they run away, leaving them destitute, their goods and chattels may be seized under direction from the Magistrates at Quarter Sessions, and their persons imprisoned. The duty of *protection* is also a natural duty, which is thought to be so inherent in a Parent, that our law does not find it necessary to enforce it, but rather to check it when carried to excess. The last duty of Parents, is the duty of *Education*; which is pointed out by reason, and is by far the most important of any. This is also left to the natural and rational feelings of the Parent, except in one or two instances, respecting Apprentices, and Children sent beyond Seas to be educated in the Popish Religion. The power of Parents over their Children, is derived from their duty. Among the Romans, the father could put his children to death; and

among some nations on the Continent, this power particularly as respects their marriage, extends beyond the age of discretion. With us, the power of a Parent is much more moderate, being only what is necessary to keep his child in order and obedience. This power ceases when the Child is twenty-one years of age; but till then, even after the death of a Parent, his power may be delegated to a Guardian.

The *Duties of Children* are deducible from a principle of Natural justice and retribution; the Parents being entitled to all those attentions and support in their age and infirmities, which the Children received in the time of their own incapacity and weakness. Upon this principle, proceed all the duties of Children to their Parents which are enjoined by positive laws.

ILLEGITIMATE CHILDREN.

Illegitimate Children are those who are born out of lawful wedlock; for the subsequent Marriage of the Parents does not by our law render the Children previously born legitimate. This is consonant to right reason and to jus-

tice; for otherwise the Parents might, by marrying or not, as they pleased, confer rights upon their Children which they had not before: and thus they divest the most important and solemn of obligations of all its holiness, and make it, as a civil contract, subservient to interested and unworthy purposes. No future marriage of Parents, therefore, can make children previously born, legitimate; but the law considers them, as without any legal Parents. It has not, however, deprived them of all the advantages of legitimacy, as it compels their reputed Father to maintain and support them. But having no legal Parents, it is impossible they can *inherit;* and the only rights they can have, are those which they can *acquire.* They have no name, but such as they are generally known by, and belong to the Parish in which they were born; whereas legitimate children belong to the Parish of their Father.

OF GUARDIAN AND WARD.

The relation of Guardian and Ward bears a very near resemblance to that of Parent and

Child. It is either by *nature*, when an estate is left to an infant; in which case the Father is the natural Guardian. Or it is by *testamentary devise*, when a Father appoints a Guardian for his children. The power and reciprocal duties of Guardian and Ward are similar to those of Parent and Child, and are evidently deducible from it. The infant is under the same subjection till the age of twenty-one years, and under the same disabilities in law.

Your's, &c.

LETTER XIII.

RIGHTS OF PERSONS.

OF CORPORATIONS.

I HAVE hitherto considered persons in their natural capacities, and have treated of their rights and duties. But as all personal rights must necessarily expire with the person; and as it would be very inconvenient to be constantly investing persons in succession with the same rights as their predecessors, for public purposes, it has been found necessary, in order to obviate this inconvenience, to invest a number of persons with the same rights, under the appellation of a Corporation. The individual Members, therefore, which compose a corporation, may die in succession, but the corporation itself retains its imaginary and artificial exist-

ence; and by supplying the place of those, who, by death, resignation, or any other cause, no longer continue members of it, it enjoys a legal immortality.

There are two sorts of Corporations, *aggregate*, and *sole*.

Aggregate Corporations are those which are composed of many persons, and by being kept up by a perpetual succession, continue for ever; as the Mayor and Commonalty of a City; the Dean and Chapter of a Cathedral Church.

Sole, as the name implies, consists of one person only; as the King, a Bishop, and some Deans and Prebendaries. A Parson is a sole Corporation, as far as his rights as Parson are concerned; by which means all his rights, by not being *personal*, but merely *clerical*, are preserved entire to his successor.

Aggregate and Sole Corporations may be also *Ecclesiastical* or *Lay*. The former are such as are entirely composed of spiritual persons, as Bishops, Deans, Vicars, &c. &c.

Lay Corporations, are either *civil* or *eleemosynary*. The *civil* are for temporal purposes, and are for the good Government of the State, as in the case of the King; or for the good Government of a town, as in the case of a Mayor and Commonalty.

The *Eleemosynary* are Corporations consisting of Members, who are incorporated for charitable purposes, such as for the care and management of Hospitals, or the maintenance of the Poor.

These are the several species of Corporations. I will now explain to you, how Corporations may be *created;* what are their *Powers, Rights, and Capacities;* how they may be *visited;* and how they may be *dissolved.*

HOW THEY MAY BE CREATED.

By Common Law, which I have already explained to you is immemorial custom, they may have been created; because the law supposes a prior and legal permission had originally been granted. Many Corporations, by immemorial

usage, have no original Charter to prove their rights; by which length of usage it is presumed that they formerly were erected into Corporations by proper authority. This is called a Right by Prescription.

All these methods of creating Corporations, by Common Law, Prescription, or by Act of Parliament, are reducible to the King's letters patent, or Charter of Incorporation. When created, they must have a name, and by that name alone, they exercise all legal Acts.

WHAT ARE THEIR POWERS, RIGHTS, AND CAPACITIES.

These are to have perpetual succession, which is the very object and use of a Corporation—To grant and receive by its corporate name—To purchase lands, and hold them for the benefit of themselves and successors.

An aggregate Corporation, consisting of many persons, have of course many peculiarities attached to it, which do not belong to an individual. It cannot commit a crime, or perform any duty specifically attaching to an indivi-

dual person. But their general duties are those, for which they were created by their founder.

HOW VISITED.

Corporations being composed of individuals subject to human frailties, are liable, as well as persons, to deviate from the end of their institution. In Ecclesiastical Corporations, the Ordinary is the Visitor, and the King being therefore the Head of the Church, as Supreme Ordinary, is the Visitor of all of them. In Lay Corporations, the Founder and his Heirs and Assigns, are the Visitors. And as the King, in the legal sense, is the Founder of all Civil Corporations, inasmuch as it is he who grants letters patent for incorporating them, he is the Visitor; and the Court of King's Bench is the place where he exercises his jurisdiction. There, all disputes are to be decided, and all misbehaviour inquired into and redressed.

HOW THEY MAY BE DISSOLVED.

The individuals who compose a Corporation

may lose their place in it, by acting contrary to the laws of the Society, or to those of the land, or they may resign. But the Corporation itself can only be dissolved, by Act of Parliament—by the death of all the Members—by surrender of its Franchises to the King—or by forfeiture of its Charter through negligence or abuse of its franchises; in which case, the law judges that the body corporate has broken the condition on which it was incorporated, and therefore the incorporation is void.

I have thus detailed to you, in as easy and summary method as I could, every thing necessary for you to know concerning the Rights of Persons. The next and three following Letters will be on the *Rights of Things*; a far more intricate and uninteresting subject for you to enter upon. But as there is a great deal of that particular branch of the laws, necessary to be known by those persons only, who pursue the Study of the Law as a profession, I shall explain to you so much only of them, as will give you a general insight, without burthening your mind or fatiguing it, with difficult and com-

plicated details; and after having detained you with those distinctions of Property, which I consider sufficient for your acquaintance, I shall proceed to the remaining part of my subject.

Your's, &c.

LETTER XIV.

RIGHTS OF THINGS.

OF PROPERTY IN GENERAL.

THE Rights of Persons were the subject of our inquiry in my former Letters; they are such rights and duties, as are annexed to the persons of Men. The Rights of Things are now to be the object of our investigation. They comprise such rights, as a man may acquire to such external things as are unconnected with his person. They are called the Rights of Property, which every one, more or less, are desirous of acquiring for their own enjoyment, and for the advantage of their posterity.

The Earth, and every thing therein, are the general property of mankind, given to him by

the Great Creator of all things for his use and enjoyment. And while the Earth continued thinly peopled, it may be presumed, that all things were in common, and that each person took to his own use, such things as his immediate necessities required.

This *Use* gave a transient property to the person using it, so long as he used it, and no longer; and thus the *Right* of Possession continued for the same time only, as the *Act* of Possession lasted. Thus the ground was in common: but whoever was in the occupation of any determined spot in it for rest, shade, or shelter, acquired a temporary ownership, from which it would have been unjust to have driven him; but which ceased, as soon as he voluntarily quitted it. Thus also a tree might have been in common, but whoever gathered the fruit, acquired the sole property of the fruit, so gathered for his own use and sustenance.

But when mankind increased in numbers, craft, and ambition; it became necessary not only that the *use* of Property for the time being,

but that the Property *itself*, should be exclusively appropriated to the person using it; otherwise endless contention and violence must inevitably ensue, and the right of the strongest would become the only right acknowledged. Besides, as the ingenuity of man supplied himself with various conveniences and comforts; and as he found it necessary to provide habitations for shelter, and clothes for covering, the productions of his labour became identified with himself, and no person could have so full a claim upon the property, which he had in a manner created, as himself.

By this means he became solely entitled to the property which he had either acquired or appropriated, and no person could have a right to it without his consent and compliance.

The Right of Property, therefore, in such things as were the natural productions of the earth, and in such things as were the productions of his own ingenuity and labour, became soon acknowledged and established in the individual possessing it; and every man was allowed to follow his own inclination and taste, in

acquiring possessions, so that they did not interfere with the acquired rights of others.

Some, however, who were not contented with the spontaneous productions of the Earth, sought a more solid refreshment in the flesh of animals, which they obtained by hunting. But from the frequent disappointments attendant on such precarious subsistence, they sought animals of a more tame and docile nature, and collected them into flocks and herds. At first the owners of flocks and herds changed their pasture, as food and water were supplied or withheld; and as the earth was in common, this migration from one part of a country to another, according to the seasons and the convenience of pasturing, could not encroach upon the rights of any individual in particular. But as men multiplied, it became daily more difficult to find out new spots to occupy, without encroaching on previous occupants; and thus, by constantly occupying the same ground, the constant *use* of Property was the same thing as a constant *right* to it; the *right* of Possession, as I have before observed, remaining so

long as the *Act*. But this constant occupation having consumed the fruits of the earth, and its spontaneous produce having been thus destroyed, it became necessary to pursue some regular method of providing a constant substance for support, and it was this necessity, which gave birth to agriculture.

Property in Land, and in its productions, being thus acquired by the first taker, it remains in him, till he does some act to shew that he abandons it; and when he does abandon it, it becomes the property of the next occupant. This might be attended with little inconvenience in the infancy of civil society, but could not exist in the complicated interests and artificial refinements of established governments. What might be useless to one man, might be useful to another; and therefore instead of abandoning property entirely, it was soon found, that by exchange, grant, or conveyance, each man might part with such property as he did not want, for such as he coveted or required. Thus, mutual convenience introduced commercial traffic, and the

reciprocal transfer of property from one person to another.

The most universal way of abandoning property is by the death of the occupant. All property must cease upon death, considering men simply as individuals; but considering them as connected with civil Society, such an abandonment would be productive of endless disturbances, and therefore the universal law of every nation has permitted the individual to bequeath his property to whom he pleases; or in default of such bequest, has directed on whom such property shall devolve, according to the municipal law of the country, of which such individual was a member: And where no bequest has been made, and there is no person whom the law has appointed heir to such Property, then it devolves to the Sovereign.

Wills, therefore, and the Rights of Inheritance, are the two channels through which property descends on the death of the occupant. Every country has different ceremonies, forms, and laws, to regulate the manner of the descent,

and the persons to whom the property shall descend. Neither does any thing vary more than the rights of Inheritance under different national establishments. What the nature of this property is, and how it is transferred from one person to another, will be the subject of the following Letters.

Your's, &c.

LETTER XV.

RIGHTS OF THINGS.

THE SEVERAL SORTS OR KINDS OF THINGS REAL, AND THE TENURES BY WHICH THEY MAY BE HELD.

THE Property in *Things*, as contra-distinguished from *Persons*, are of two kinds: Things *Real*, and Things *Personal*. Things Real, are such as are permanent and irremoveable, as Lands and Tenements; Things Personal, are such as are transitory and moveable, as Money, Goods, and such like, and which may attend the owner's person, wherever he chooses to go.

I. THE SEVERAL SORTS OR KINDS OF THINGS REAL.

Things Real are of two sorts, *Corporeal* and *Incorporeal.* Things *corporeal*, are Lands, Tenements, and Hereditaments (which last word signifies any thing that may be inherited), and Things *incorporeal*, are in the nature of Rights emanating and derived from the land; and therefore not the object of the touch, and cannot be seen nor handled, yet are as much Real Property, as the land itself from which they are derived.

Things Corporeal, or Land, includes every thing on the land, over the land, and under it. So that, where a man grants all his lands to another, he grants all his Woods, Mines, Waters, and Houses, as well as his Fields and Meadows. And as such grant of land comprehends every thing above it, he may erect what buildings he pleases, as high as he pleases, so that such buildings do not project over the land of his neighbours. For as his neighbours have equal rights with himself, such projection would be an encroachment on those rights.

Things Incorporeal, or Rights, emanate from things corporate either real or personal; it is not the things themselves, which may be Lands, Houses, or Jewels, which constitute the property in the Possessor of the Incorporeal Right; but some Right or Advantage collateral to them, as for instance, a Rent issuing out of the land, or an office relating to those Jewels.

Things Incorporeal consist of ten sorts.

Advowsons, or the Right of Presentation to a Living: it is not the possession of the Church and its appendages; for these belong to the Minister, but it is the right of nominating such minister, and giving him a title to such bodily possession, which constitutes the incorporeal property in the Patron.

Tithes are paid for every thing that yields an annual increase, but not for any thing that is the substance of the earth. The Tithes of each parish are allotted to its particular minister, and are due of common Right, unless there be a special exemption.

Common, or Right of Common.

Ways, or the Right of going over another man's ground. This may be grounded on special permission, given to one particular person; or may be by prescription to the inhabitants of a particular hamlet generally.

Offices. In these a man may have an estate, either for life, for a term of years, or during pleasure.

Dignities.

Franchises. These are Royal privileges in the hands of a subject. Such as to have a Manor or Lordship, to have a fair or market, with the Right of taking toll. The number and variety of Franchises are infinite.

Corodies, are a Right of Sustenance, or to receive certain allotments of Victuals and Provision. They are charged on the owner in respect of his inheritance, and in lieu of them, a Pension or Sum of money, is sometimes substituted.

Annuities. These differ from Rent charges, which are things real, inasmuch as a Rent charge is imposed on, and issues out of land;

whereas an annuity is a yearly sum chargeable only on the person who grants it.

Rents, are certain profits issuing out of lands and tenements corporeal, and cannot be charged on an incorporeal property as out of Advowsons, Commons, Offices, or Franchises. They are payable on the Land, from which they issue, except in the case of the King, when payment must be made in his Exchequer, or to his Receiver in the country.

II. THE TENURE BY WHICH THINGS REAL MAY BE HOLDEN.

There is no doubt, but that in the time of our Saxon ancestors, all the Lands in the kingdom were held by their several possessors, free from all incumbrances, and subject to no fines nor impositions. Neither were any rents or services paid or due out of them to any person whatever. But on the Norman Conquest, the Feudal system, which had some time been established in Europe, was introduced by King William, as a necessary consequence of those grants of forfeited lands, which he made

to his Norman followers, and we find that it was not long, before the English nation by public consent adopted and recognised this system. The principle of it was entirely of a military nature, and presumed, that all lands whatever were held of the King, as Superior Lord, and were granted by him to inferior persons, subject to certain services and returns. These again granted portions of such land to persons under them, and were called *feuds*, or *fees*, signifying, in the Northern language, a conditional stipend or reward. The principle of the condition which accompanied these fees, was mutual defence; and as each party in a progressive gradation from the original grantor of the Fees, to the last person benefited by them, were linked together by the mutual obligation of Protection and Defence, nothing could be more admirably adapted for the strength of the whole, than this military system of Feudatories.

Our ancestors who held their Lands originally subject to no Superior Lord, and consequently subject to none of the impositions and

hardships of the Feudal system, consented to this tenure from the Crown as the basis of a Military Discipline; but when the grievances resulting from it, became intolerable, they sought, by force of arms, to obtain redress, and a restoration to their former independence; this produced Magna Carta from King John, justly considered the foundation of our Liberties.

The fundamental maxim of the Feudal tenure, was, that all Lands being originally granted by the Sovereign, were therefore held mediately, or immediately, from the Crown. The Grantor was called the Proprietor or Lord, and he, to whom the land was granted, Feudatory, or Vasal. The Vasal took an oath of fealty, or profession of faith, to the Lord; and upon being invested with the grant, did homage for the Lands. The service, which he was bound to render to his Lord in recompense for the Land he held, was two-fold: to attend his Courts in time of Peace, and attend his person in time of War.

Feud, or Fees, on their first introduction,

were granted to the Vasal at the will of the Lord, who might resume them when he pleased. They were afterwards granted for a term of years; then for life; then to the Vasal and his sons; and lastly to him and his Heirs, by which they descended to all his male descendants.

These were the simple and principal qualities of the genuine and original Feuds, all of a military nature, and in the hands of a military person. But as soon as they became to be considered in the light of a civil establishment, their simplicity was destroyed, and most refined and oppressive consequences were drawn from them. These vary in different countries; and I will now point out to you, in what manner they have affected the Landed Property in England.

All Real Property being held, or supposed to be held of the Crown, and under it, of inferior Lords, in consideration of certain services to be rendered by the tenant, those who held immediately under the King, were called Tenants in Chief, and the same distinction ran through all the different sorts of tenures.

There are four Principal Sorts of Tenures, all of which subsisted till the middle of the seventeenth Century, and three of which exist at this day:—*Knight Service*; *Socage*; *Common Copyholds*, and *Base Copyholds*.

KNIGHT SERVICE.

To make a tenure by Knight Service, land consisting of twelve hundred Acres, called a Knight's Fee, was granted by the Sovereign; and the return or rent, which the grantee of the land paid to his Lord, was forty days' attendance annually during the time of War. Knight's Service also included other consequences. Such as

Aids, which were in the nature of pecuniary grants, to ransom the Lord, if taken prisoner, to defray the expenses of making his eldest son a Knight, and to provide a portion for his daughter.

Relief. These were Fines upon the death of the actual Possessor of the Land; and though when the Fees were made hereditary, Reliefs must necessarily have ceased to exist, yet they still continued.

Primer Seisin. This was a right which the King had to one year's Rent for those Lands which were held of him in chief, if the Heir was of age.

Wardship. But if the Heir was under age, then the Lord had the Wardship of the Heir, and was entitled to hold the Lands without accounting for the profits.

Marriage. If the Heir was under age, the Lord has also the power of offering to him or to her a suitable match; which, if refused, gave him the value of the Marriage Portion.

Fines. These are Sums of Money, paid to the Lord, whenever the Tenant had occasion to make over his Land to another.

Escheats. This took place, when the Tenant died without Heirs, or was attainted of felony or treason, in which case the Land reverted to the original grantor.

There are other species of Knight Service, called Grand Serjeantry; which is, where the Tenant is bound to some personal service, as carrying the King's Sword, being his Champion, or to carry his Banner. These services, as

well as Knight's Service, being personal, a personal attendance was necessary, and becoming inconvenient and troublesome, the Tenants found means of compounding for them, either by sending others in their place, or by making a pecuniary satisfaction. These pecuniary assessments soon became arbitrary, and the whole nation groaned under the hardships of this Feudal Constitution. Palliatives were from time to time applied, till at last by 12th Charles II. all the incidents to Knight Service were entirely abolished, and all sorts of tenures whether held of the King or others, were turned into free and common Socage; excepting Tenures in Free Alms, Copyholds, and the Honorary Services of Grand Serjeantry.

SOCAGE,

Is a Tenure by any certain and determinate service, and includes all other methods of holding free Lands by certain invariable Rents and Duties. As the holding of Lands of the King by rendering him annually a Bow, a Sword, or such like. The number

of Socage Tenures after the Conquest was inconsiderable; till by successive charters of enfranchisement granted to the Tenants, their number and value began to increase, so far as to make a distinct part of our English system of Tenures.

COPYHOLDS.

A Manor was a district of ground held by Lords and great Personages; who after taking what quantity of ground they pleased to their own use, distributed the rest among their tenants. This land was held by them by no assurance in writing, but at the pleasure of the Lord. The remainder was uncultivated, and was termed the Lord's waste. These Tenants were called Villeins, and were little better than slaves. In process of time, however, these Villeins having enjoyed their Estates without interruption in a regular descent, became as much entitled to their possessions, as the Lords themselves, in spite of their Lord's will; and having no title to shew for their estates, but *the will of the Lord*

according to the custom of the Manor; which customs with their admissions in pursuance of them, are entered in the several Rolls of the Courts of the Manor; they were called Tenants *by copy of Court Roll*, and their tenure a *Copyhold.*

To constitute a Copyhold, therefore, it is necessary that the Lands be parcel of that Manor under which it is held; and that they have been demised by Copy of Court Roll immemorially. There are various incidents to a Copyhold Tenure, in the nature of pecuniary payments to the Lord of the Manor on the transfer of the Copyhold, by death or sale.

BASE COPYHOLDS.

These differ from common Copyholds, principally in the privilege of their services being certain, and not being held at the will of the Lord, the *tenure* is absolutely Copyhold, but the *interest* which the tenant has in it, is equivalent to a Freehold. They differ, however, from Freeholders in this, that they cannot convey their Lands by the general

common Law conveyances, but must pass them by surrender to the Lord or his Steward in the manner of common Copyholds.

Whatever changes and alterations the foregoing tenures have undergone from the Saxon era to the 12th Charles II. before mentioned: all tenures are now in effect reduced to two species; *Free* Tenures in Common Socage, and *base* Tenures by Copy of Court Roll.

FREE ALMS

Is that, whereby a religious Corporation, aggregate or sole, holds lands of the donor to them and their successors for ever. All such donations are now out of use, as, since the time of Edward I. none but the King can give lands to be holden by this tenure.

Your's, &c.

LETTER XVI.

RIGHTS OF THINGS.

THE ESTATES WHICH MAY BE HAD IN THINGS REAL, AND THE MANNER OF ACQUIRING AND LOSING A TITLE TO THINGS REAL.

FIRST—THE ESTATES WHICH MAY BE HAD IN THINGS REAL.

ESTATES are of two sorts, *Freehold*, and such as are *less than Freehold.*

A FREEHOLD *Estate of* INHERITANCE is divided into estates absolute, or Feesimple, and inheritances limited or Feetail.

A Feesimple is an estate which a man possesses to him and his heirs for ever, thus leav-

ing the disposition of his estate to what heirs he pleases. This is an estate in the highest degree, the owner having the absolute and uncontrollable dominion over it.

A Feetail is an estate which a man possesses to him and to particular heirs, namely his children, thus depriving him of the power of disposing it to whom he pleases; but marking out who shall succeed to it. A man may make what persons he pleases his heirs; but he cannot make whom he pleases his children; and therefore, he has not the absolute dominion over his estate, but it must descend in the manner in which the law has pointed out. As a Feesimple therefore is an estate to a man and his *heirs*, a Feetail is an estate to a man and the *heirs of his body*, or children; when an estate is given to a man without either of these additions, it is only an estate for life.

A FREEHOLD *Estate* NOT OF INHERITANCE, are estates for life only, and are either expressly created by deed or grant; or are created in law. As where a man has an estate tail given to him and his children born of a

certain woman as his wife; and his wife dies without children, he is considered tenant for life. Also a man may be tenant for life by the *curtesy of England*; which takes place when a man marries a woman who possesses an estate in feetail or feesimple; and having a child, that child dies; in this case, the husband, after the death of his wife, enjoys an estate for life. A wife also may be tenant for life, of such part of her husband's estate as the law apportions by way of dower. But a dower is now generally prevented, by a jointure, settled on the marriage in lieu of dower.

AN ESTATE LESS THAN FREEHOLD may be either an estate for years, at will, or by sufferance.

An Estate for Years, though for one thousand years, is a less estate in law than an estate for life; for this reason: that in one case the termination of the estate is certain and fixed; in the other uncertain and without any known limit: in the one case it is contracted by the will of man; in the other it is uncontrollable,

and totally out of his power to fix the termination. Every estate, therefore, which must expire at a certain period, is an estate less than Freehold.

An Estate at Will is an estate let to a man from year to year, determinable by either party at their pleasure.

An Estate by Sufferance is similar to an estate at will; being where an estate is let to a man for any given time, and on the expiration of that time, he still continues tenant without any renewal of his lease. The same process is necessary to resume the estate, as in a tenancy at will, and from year to year.

An Estate on Condition is an estate which depends upon the happening or not happening of some uncertain event, whereby the estate must be created, enlarged, or defeated. As where a grant is made to a man of an office, though no condition is named, yet the law implies that he received it on condition of executing the office; or where an estate is given on a condition expressed, as that he shall take the donor's name, if he does not perform the condition, the gift is void.

An Estate on Pledge is where a man borrows a sum of money, and grants his estate and the rents and profits of it, till the debt is paid. Or where a man borrows a sum of money, and conveys the estate as security for the debt and interest, in which case it is called a mortgage ; and the borrower still continues to receive the rents and profits, as long as he pays the interest of the debt; when the debt is paid, the estate is re-conveyed back again.

I have thus pointed out the different species of estates with regard to the *quantity of interest*, which their owners have therein. I will now consider them in another point of view, with regard *to the time of their Enjoyment.*

An Estate in Possession requires little observation, as it comprises all those which I have already enumerated.

An Estate in Expectancy may be either a *Remainder* or a *Reversion.* An estate in *remainder* is where an estate is given to A for his life or for a term of years, and after he has enjoyed it for the time it was granted, then

it is to go to B. The first estate is an estate in possession, as respects A, and the second estate is in remainder, as respects B. An estate in *reversion* is where an estate is granted to A for life, remainder to B in feetail. If B has no children, the estate reverts to the original possessor without any words expressive of it.

An estate also may be held in four different ways.

In Severalty, where one man is the sole tenant of it.

In Jointenancy, where an estate is granted to two or more, who are all equally tenants of every part, and on the death of any one, his share devolves to the survivors.

In Coparcenary, where an estate descends to two or more persons, and may be parted between them.

In Common, where an estate is granted to two or more persons, each holding by unity of possession, but not by unity of title; for the share of any one who dies, descends to his heir.

SECOND,—THE TITLE TO THINGS REAL.

Mere Possession, or actual occupancy, is the lowest and most imperfect title. This may be good or bad. If the latter, the occupant must be ejected by process of law; but if good, then the next step to a good and perfect title is,

Right of Possession, which may reside in one man, while the mere possession is in another. If such person puts in his claim within the proper time, and pursues those steps which the law points out, he may recover the possession of the estate; but if through negligence or some other cause, he has omitted to take those necessary steps, then the party kept out of possession, may have nothing left in him but the mere

Right of Property, without either possession or the right of possession. In possession, right of possession, and right of property, consists,

A complete Title to lands, tenements, and hereditaments.

THIRD,—THE MANNER OF ACQUIRING AND LOSING A TITLE TO THINGS REAL.

There are only two ways by which Estates may be acquired; by *Descent* or Inheritance, where the estate is vested in a person by the single operation of law; and by *Purchase*, or by any other mode excepting Descent, where the title is vested in a person by his act or agreement. Purchase is used in contra-distinction to Descent, and does not mean the buying of an estate, as it would do in common speech, but solely implies the *Acquisition* of the estate by any means, excepting by inheritance.

ESTATES BY DESCENT.

There are several rules or canons of Inheritance, which I shall briefly enumerate, without entering into their origin and progress, or the reasons on which they are founded. They form by far the most intricate and important part of the laws of property, but come not within the intention of these Letters, as an object of your attention.

Inheritances must *lineally descend*, but can never *lineally ascend*. Thus a son succeeds to his father, but a father does not succeed to his son.

The Males are admitted before the females. Thus each son succeeds to his brother before any of the daughters, though the daughters are the eldest.

Where there are two or more males in equal degree, the *eldest* only shall inherit, but the females altogether.

The lineal descendants shall represent the ancestor, or first person in possession: that is, a child, grandchild, and great grandchild, shall succeed before the younger sons of the ancestor.

On Failure of lineal descendants, the inheritance shall descend to collateral relations, they being of the blood of the first ancestor.

The collateral Heir of the person last in possession of the inheritance must be his next collateral kinsman of the whole blood; that is, the inheritance must descend to the issue of the nearest couple of ancestors that have left descendants behind them.

In collateral inheritances the male stocks must be preferred to the female: that is, kindred derived from the blood of the male ancestors, however remote, shall be entitled before those of the blood of the female: unless where the lands have descended from the female.

ESTATE BY PURCHASE.

There are five methods of acquiring a title to an estate by purchase, as contra-distinguished from descent.

By Escheat. I have already explained to you that an escheat takes place where there is an obstruction in the course of descent, by some unforeseen contingency, and in consequence, the land reverts back to the original grantor, or Lord of the Fee. This may take place where the tenant dies without any relations whatever: where the child, who otherwise would inherit, is born a monster: where the child is illegitimate, or born before marriage; where the relations are aliens; and lastly, upon an attainder for treason or felony.

By Occupancy. This can never happen now, as every thing now has an owner. It is confined by our law to one instance only. Where A has an estate for the life of B; if A dies before B, the heirs of A may hold it during the remainder of B's life.

By Prescription, where a man can shew no other title to what he claims but that he, or those under whom he claims, have immemorially used to enjoy it.

By Forfeiture. Lands may be forfeited in various ways and by various means:—By crimes, such as by treason and felony; by alienation contrary to law; by non-presentation to a benefice, when the right lapses to the Bishop; by simony, or selling the presentation for money, when the next presentation is vested in the Crown; by non-performance of conditions; by waste, which is the destruction, by a tenant for life, of that property which is to descend to the next heir; by breach of copyhold customs, if the estate is copyhold; and by bankruptcy.

By Alienation. This is the most common

and universal method of acquiring a title to property, and includes any method by which land is voluntarily assigned by one man and accepted by another; whether by gift, sale, marriage, will, or other transmission of property, by the mutual consent of the parties. Those persons only can alienate property, who have the complete title and absolute control over the estate, and who are capable by law, of executing a conveyance. There are various ways of alienating—by deed, signed, sealed, and delivered by the parties; by fines and common recoveries, which are legal processes to cut off an entail, and give the tenant a fee-simple, and thus give him the absolute power over the estate; by special custom as in the case of copyholds; and by demise or last will.

Your's, &c.

LETTER XVII.

RIGHTS OF THINGS.

OF THINGS PERSONAL.

I HAVE already explained to you that Things *personal*, as contra-distinguished from things *real*, mean every thing moveable, and which may attend a man's person, wherever he goes. But as things personal sometimes issue out of and are annexed to real Estates, they are divided into *Chattels real*, and *Chattels personal*.

Chattels real have one quality of real estates, *viz.* immobility, but want the other requisite, *viz.* a sufficient indeterminate duration, and it is this deficiency, which constitutes them things personal. Thus, a lease of real property for a term of years, is a chattel real, as it must

determinate at a given time, the next presentation to a living also is a chattel real, as the right of presenting is gone the moment it has been exercised.

Chattels Personal are, properly speaking, things moveable, as animals, furniture, money, corn, &c. But it may sometimes be not only in *possession*, but in *action*; that is, it may be a *right* to possess, or to acquire possession, without the *occupation* or enjoyment. Thus, money due upon a bond, or a recompense for damages sustained by the unlawful conduct of another, or for the failure of any express contract, may be a Chattel personal *in action*. In these cases, though the right is vested, yet there is no possession till recovered by law.

The Title to things personal, and the various ways of acquiring or losing it, are principally the following:—

By Occupancy; for though this is the original and primitive method of acquiring property, and has been restrained by the positive laws of society, yet in some few instances, it may still give a title to property: as moveables found

upon the earth or sea, unclaimed by any owner, the benefit of light, air, and water, so as not to encroach on the previous occupancy of another; wild animals when killed or taken; where a man's property, such as cloth, timber, or silver, has been taken from him, and converted into garments or utensils; this additional improvement he has a right to possess; and also where the goods have been mixed, so that the several portions cannot be distinguished; the copyright of a man's literary compositions, which the law has given him for a certain number of years.

By the King's Prerogative, such as all tributes, taxes and customs; in these the King acquires a property, and the subject loses it, the instant they become due.

By Forfeiture, such as by conviction of high treason, felony, petit larceny, &c.

By Custom. As by Fines, and pecuniary or other payments in Copyhold Tenures, payable to the Lord of the Manor, on the decease of the owner of the land.

By Succession. This right of succession to Chattels is universally inherent by the common

law in all aggregate Corporations, in the King, and in such single Corporations as represent a number of persons; and may by special custom belong to certain Sole Corporations for some particular purposes.

By Marriage. All the personal property, or chattels personal in possession of the wife, vest immediately on her marriage in her husband; but if it consists of chattels real, then only for a time, as in the case of a lease; but chattels personal in action, as debts due to her, the husband must convert into possession, to enable him to enjoy them. In one particular instance a wife may acquire a property in her husband's goods, which shall remain to her after her husband's death. These are called her Paraphernalia, and literally mean something beyond her dower. These consist of her necessary apparel, jewels, and other ornaments, suitable to her station. A husband may indeed dispose of them during his life, but if she continues to use them till his death, they become her property.

By a Judgment; in consequence of some

suit or action at law, whereby the right and property of chattel interests have been decided to be vested in the prevailing party. This may either be for the possession of property unlawfully detained; or for a penalty, conferred by the law on him who gives information of a breach of the law in another; or for damages acquired as a recompense for any injury sustained.

By Gift or Grant; a Gift is always gratuitous; a Grant is always for a consideration; and are transfers of property from one man to another, either by writing or word of mouth. They take place immediately on being executed; but if not, then they are in the nature of contracts.

By Contract; which is an agreement upon sufficient consideration to do some particular thing. This agreement must be mutual and is either expressed or implied. If expressed, the terms are openly known and avowed; if implied, are such as reason or justice dictate; as that a workman shall be paid for his work. It must also be on sufficient consideration; that is,

there must be something given in exchange. It must also be to do, or not to do, some particular thing.

By Sale or Exchange. If it be a commutation of goods, it is more properly an exchange; but if it be a transfer of goods for money, it is a sale. Goods bought are not the property of the buyer till paid for; or till the money has been offered and refused; or till credit is allowed; they are then the property of the buyer, and the money due becomes a debt.

By Bailment; which signifies goods delivered upon trust, as cloth to a tailor to be made into a garment. Here the law implies a contract on the part of the tailor to render the cloth again when the garment is made; or in the case of a carrier, who is bound to convey and deliver the goods according to their destination. In these and many other instances, there is a special qualified property in the tailor and the carrier, and they, as well as the owner of the cloth and goods, may proceed against any one who steals or damages them.

By Hiring or Borrowing: These are qua-

lified contracts on the part of the hirer and borrower; the premium for the use of the thing hired, or for the money borrowed, depends in a great measure on the risk run by the person who lets or lends. In the latter, interest at so much per cent. fixed by law not to exceed £5. per cent. per annum, is payable by the borrower: and from this subject have arisen policies of Insurance, which are in the nature of wages, wherein a person undertakes to make good a loss, if a certain sum according to the estimated risk is paid. From this also have sprung annuities upon lives, which are also gambling transactions, whereby one man pays a sum of money to receive a yearly return, so long as himself, or those for whose lives the annuity is granted, shall live.

By Debt, which is any contract whereby a determinate sum of money becomes due and is not paid, but remains in action merely. This may be a debt of record, due by judgment of a court of law; or by special contract due by deed or instrument under seal; or by simple contract, due in the common and daily occur-

rence of bargain and sale. There is also another species of simple contract called Bills of Exchange or Promissory Notes. The former were originally invented for the more easy remittance of money from one part of the world to another; and is an open letter of request, desiring one man will pay a sum of money to another person on his account. They are generally called Drafts. A Promissory Note is an engagement in writing to pay a sum therein specified in a time limited to a person therein named, or sometimes to his order. This property may be transferred from one man to another, and is contrary to the general rule of law, that no property in action is transferable. This assignment, is the life of Paper Credit.

By Bankruptcy. No man can be a Bankrupt, but a trader; and he must secrete himself, or do some act tending to defraud his Creditors in order to commit an act of Bankruptcy: What all these acts are, it will not be necessary for me to enumerate; they are many and various; avoiding his creditors, and evading their

just demands, are generally sufficient to declare a man a Bankrupt; whether it be by secreting himself, suffering himself to be arrested, or making a fraudulent conveyance of his property to another. I need not explain to you the steps to be taken preparatory to a man being declared a Bankrupt; I shall only add, that as soon as the directions of the law have been complied with, all the Bankrupt's property is conveyed to assignees, who receive it for the benefit of his creditors, to be divided among them.

By Testament and Administration. The former is executed by the Testator, and may be made by any one with some few exceptions. The latter takes place when no will having been made, the next of kin takes out letters of administration, and distributes the property of the deceased according to the laws of succession. There are some persons who are prohibited by law from making a will; by reason of incapacity, as male infants under fourteen years of age, and female under twelve; lunatics, and persons under temporary derangement. A married woman may in some instances make a

will, devising lands; but, excepting by her husband's consent, she is incapable of making a testament. Neither can criminals after conviction make a will, as their goods have been forfeited to the King. Testaments may be either written or verbal; but if the latter, they must be made at the point of death, before a sufficient number of witnesses, and reduced to writing afterwards. A codicil is a supplement to a will. A written will of chattels requires no witnesses, provided there is proof of the Testator's hand writing, or if written by another, that it was dictated by him. No will takes effect till the death of the Testator, and therefore if a man makes many wills, the last overthrows all the former. An Executor is necessary to a will, and is the person to whom the Testator commits the execution of the directions contained in the will. An Administrator is similar to an Executor, inasmuch as he does that according to the directions of the law, which an Executor does according to the directions of the Testator.

I have thus taken a transient view of a very

extensive and diffuse subject, and which requires much attention and great study thoroughly to understand. I am afraid that it has afforded you less pleasure and amusement in the pursuit, than what I have discussed in my former Letters. The study of this branch of our national jurisprudence is not a little perplexed and intricate. But I have endeavoured to select those parts of it, which may be useful for you to know, and in which the principles are the most simple, the reasons the most obvious, and the practice the least embarrassed. I have compressed them in four Letters only; but which have taken up nearly four hundred pages of the learned Commentaries; if you are dissatisfied with my brevity I must refer you to the original.

Your's, &c.

LETTER XVIII.

PRIVATE WRONGS.

OF THE REDRESS OF PRIVATE WRONGS, AND OF COURTS OF JUSTICE IN GENERAL.

At the commencement of these Letters, I defined Municipal Law to be, "a Rule of Civil Conduct, prescribed by the Supreme Power in a State, commanding what is right, and prohibiting what is wrong." The primary objects of Law, therefore, are the establishment of *Rights* and the prohibition of *Wrongs*; and having already considered the Rights that were defined and established, I have now to consider the Wrongs that are forbidden and redressed by the laws of England.

Wrongs are of two sorts, Private and Public. The former are an infringement of the private or civil rights of individuals, and are called *Civil Injuries*. The latter are a breach and violation of those public rights which affect the whole community, and are called *Crimes* and *Misdemeanors*.

In order to redress these Civil Injuries, Courts of Justice have been established, wherein the aggrieved party may seek and obtain redress, according to the nature and extent of the injury sustained. But as there are some injuries which may be redressed by the mere *act of the parties*, or by the mere *act of the law*, without having recourse to Courts of Justice, I will first notice them, before I proceed to that branch of the subject, which will occupy the remainder of my correspondence on Private Wrongs. The first remedy which the law allows by

THE MERE ACT OF THE PARTIES—is

Self Defence. I have already shewn to you that the Defence of one's Self, and of those

who stand in relation of Husband and Wife, Parent and Child, and Master and Servant, is consonant to the law of nature, and agreeable to those natural rights, given to us by the Creator of all Things. But as this law of nature cannot be taken away by the law of society, still it must not exceed the bounds of defence and prevention, for then the defender would himself become an aggressor.

Reprisal or Recaption. This happens when a person is unlawfully deprived of his property, and finds it again. He then may lawfully claim and retake it, provided it is not attended with a breach of the peace, nor accompanied with force or terror. Otherwise he must have recourse to an action at law.

Entry on Lands and Tenements. As Recaption is a remedy for an injury to *personal* property; so entry on lands and tenements is a remedy allowed when another has taken possession of *real* property. This must also be done without force or a breach of the peace.

Abatement or *Removal of a Nuisance.* Whatever unlawfully annoys or does damage

to another is a Nuisance, and such nuisance may be removed by the party aggrieved, so that no riot is committed in doing it. Of this nature is the removal of a fence placed across a public path or road; or of an obstruction, which deprives me of light through my windows.

Distraining for Rent, or for Cattle damaging and trespassing upon another's land. In the former case it is a remedy given by law to Landlords, to secure and pay themselves their rent when due and unpaid. It is in the nature of actual payment. The Act of distraining is a redress obtained by the mere act of the parties; but what is to be distrained, and how it is to be taken and disposed of, are regulated by law. In the latter case, a distress or seizure of cattle, trespassing and damaging the land, is in the nature of a security; either till the party trespassing satisfy the other for the damage done; or if he refuses so to do, then to be sold to make good the damage. The party whose cattle have trespassed, may also *replevy* the cattle distrained, that is, bail them out of the custody of the law, to abide the dis-

puted damage and trespass, when ascertained in a Court of Justice. There are other causes for distraining; but which are not the act of the parties, as individuals, but are in consequence of authority vested in them by law; as a distress for penalties forfeited, or for rates unpaid, all of which may be levied after certain legal forms have been complied with.

There is another remedy which comes under the description of those, allowed by the mere act of the parties, but which requires the consent of the aggrieved and of the aggressor. This is

Arbitration, which is where two or more parties agree to refer the matters in dispute to the award and decision of a third person. This award when made is binding; but if illegally and impartially made, may be set aside by application to the Courts of Law.

THE MERE ACT OF LAW.

This only takes place in two cases. By *retainer*, when a Creditor is made an Executor, in which case the law gives him a right of retaining so much as will pay himself; and by

remitter, when a person having the right of property, but not the right of possession, and has no right to enter without recovering possession in an action, has the freehold cast upon by a subsequent, and of course a more defective title; in this case, he is *remitted* or sent back, by operation of law, to his ancient and more certain title.

From the union of the above remedies, *viz.* the Act of the Parties, and the Act of the Law, springs the principal object of our next inquiry, the Redress of Injuries by Courts of Justice; wherein the act of the parties sets the law in motion, and the process of law is the instrument, by which the parties are enabled to procure a certain and adequate redress.

Although the law allows the parties a remedy in those cases in which they choose by their act to exert the right of redressing themselves; yet it does not exclude them also from the benefit of the ordinary course of justice; but gives them that right as an additional weapon, in particular instances, where the particular circumstances require a more expeditious pro-

ceeding. In all cases, it is an indisputable rule, that where there is a legal right, there is also a legal remedy, by suit or action at law, whenever that right is invaded; and it is in Courts of Justice, where that remedy is found.

COURTS OF JUSTICE,

Are places where justice is administered, and whether created by Act of Parliament, or letters patent, or subsisting by prescription, are derived from the power of the Crown. In all Courts, the King is, in contemplation of law, always present; but as in fact, that would be impossible, he is there represented by his Judges.

In all Courts there must be at least three constituent parts;—the *Plaintiff*, who sues, or demands satisfaction; the *Defendant*, who is sued or called upon to make satisfaction; and the *Judge*, who is to examine the truth of the fact, and to determine the law upon it. There are also Attorneys, and Counsel or Advocates. An Attorney, is one who is put in the place or

turn of the Plaintiff or Defendant, to manage his matters of law, and his office and duties are regulated and defined by law. A Counsel, is either a Barrister or Serjeant. The former is one, who, at a certain period after his admission into the Inns at Court, takes his degree of Barrister, or what is generally termed called to the bar. A Serjeant is a Barrister, who, after having been a certain number of years at the bar, is supposed to have served his time, and is therefore called Serjeant at Law, *serviens ad legem*. The duties of both are to plead the cause of their clients, and to watch over their interests. All the Judges are serjeants at law, and must take that degree before they can be made Judges. Of these two description of advocates, barristers, and serjeants, are selected those whom the King appoints his counsel, and are called King's Counsel or King's Serjeants. They take precedence of other counsel, and are entitled to certain privileges annexed to their rank. The fees of counsel, like the fees of a physician, are all honorary, and are given as a mere gratuity, and not as hire; and

although few counsel or physicians would attend where they are not paid, yet they cannot demand their fees already incurred, but can only refuse to attend in future.

Your's, &c.

LETTER XIX.

PRIVATE WRONGS.

OF COURTS OF PUBLIC, OR GENERAL, AND OF COURTS OF PRIVATE OR SPECIAL JURISDICTION.

THERE are two species of courts of justice which are now acknowledged in this kingdom. The one of a public and general, the other of a private and special jurisdiction.

Courts of a public or general jurisdiction are, the Courts of Common Law, and Equity; Ecclesiastical Courts; the Courts Military; and Courts Maritime.

PUBLIC COURTS OF COMMON LAW AND EQUITY.

The lowest and most expeditious court of

justice known to the law of England, is one, which is, at this day, nearly out of use, and, except in particular places, has ceased to exercise its authority. It is called *The Court of Piepoudre*, from the old French words *pied puldreaux*, signifying a pedlar, and is incident to every fair or market, wherein disputes are settled by the Steward of the Tolls of the Market, and all subjects connected with the commercial transactions which take place in the market.

A Court Baron is incident, as I have before shewn, to every manor or lordship, and is held by the steward of the manor; also

The Hundred Court, which is a larger Court Baron, and is held for the inhabitants of a particular hundred. This, like the Court Baron, is fallen into disuse, as courts to hear and decide pleas between party and party.

The County Court is incident to the jurisdiction of the Sheriff, and may hold pleas of debt or damages, under forty shillings.

The Court of Common Pleas. In former times there was only one superior court of

justice in the kingdom, consisting of all the great officers of State, assisted by certain persons learned in the law, called the King's Justices, and also by the greater Barons of Parliament. Over all presided a special magistrate, called the Chief Justice of all England. He was the principal Minister of State, and the second man in the kingdom. This great court being bound to follow the King's household in all its expeditions and progresses, the trial of common causes became very burthensome to the subject, as he never knew in what place he could seek redress. It was, therefore, one of the articles of the Great Charter, that, "The Court of Common Pleas should not follow the King, but be held in some certain place." This certain place was Westminster Hall, where it usually had sat, when the King resided in the city; and the court being thus stationary, the judge became so too, and a Chief Justice, and three lesser or *puisné* judges were appointed. The power of the Chief Justice being also greatly lessened by other provisions in the Great Charter,

several of the offices which he formerly held, were subdivided into distinct courts of judicature. The Steward of the Household presided over a court to regulate the household, or King's domestic servants. The High Steward, with the Barons, formed a tribunal for the trial of peers, and assumed the appeal to themselves from the judgments of other courts. The distribution of common justice between man and man, was thrown into so prudent an order, that each court formed a checque upon the other. The Court of Chancery issuing all original writs under the Great Seal to the other courts; the Common Pleas determining all causes between private subjects; the Exchequer managing the King's revenue; and the Court of King's Bench superintending all the rest by way of appeal, and having the sole cognizance of criminal causes, or pleas of the Crown.

The Court of King's Bench is the supreme court of common law, and consists of a Chief Justice, and three lesser or *puisné* judges. Its jurisdiction is very high and transcendent.

It superintends all corporations, and the conduct of all magistrates. It protects the liberty of the subject by speedy and summary interposition, and takes cognizance both of civil and criminal causes. It is a court of appeal from all the other courts of law, and from it there is an appeal to the House of Lords.

The Court of Exchequer is inferior to the two former courts in rank and power. It is a court of law and equity also. It derives its name from a chequered cloth, formerly covering the table, on which, when certain of the King's accounts were made up, the sums were marked or scored with counters. It is divided into two parts; the receipt of the Exchequer, and the court or judicial part of it. As it is a court entirely for the recovery of the King's revenue, all persons who seek to recover in it for their own private purposes, must plead and sue their debtors on the ground that, without the interposition of the court, they cannot discharge their debts to the King.

The High Court of Chancery is the most important of any of the King's courts of

justice, in all matters of civil property. The Chancellor is appointed solely by the delivery of the Great Seal by the King to the person he wishes to appoint Chancellor. He is Speaker of the House of Lords by prescription. He has the appointment of all justices of the peace; and from having been formerly an ecclesiastic, he is Keeper of the King's Conscience. He is Visitor of all hospitals and colleges of royal foundation. He is Patron of all livings under a certain value in the King's books. He is the General Guardian of all Infants and Lunatics, and has the general superintendence of all charitable uses in the kingdom. From the Court of Chancery lies an appeal to the House of Lords.

The Court of Exchequer Chamber consists of all the judges, adjourned from the other courts, to hear some cause of difficulty and weight argued before them, previous to judgment.

The House of Peers is the supreme court of all, to which lies an appeal from all the other courts.

The Courts of Assize and Nisi Prius. These are composed of two or more commissioners, now always the judges, and one or two serjeants and king's counsel, to go twice a year through the different counties, to inquire into the truth of *facts* by a jury, then in dispute in the courts of Westminster Hall. The causes in dispute are appointed to be tried at Westminster, in some Easter or Michaelmas term, on a certain day, *unless before* that day the Judges of Assize shall come into the county in which the dispute has originated. Hence they are called *Nisi prius.* They are called also Courts of Assize, because the commission is directed to the judges therein named to take *assizes* or verdicts by a particular species of jury, called an assize, and summoned for the trial of landed property.

ECCLESIASTICAL COURTS.

Originally there was no distinction between lay and ecclesiastical jurisdiction; but at the Conquest, the ecclesiastical courts were separated from the civil, and though afterwards

united by Henry I., yet they were very soon completely severed from each other, and each held their separate jurisdiction; the temporal courts adhering to the laws of England, the spiritual adopting, as their rule of proceeding, the laws of Rome, or the civil law. The lowest of the Ecclesiastical courts is

The Arch-deacon's Court. It is held in the Arch-deacon's absence before a judge appointed by himself, and called his Official.

The Consistory Court of every diocesan Bishop is held in their several cathedrals, for the trial of all ecclesiastical causes arising within their respective districts. The Bishop's Chancellor is the judge.

The Court of Arches is a court of appeal belonging to the Arch-bishop of Canterbury, wherein the judge is called Dean of the Arches.

The Court of Peculiars is a branch of, and annexed to the Court of Arches.

The Prerogative Court is established for the trial of all testamentary causes.

The Court of Delegates is appointed by the

King's commission, issuing out of Chancery, to represent his royal person, to hear all appeals made to him from the other courts. These appeals were formerly made to the Pope; but on the Reformation, they were directed to be made to the King, as head of the Church.

A Commission of Review is a commission sometimes granted in extraordinary cases, to revise the sentence of the Court of Delegates. This is also granted by the King, as Supreme Head of the Church, and is not a matter of right, but of favour only.

COURTS MILITARY. These are entirely grown out of use; and were formerly courts of *Chivalry*, held before the High Constable of England and Earl Marshal, and had cognizance of matters touching deeds of arms and war.

MARITIME COURTS.

There is only one, the Court of Admiralty. It is held before the Lord High Admiral, or his deputy, who is judge of the court.

Appeals from the Vice Admiralty Courts in America and other settlements, may be brought before the Courts of Admiralty in England. But they are now brought before the King in Council, which is a court of appeal from the Admiralty Court, and consists of the King's Privy Council.

These are the several courts of common law and equity, which are of public and general jurisdiction throughout the kingdom.

COURTS OF SPECIAL JURISDICTION

Are confined to particular spots, or instituted only to redress particular injuries. These are

The Forest Courts, for the government of the King's Forests. Now in total disuse.

The Courts of Commissioners of Sewers. Their jurisdiction is to overlook the repairs of sea banks, and sea walls, the cleansing of rivers, public streams, and conduits.

The Court of Policies of Assurance, now in disuse, as all insurance causes are now tried by

a jury, under the opinion of the judge on legal doubts.

The Court of the Marshalsea and the *Palace Court* of Westminster. The former is now merged in the latter. It is a court over which the Steward of the Household, the Knight Marshal, and the Steward of the Court preside, to hear pleas of all personal actions, within twelve miles of his Majesty's palace of Whitehall. All important causes are now generally removed to the courts of King's Bench, or Common Pleas.

Courts in the Principality of Wales. In addition to courts established in that country similar to our Courts Baron, and Hundred Courts, a session is held twice a year in each county, by judges appointed by the King, in which all pleas of real and personal actions are held in the same manner, as in the courts of Exchequer and Common Pleas.

The Court of the Duchy Court of Lancaster is held before the Chancellor of the Duchy, in all matters of equity, relating to lands held under the King in the Duchy.

Courts appertaining to the counties palatine of *Chester*, *Lancaster*, and *Durham*, and the royal franchise of *Ely*. The Judge of Assize who sits in them, sits by virtue of a special commission, from the owners of the several franchises. The two former are vested in the Crown, the two latter under the government of their respective Bishops.

The Stannary Courts in Devonshire and Cornwall, for the administration of justice among the tinners. They are held before the Lord Warden and his substitutes.

The Courts within the City of London, and other boroughs, cities, and corporations, held by Prescription, Charter, or Act of Parliament. In these the courts of Westminster have either a concurrent jurisdiction or a superintendency over them.

The Courts of Conscience and Requests, for the recovery of small debts. These were erected in the city of London, and other trading districts, and are constituted by Act of Parliament. They are courts to hear and determine all causes of debt not exceeding forty shillings.

The Chancellor's Courts in the two Universities are another species of private courts, in which these learned bodies enjoy the sole jurisdiction over all civil acts or suits, whenever a scholar or privileged person is one of the parties.

Your's, &c.

LETTER XX.

PRIVATE WRONGS.

OF THE COGNIZANCE OF PRIVATE WRONGS

In my preceding Letter I explained to you the different courts of justice, which have been established in England, for the redress of injuries; and it will now be my object to inquire, in which of this vast variety of them, every possible injury that can be offered to a man's person or property, is certain of meeting with redress.

Of what wrongs, courts of a special jurisdiction can take cognizance, has already been remarked as those respective tribunals were enumerated; and therefore, I shall confine myself to the cognizance of civil injuries in the several courts of public or general jurisdiction.

These courts have been already divided into four: *Ecclesiastical*, *Military*, *Maritime*, and *Common Law*; and I will now consider the actions that may be brought in each.

WRONGS COGNIZABLE IN ECCLESIASTICAL COURTS.

Pecuniary Causes are such as arise from the withholding of ecclesiastical dues; in the doing, or in the neglecting to do, some act relating to the church. The principal of these is withholdi g the tithes from the parson or vicar; the non-payment of dues and surplice fees to the clergy; the spoliation or dilapidation of the church, or the parsonage house.

Matrimonial Causes are injuries respecting the rights of Marriage. These, properly speaking, belong to the civil courts, but in some instances are under the cognizance of the ecclesiastical. As when a party boasts or gives out that he or she is marr ed to another; on this ground the party aggrieved may pro_ ceed in these cou.ts; and unless the person

complained of proves a marriage, the court will pronounce perpetual silence on this head. The restitution of conjugal rights is another cause; which takes place when either party lives separate from the other without sufficient legal reason. In this case the Ecclesiastical Court can order the parties to live together, if they are silly enough to wish it. Divorces also are cognizable by the ecclesiastical Judge, who can pronounce a divorce from bed and board, in those cases, where the cause has arisen *since* marriage, but cannot sufficiently dissolve the union, so as to enable the parties to marry again: this can only be done by Act of Parliament. But in cases, where the cause of incompetency to fulfil the contract of marriage, existed *previous* to the marriage, as minority or consanguinity, then the Ecclesiastical Court has the power of dissolving the marriage so entirely, as to restore the parties to the same situation, as if no marriage had ever been celebrated. A suit of Alimony is another cause; which is a consequence of a divorce from bed and board only, it being an

action by the wife for a sufficient maintenance from the husband, after their separation.

Testamentary Causes. The privilege of the cognizance of testaments or wills, is enjoyed by the clergy, not as a matter of right, but by the special indulgence of the Municipal law. It originated in the power of the Bishop to compel by ecclesiastical censures, bequests to *pious uses:* and therefore, wills fell within the jurisdiction of the spiritual courts, by the express words of the charter of King William, at the Conquest; and when afterwards Henry I. directed that the goods of an intestate should be divided for the *good of his soul*, all intestates became spiritual uses, as much as legacies to *pious uses* had been before. This jurisdiction is divisible into three branches, the probate of wills; the granting of letters of administration; and the suing for legacies, where they are withheld. The two former are matters of course, unless the will is disputed, or the next of kin is uncertain. In the latter case, the Courts of Equity exercise a concurrent jurisdiction.

WRONGS COGNIZABLE IN COURTS MILITARY.

The object of this court is to keep up the distinction of degrees and quality, the redressing of encroachments in matters of heraldry and coat armour. It is now fallen into total disuse. The marshalling of coat armour has now fallen into the hands of certain officers of the court, called Heralds, who consider it only as a matter of lucre, and not of justice; so much so, that their common seal will not be received in evidence in any court of justice in the kingdom; although the visitation books, compiled when progresses were made in different counties, to inquire into the state of families, as to their marriages and descents, are allowed to be good evidence of pedigree, if verified on oath.

WRONGS COGNIZABLE BY COURTS MARITIME.

These courts have jurisdiction to try all manner of causes committed on the high seas, out of the reach of our ordinary Courts of Justice. But, as it is a common thing to consider contracts, though made at sea, yet to have been

made within the cognizance of Courts of Common Law, these disputes are generally settled in them. In cases of prizes in time of war, and which are taken at sea, and brought into our ports, the Courts of Admiralty have an exclusive and undisturbed jurisdiction to determine the same according to the laws of nations.

WRONGS COGNIZABLE BY THE COURTS OF COMMON LAW.

All possible injuries that do not fall within the exclusive cognizance of either of the Ecclesiastical, Military, or Maritime Courts, are within the cognizance of the Common Law Courts of Justice. These injuries, and their respective legal remedies, will occupy our attention for many subsequent Letters. But before I conclude this Letter, I will mention two species of injuries; one of which is where justice is delayed by an inferior court, that has a legal cognizance of the cause; and the other, where such inferior court takes upon itself to examine and decide without a legal remedy.

In the first case, the Court of Chancery may issue a writ, commanding such inferior court to *proceed* to judgment; or a writ of *mandamus*, (so called from *mandamus* [*we command*] being the first word of the writ), may issue out of the King's Bench, requiring such inferior court to do some particular thing therein specified.

In the second case, where there is an encroachment of jurisdiction, a *prohibitory* writ issues either out of the King's Bench, Common Pleas, or Exchequer, to command the inferior court to cease from the prosecution of the matter before them, on a suggestion, that either the cause originally, or some collateral matter arising therein, does not belong to that jurisdiction, but to the cognizance of some other courts.

Your's, &c.

LETTER XXI.

PRIVATE WRONGS.

OF WRONGS AND THEIR REMEDIES, RESPECTING THE RIGHTS OF PERSONS, AND THE RIGHTS OF PROPERTY.

As all Wrong may be considered as a privation of Right, the natural remedy for every species of wrong, is the restitution of that right, whereof the party injured is deprived. This may be done either by the delivering up of the subject matter in dispute, or by making the sufferer a pecuniary compensation in damages. The means by which this possession, or these damages are obtained, are called *actions* or *suits at law*, by which property is demanded, and personal damages for a wrong required.

As I divided all Rights into Rights of *Persons*, and those of *Things*; so I will make the same distribution of injuries, into such as affect the *Rights of Persons*, and the *Rights of Property*.

The Rights of Persons are either *absolute* or *relative*; the former are such as belonged to private men, considered as individuals; the latter are incident to them as members of society, and connected to each other by various ties and relations.

THE ABSOLUTE RIGHTS OF PERSONS,

Are the rights of *Personal Security*, of *Personal Liberty*, and of *Private Property*.

Personal Security. Injuries affecting the *lives* of individuals come within that part of the subject which will be hereafter treated of in the Criminal Code.

Injuries affecting the *limbs* and bodies of individuals, may be committed by threats of bodily hurt; by assault, which is either striking or attempting to strike another; by battery, which is a lower stage of assault, though now generally joined in a plea of assault; by wound-

ing, and by mayhem, which is an aggravated species of battery, and wherein a man is deprived of the use of a limb.

Injuries affecting a man's *health*, are where, by any unwholesome practices of another, a man sustains any apparent damage to his health or constitution; as by the exercise of a noisome trade, or by the neglect or ignorance of his surgeon.

Injuries affecting a man's *reputation*, are by malicious, scandalous and slanderous words, whereby a man is injured in his trade or profession. A man's reputation may also be injured by written or printed libels, which set him in an odious or ridiculous light. There are two ways of punishing a libeller. By indictment; in which case, a libel being considered as tending to a breach of the peace, and therefore a public offence, is equally a libel, whether true or false, and punishable as such. Or by action, which is a private and personal remedy, by which the party injured seeks a reparation in damages; and therefore the truth or falsehood of the libel, and the damage sustained, are a material question.

Personal Liberty, is affected by false imprisonment, for which the law has decreed a punishment as a public crime, and also given to the party injured a private reparation by an action for damages. To constitute false imprisonment, two things are necessary; the detention of the person, and the unlawfulness of such detention. Any detention in any place is considered in law an imprisonment; and it is an illegal imprisonment, if it is done without lawful and sufficient authority. The remedy for false imprisonment, besides the private remedy by an action for damages, is the *Writ of Habeas Corpus*, already explained to you in a former Letter. This is the most celebrated Writ in the English Law, and is justly called the safeguard of English Liberty. There are three or four writs of Habeas Corpus, used for the purpose of expediting justice in various courts. But the great and efficacious writ in all manner of illegal confinement, is that writ, directed to the person detaining another, and "commanding "him to produce the body of his prisoner, with "the day and cause of his caption and deten-

" tion, to do, submit to, and receive whatsoever " the judge or court awarding such writ shall " consider in that behalf." So that no person can be imprisoned without the liberty of applying for this writ to inquire into the legality of his imprisonment; when if it shall appear that there is a probable ground that the party is imprisoned without legal cause, this writ is obtained as a matter of right. In times of civil commotion and rebellion, it is not unusual to pass an Act of Parliament to suspend this right of applying for a writ of Habeas Corpus for a limited time, as the safety of the state may require the detention of many persons, whom perhaps there might not be the immediate means of bringing to trial. But this is done only in extreme cases, so sacred and so important is this great safeguard and bulwark of our liberties.

Private Property. These rights, though the enjoyment of them, when acquired, are strictly a personal right; yet as they come within the Rights of Things, the Wrongs that affect them, must be referred to the correspon-

ding division of the subject in my future Letters.

THE RELATIVE RIGHTS OF PERSONS.

Injuries may be done to persons, considered as members of society in the four following relations; Husband and Wife; Parent and Child; Guardian and Ward, and Master and Servant.

Husband and Wife. The first injury that may be inflicted on a Husband, is the taking away his wife, either by fraud or open violence: in which case the husband may have an action at common law against the person so taking his wife away, and may recover damages. The next injury, is Adultery; which though as a public crime, is left by our laws to the coercion of the Spiritual Courts, yet considered as a civil injury, the law gives a satisfaction to the husband for it by an action against the adulterer; and the damages awarded by the Jury are generally increased or diminished according to circumstances. Another injury, for which the husband may bring an action, and recover

damages, is that of any person beating and ill-using his wife; which if a common assault, will be remedied by the usual action to recover damages brought in their joint names; but if the maltreatment is so enormous, that the husband is deprived of his wife's company and assistance, then he may have a separate remedy for this ill-usage, and recover damages accordingly.

Parent and Child. Formerly, the marrying the son and heir without the father's consent, was an offence cognizable by law. But as the military tenures, on which this injury rests, have ceased, the injury has ceased also. Taking away his children also, is an injury, and is remediable, in the same manner, as in the case of a husband from whom his wife has been taken.

Guardian and Ward. This is of a similar relation to the last, and the same remedies are given by law for similar injuries. But a more speedy and summary method of redressing all complaints relative to Wards and Guardians is now obtained by an application to the Court of Chancery; which is the Supreme Guardian,

and has the superintendent jurisdiction of all the infants in the kingdom.

Master and Servant. There are two species of injuries incident to the rights, accruing from the relation between Master and Servant. One is, retaining a man's hired servant before his time is expired; the other is, beating or confining him so that he is not able to perform his work. In either case the master may bring an action against the person retaining or ill-treating his servant, and he may also proceed against his servant for non-performance of his agreement. I shall now proceed to the second head of injuries; those affecting the Rights of Property.

As I divided Property into *personal* and *real:* the former consisting of goods, money, and all other moveables; the latter, of such things as are permanent and fixed, as lands and tenements; so I will now follow the same division, in treating of the injuries affecting those rights, and the remedies which the law has given to repair and redress them.

INJURIES AFFECTING PERSONAL PROPERTY,

In Possession, are two-fold; the *unlawful taking* away, and the *unlawful detaining* it.

The unlawful taking. This upon every principle is clearly an injury; as it follows as a necessary consequence, that when a man has once gained a rightful possession of any thing, whoever by fraud or force dispossesses him of it, is guilty of a transgression against the laws of society. The *remedy*, which the law gives, is the restitution of the property with damages for such unlawful invasion of it. I shall not in this, nor in the subsequent discussion of the injuries affecting real property, enter into the various species of suits at law or actions, by which the injured person may recover his property, and obtain a satisfaction in damages for the unlawful taking away It will be sufficient to say generally, that according to the circumstances of the case, various processes and species of actions, are open to the injured party for redress and compensation.

The unlawful Detention. It is possible, as in the case of borrowing a horse, or other pro-

perty, and not restoring it, for the *taking away* to be lawful; but the *detention* illegal. In all and similar cases, the injured party may bring his action to recover his property, and to receive a satisfaction in damages for such unlawful detention.

INJURIES AFFECTING PERSONAL PROPERTY, *In action.*

Property in action are such rights as are founded in *contracts:* and the injury to such property, is the breach of such contracts, for which the law has provided also various remedies. Contracts may have either an *expressed* or *implied* condition.

Expressed Contracts are *Debts*, due on promissory notes or agreements, bonds, or special bargains,—on *covenants* contained in deeds or leases, to perform certain acts and conditions,—on *promises*, which are in the nature of a verbal covenant, and want nothing but the writing and sealing to make them absolutely the same. In all these cases, the party injured may proceed against the wrong

doer by the particular species of action which the law prescribes.

Implied Contracts are such as reason and justice dictate, and which the law presumes every man has contracted to perform: as where one man employs another to transact any particular business, or perform any particular work. The law implies that the person employing the other undertook to pay him for his work;—where a man receives money for another;—where a man has laid out his own money for the use of another at his request;—or where a man having undertaken an office or employment, undertakes by the acceptance of it, an implied contract to perform his duty properly. In all these cases the law has given a remedy to the injured party by different sorts of actions applicable to the particular case.

INJURIES AFFECTING REAL PROPERTY

Are principally the following:—

Dispossession of the Freehold; whereby the wrong doer gets into actual possession of the land, and obliges him that hath the right,

to seek his legal remedy in order to gain possession and damages for the injury sustained. This dispossession may be done in various ways, according to the relative situation of the party, into which he has been thrown, either by operation of law, or by the supposition that he was claiming his own rights. The remedies for these different species of dispossession are also various, as besides the right of entry, if peaceable, there are different species of actions or suits at law, according to the particular species of dispossession; the most usual method of trying a title to lands and hereditaments, is by an action of ejectment or trespass.

Trespass, is another injury to the Freehold, and, in its enlarged sense, is considered any transgression or offence against the law of nature or of society; but in the limited sense, it signifies an entry on another man's ground in his own person or by his cattle without permission or lawful authority. In these cases the injured party may proceed at law, and the wrong doer may justify his trespass, or not, according to circumstances.

Nuisance, is where a man encroaches on another's grounds, or on his natural rights by erecting buildings, or other obstructions, so as to overhang or disturb the rights of the other: By corrupting the air, by carrying on an unwholesome and noisome trade, or by stopping or diverting an ancient watercourse. For these and other injuries of a private nature, besides the power of abatement in the injured person, the law has given a private remedy by action. For nuisances of a public nature, the remedy is by indictment.

Waste. This is by destruction on lands and tenements; whereby the person who has an estate only for life or for years, injures or destroys the buildings or timber, which are afterwards to be the uncontrolled property of another. The remedies of Waste, are also certain suits at law, pointed out by the laws for the purpose; and also by an injunction from the Court of Chancery, to restrain the wrong doer from committing waste. This last is the most usual proceeding.

Subtraction, is where a person owes any suit, duty, custom, or service, to another, and neglects to perform it.

Disturbance. This is a wrong done to some incorporeal hereditament, by hindering or disquieting the owners in their regular and lawful enjoyment of it; where a man having the franchise of holding a Court Leet, or of keeping a Fair, is incommoded by another in the lawful exercise thereof; or where a man having a right of Common, such right is incommoded or disturbed; or where a man has a right of way over another's grounds, is obstructed by enclosures; in all these and similar cases, particular remedies by particular processes and actions at law, are pointed out by the laws for the restoration of the right, and the reparation of the damage sustained.

I have thus cursorily explained to you the injuries affecting personal and real property, and the remedies applicable to them; it would have been foreign to my purpose, to have entered more largely into a subject of some difficulty and little interest; but I have given you a

sufficient insight into them, to shew you, that there are no injuries, which a man can sustain either in his person or property, but for which our most excellent code of jurisprudence has not offered an adequate remedy.

Your's, &c.

LETTER XXII.

PRIVATE WRONGS.

PROCEEDINGS IN AN ACTION AT LAW.

HAVING avoided, in my preceding Letter, confusing you with the different species of actions adapted to the various injuries which a man may receive in his person or property, I will now shortly trace, for your amusement, the progress of a suit at law, from its first commencement to its final judgment. In this history, you will see how admirably adapted the whole proceedings are, for the obtaining of substantial justice; and how unjust are the imputations of delay and uncertainty, with which the law is frequently charged. You will see that clearness and brevity, the rejection

of all superfluous and extraneous matter, and the laying bare of the real point in dispute, for the decision of the tribunal before which the action is to be tried, are the great ends of the whole proceedings, and that in no way could these objects be obtained more advantageous to all parties, or more conducive to the impartial administration of justice.

When a person hath received an injury, and thinks it worth while to demand satisfaction, he must first of all consider, what redress the law hath given him, and what specific remedy he must pursue. When the particular species of action is determined, and the particular court in which the action is to be brought, he must sue out of that court, whether it be the King's Bench, Common Pleas, or Exchequer, the particular writ which gives the Court a jurisdiction in the proceedings, and enables it to proceed to the determination of the cause.

A writ is then directed to the Sheriff of the county in which the cause of action arises, to arrest the defendant, in order for his appear-

ance to answer the complaint. An arrest is *completed* by touching the defendant's body; for although before such arrest, every man's house is his castle, and no bailiff can justify breaking into the house of the defendant, yet, after such arrest made, the bailiff may pursue the person wherever he can find him. When the defendant is regularly arrested, he must either go to prison, or put in *bail* to the Sheriff; which are sureties, binding themselves for his appearance, to answer the complaint or action.

This is one process to bring the defendant into court, in order to contest the suit, and abide the determination of the law. There is also another mode of bringing the defendant into Court, by issuing a writ, and serving him with a copy of it.

Then follow the pleadings, which are set down upon paper, and delivered into the proper office, and which are in fact, the mutual altercations between the plaintiff and defendant. The first of these pleadings is the *declaration* on the part of the plaintiff, setting

forth the cause of complaint. When the plaintiff hath thus stated his case in his declaration, the defendant makes his defence, or puts in his *plea*; in which is not to be understood that he *defends* or justifies the cause of complaint, but only that he opposes or denies the truth or validity of it. This plea may either be a general denial of the whole declaration of the plaintiff, or a special plea in bar of the plaintiff's demand. When the defendant's plea or answer is thus put in, the plaintiff may plead again, if the defendant has only evaded, without totally contradicting the declaration; the defendant may reply, and the plaintiff answer; the whole of which is denominated the *Pleadings*, in the several stages of which, the title or defence which the party insisted on, must not be departed from or varied. As soon as in the course of the pleadings the parties come to a point which is affirmative on one side, and denied on the other, they are then said to be *at issue*; all their debates being at last contracted into a single point, which must now be determined either in favour of the plaintiff or defendant.

This *issue* or *end* of the pleadings may either be on matter of *law* or matter of *fact*. If the former, the Judges of the Court before which the action is brought, must determine it. But if the latter, then it must be inquired into *by the country*, which is represented by a jury of twelve men, sworn to inquire into the truth of the fact. This Jury is taken promiscuously out of a number of freeholders, who are summoned by the Sheriff, to attend at the Assizes, to inquire into the truth of the fact on which issue has been joined by the plaintiff and defendant.

When the general day of trials is fixed, the record of the proceedings is brought down to the Assizes, and entered with the proper officer, in order to its being called on in course. When called on, the Jury are empanelled, and sworn "well and truly to try the issue "between the parties, and a true verdict give "according to the evidence." But before they are sworn, either party may challenge any of them, that is, except to their being on the Jury, on account of partiality, or any other

default, allowable by law, as a ground of exception; or the whole number empanelled by the Sheriff, may be objected to, if returned by him under the supposed influence of partiality or other default.

As soon, however, as the Jury are sworn, the plaintiff opens his case, and calls his witnesses, who are examined on oath to prove it. The defendant replies, and calls his witnesses in support of his defence. The plaintiff replies; and the Judge then sums up, making such observations as he shall think the nature of the case may require; and then the Jury either remain in court, or retire to consider of their verdict, if a case of difficulty. As soon as they are agreed, the foreman delivers their verdict, either for the plaintiff or defendant, as it shall happen; and this is recorded as the decision of the cause in dispute.

The trial by Jury ever has been, and I hope ever will be looked upon, as the glory of the English law. It is the most transcendent privilege which any subject can enjoy, or wish for that he cannot be affected in his property,

his liberty, or his person, but by the unanimous consent of twelve of his neighbours and equals. The impartial administration of justice, which secures our persons and our properties, is the great end of civil society. If that was entirely entrusted to the Magistracy, their decisions, in spite of their own natural integrity, might have frequently an involuntary bias. If, on the other hand, the power of the judicature were placed at random, in the hands of the multitude, their decisions might be wild and capricious. It is wisely therefore ordered, that the axioms of law should be deposited in the hearts of the Judges, to be applied occasionally to such facts as come properly ascertained before them. But in settling a question of fact, a competent number of sensible and upright jurymen, chosen by lot from among those of the middle rank, will be found the best investigators of truth, and the surest guardians of public justice.

The next step towards the completion of an action at law, is the judgment of the Court upon what has previously passed; both the

matter of law and the matter of fact being now fully weighed and adjusted. The verdict at the trial is entered on record, and returned to the Court from which it was sent. But as it cannot be entered till the next term after trial had, any defect of justice, inadvertence, or misconduct, may be stated to the Court, in arrest of its judgment; and the whole proceedings set aside. There is also another remedy to cure any unjust determination, and to give the party injured an opportunity of reviewing a doubtful decision. This is by moving the Court to grant a new trial, and thus examining and inquiring again into all the facts of the case.

If no steps are taken to disturb the verdict, after judgment execution immediately follows; but still if the party condemned thinks himself unjustly aggrieved by any of these proceedings, he has his remedy to reverse them by several writs of appeal; the chief of which is a writ of Error, to a higher tribunal.

But if none of these steps are taken, then the last step is the execution of the judgment

of the Court, or putting the sentence of the law in force; this is performed in different manners, by different writs, according to the nature of the action upon which it is founded, and of the judgment which is had and recovered.

Your's, &c.

LETTER XXIII.

PRIVATE WRONGS.

COURTS OF EQUITY.

I HAVE already explained to you the different species of Courts of Law, and the various proceedings by which the administration of justice is carried on in England. Here my subject would naturally draw to a conclusion. But as the proceedings in the Court of Chancery, which is a court of *Equity*, are very different from those of *Common Law*, and as their object and jurisdiction are very often misunderstood, I will very shortly explain to you the meaning of Equity, as contra-distinguished from that of Law.

Equity, in its true and genuine meaning, is

the soul and spirit of all law; positive law is construed, and rational law is made by it. In this, equity is synonymous with justice; in that, with the true sense and sound interpretation of it. But the terms of *A Court of Equity*, and of *A Court of Law*, as contrasted to each other, are apt to mislead us, as if the one judged without equity, and the other was not bound by law.

Equity, in the sense in which it is used, when applied to the Court of Chancery, as a Court of Equity, means only that species of a Court of Justice which interferes, relieves, and determines in those cases, and in those branches of jurisprudence, in which Courts of Common Law have not the power of interfering. But it is equally bound by rules and precedents, from which it does not depart. The difference between them principally consists in the mode of proof, in the mode of trial, and in the mode of relief. For when facts, from their leading circumstances, rest only in the knowledge of the party, a Court of Equity applies itself to the conscience of a man, and

purges him upon oath, to the truth of the transaction; and that once discovered, the judgment is the same in equity as it is in law. For want of this power of discovery in a Court of Law, the Court of Equity has acquired with every other court, a concurrent jurisdiction in matters of *Account*. From the same compulsory discovery upon oath, a Court of Equity hath acquired a jurisdiction over almost all matters of *Fraud and Concealment*; the true construction of *Securities* for money lent, and the jurisdiction over *Trusts* in all settlements, now so complicated and various, arising from the modern system of conveyancing, and from *Testamentary Devises*.

An appeal to Parliament in the House of Lords, is the dernier resort of the party who thinks himself aggrieved by the final determination of this court, and is effected by petition, and not by a writ of error, as upon judgments at common law.

I have thus briefly explained to you the Laws of England, as affecting the *Rights of Things*, and the *Rights of Persons*, and also

those *Private Wrongs* which a subject may sustain in his individual or relative capacity. My next and subsequent Letters will be an explanation of those wrongs, which are emphatically called *Public Wrongs*; inasmuch as they affect not only the individual, but the welfare of the community at large; and however the properties or persons of the subject may be the direct object of protection, by the enactments of the Criminal Code; yet the happiness, prosperity, and well-being of the State, are equally under its tutelary care and protection.

Your's, &c.

LETTER XXIV.

PUBLIC WRONGS.

OF THE NATURE OF CRIMES, AND THEIR PUNISHMENT.

The knowledge of the Criminal branch of our Jurisprudence, which teaches the nature, extent, and degrees of every crime, and adjusts to it its adequate and necessary penalty, is of the utmost importance to every individual in the state. For no rank, nor elevation in life, no uprightness of heart, no prudence nor circumspection of conduct, should tempt a man to conclude, that he may not at some time or other, be deeply interested in these researches. 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, will teach us, that to know with precision what the laws of our country have forbidden, and the deplorable consequences to which a wilful disobedience may expose us, is a matter of universal concern.

To you, however, this inquiry is more an object of curiosity, and an addition to your stock of knowledge, than a necessary acquisition for any practical use. As removed by your sex and station, from those temptations and accidents of life, which sometimes expose us to trying difficulties, and to unforeseen dangers, you never can be called upon to discriminate between actions criminal in themselves, or criminal only according to circumstances. If, however, an insight into the criminal code of your country, in addition to the feelings of admiration which its justice and humanity must excite, shall increase your gratitude to God, for placing you in a situation above those wants under which your fellow creatures suffer; and above those temptations

under which so many fall; and if, above all, it should have a practical effect on your conduct through life, in making you think humbly of yourself, and charitably towards all; then the knowledge of the criminal code, even to you, will be an useful and valuable acquisition, and will be productive of the greatest benefit.

Private Wrongs have already been explained to be, those civil injuries which individuals sustain in their private capacity, and for which the law has given them a remedy by an action in the name of the party injured. But there is another species of injury, which, however detrimental to individuals, yet inasmuch as it is an infraction of the public rights, belonging to the community at large, is an offence of a public nature, and comes under the appellation of Public Wrongs.

The distinction, therefore, of Public Wrongs from Private, of Crimes and Misdemeanors from Civil Injuries, principally consists in this: Private Wrongs are an infringement of the civil rights of individuals; Public Wrongs are a breach and violation of the public rights

and duties due to the whole community. The law, therefore, in taking cognizance of all wrongs, has a double view; the redress of the party injured; and also to secure to the public the benefit of society, by preventing and punishing every breach of those laws, established for the government and tranquillity of the whole. The prosecution of these crimes and misdemeanors is therefore carried on in the name of the King, in whom rests the majesty of the whole community, and who is the proper prosecutor for every public offence.

A CRIME or *Misdemeanor* then is an act commmitted in violation of a public law, either forbidding or commanding it. In all cases the crime includes the injury. Every public offence is also a private wrong; it affects the individual, and it likewise affects the community. Treason against the King is not only conspiracy against an individual, but, in its consequences, it tends to the dissolution of Government. In murder, robbery, and in all offences of similar outrage, there is an injury to the person and to the property; but the

public mischief is the material thing, for the prevention of which our laws have enacted punishments.

PUNISHMENTS are therefore the evils or inconveniences consequent upon crimes and misdemeanors; and this leads us to consider the *power*, the *end*, and the *measure* of human punishment.

The Power of Human Punishment.

The right of punishing crimes against the law of nature, as Murder, Theft, is in a state of mere nature vested in every individual. But in a state of society, this right is transferred from individuals to the sovereign power; whereby men are prevented from being judges in their own causes, which is one of the evils which civil society was intended to remedy. Whatever power, therefore, individuals had of punishing offences against the law of nature, that is now vested in the Magistrate alone; who bears the sword of justice, by the consent of the whole community.

But there are other offences which are against the Municipal law only; and to pre-

vent which the temporal Magistrate is empowered to inflict coercive penalties for such transgression, and this by the consent of individuals, who either tacitly or expressly invest the sovereign power with the right of making laws, and of enforcing obedience to them, by exercising severities adequate to the evil. It is the enormity and dangerous tendency of these evils, added to their frequency and the difficulty of preventing them, which justifies the Legislature in enacting the severest penalties, and even death itself, on offences which are apparently slight, or such as are merely positive. Where the evil to be prevented, is not adequate to the violence of the preventive, such a law cannot be reconciled to the dictates of conscience and humanity. For to shed the blood of a fellow creature is a matter that requires the greatest deliberation. Life is the gift of God, and cannot be resigned, nor taken from us unless by his command or permission, revealed or collected from the laws of nature and society, by clear and indisputable demonstration.

The End, or final cause of Human Punishment.

This is not by way of atonement or expiation for the crime committed; but by way of precaution and preventive against future offences of the same kind. This object is effected either by the amendment of the offender, as by corporal punishment, imprisonment, or temporary exile; by deterring others by the dread of his example from offending in the like way, which gives use to all ignominious punishments; and by depriving the offender of the power of doing future mischief, as by inflicting death or perpetual exile. The same end, that of preventing future crimes, is endeavoured to be answered by each of these species of punishment.

The Measure of Human Punishment.

The quantity of punishment can never be absolutely determined by any standing invariable rule; but it must be left to the Legislature to inflict such penalties as are warranted by the laws of nature and society, and such as are best calculated to answer the end of pre-

caution against future offenders. It appears, however, undeniable, that punishments of unreasonable severity, especially when indiscriminately inflicted, have less effect in preventing crimes and amending the morals of the people, than such as are more merciful in general, yet properly intermixed with due distinctions of severity. Crimes are more effectually prevented by the *certainty*, than by the *severity* of punishment. For the severity of the laws hinders their execution, and when the punishment surpasses all measure, the public will frequently out of humanity prefer impunity to it. The injured, through compassion, will often forbear to prosecute: Juries, through compassion, will sometimes forget their oaths, and either acquit the guilty or mitigate the nature of the offence; and Judges, through compassion, will respite almost all the criminals who are condemned to death, and recommend them to the Royal mercy. Among so many chances of escape, the needy and hardened offender overlooks the multitude that suffer; he boldly engages in some des-

perate attempt to relieve his wants or supply his vices; and if unexpectedly the hand of justice overtakes him, he deems himself peculiarly unfortunate, in falling at last a sacrifice to those laws which long impunity has taught him to contemn.

Your's, &c.

LETTER XXV.

PUBLIC WRONGS.

OF PERSONS CAPABLE OF COMMITTING CRIMES;

OF PRINCIPALS AND ACCESSORIES;

OF OFFENCES AGAINST GOD AND RELIGION;

AND

OF OFFENCES AGAINST THE LAW OF NATIONS.

As no person is exempt from punishment for disobedience to the laws of his country, I shall enumerate those cases in which the person committing a forbidden act, is excused from the penalty annexed to it; considering these as forming exceptions to the general rule, that all are equally amenable to the laws to answer for a violation of them. All these pleas and excuses

may be reduced to this single consideration, the want or defect of *Will.* An involuntary act cannot induce any guilt; for the concurrence of the will, when it has a choice to do, or to avoid the fact in question, is the only thing which renders human actions either praiseworthy, or culpable.

The first case in which the will does not join with the Act is,

Infancy, or Nonage, which is a defect of the understanding. Infants under the age of discretion, ought not to be punished by any criminal prosecution. But what that age of discretion is, does not depend on the age of the offender, but on his consciousness of guilt, and his discretion between good and evil. In this case, that malice, which is to supply age, ought to be strong and clear beyond all doubt and contradiction.

Idiotcy and *Lunacy*, will excuse the commission of a crime, if committed during such incapacity. A Lunatic subject to lucid intervals, will be amenable to the laws, if the offence was committed during a lucid interval: but

this point will be the subject of a Jury's determination. But if a person, who is generally considered insane, shall be proved to have been able to distinguish right from wrong, and to be conscious of what he was about, during the perpetration of the crime, the plea of insanity will not avail him, any more than the plea of infancy, where sufficient discretion and malice have been proved.

Drunkenness. This is considered by our law, as an aggravation rather than an excuse for any criminal behaviour. For though the will in this case is not under control, yet inasmuch as it is a voluntary abuse of reason, and may be easily counterfeited, the law will not suffer a man to privilege one crime by another.

Misfortune or Chance. Here the accidental mischief must follow the performance of a lawful act: but if the consequence ensues from an unlawful act, the want of foresight is no excuse.

Ignorance and Mistake: as when a man intending to do a lawful act, does that which is unlawful. This must be a mistake in matter of fact, and not an error in point of law.

Compulsion or evident *Necessity*. In the former case of an usurped Government, where the Magistracy for the time being orders a person to do a thing which his reason condemns, and which on the restoration of lawful authority, is condemned as unlawful. Also in the case of a wife, who commits an unlawful act in the company of her husband. She is supposed to be under his coercion at the time, and she cannot commit any crime except treason and murder. Another species of compulsion is under threats and menaces, but these must apply to the injury of the person, and not of the property. Under the head of Necessity, may be ranked the killing or wounding another in attempting to apprehend him under a legal warrant. Or the dispersing of a tumultuous assembly under the Riot Act. In either of these cases, that act, which would be a crime under other circumstances, is justified by the necessity of the thing; it being of the utmost importance to prevent a notorious offender from escaping, and to preserve the public peace.

Persons capable of committing crimes, may either be *Principals* or *Accessories*. A *Prin-*

cipal is he who is the actual perpetrator of the act; or by being present, aiding and abetting it. This presence does not mean merely within sight or hearing; but such a constructive presence, as to shew that he was a party to the actual robbery, An *Accessory*, is he who is not the chief actor in the crime, but has something to do with it either *before* or *after* the fact committed. *Before* the fact, as by counselling or procuring another to commit a crime; *After*, as by receiving the stolen goods, by relieving and assisting the felon. In this case the accessory must know that the felony has been committed. In treason all accessories are principals, because the same act which makes a man an accessory in a felony, makes him a principal in treason, the imagining and knowing of a conspiracy against the King. Accessories before the fact have the same punishment as principals, but accessories after the fact have a less degree of punishment.

In treating of the several species of crimes and misdemeanors, with the punishments annexed to them by the laws of England, you

will bear in mind, that all crimes are to be estimated merely according to the mischief which they may produce in civil society; and therefore those vices or breach of mere absolute duties, though equally crimes in the eye of God; yet inasmuch as they concern man only as an individual, are not the objects of municipal law. There are also some misdemeanors, which have in themselves nothing criminal, but are made unlawful by the positive institutions of the state for public convenience. In enumerating, therefore, the offences which are cognizable by laws, some of which are against the revealed will of God, others against the law of nature, and some against neither, we shall consider them all as deriving their particular guilt here punishable from the particular laws of man.

The crimes, therefore, which are punishable by our laws may be divided into three classes: —Offences against God and Religion; Offences against the Law of Nations; and Offences against that social compact, which unites mankind, under certain laws and restraints, for the ends of civil government.

OFFENCES AGAINST GOD AND RELIGION.

It is unnecessary in these days to enumerate the various enactments against *Apostates, Heretics, Non-Conformists, Protestant Dissenters* of all sects and degrees, and *Papists;* as the proceedings against them are more in the nature of incapacitating them from certain privileges in the state, than of actual punishment. Nor need I mention the crimes of *sorcery* and *witchcraft*, against which many severe penalties were by law inflicted, but which the good sense and true religion of the present age, have utterly annulled.

Blasphemy against God, and contumelious reproaches against Christ, and all profane scoffing at the Holy Scriptures, and bringing them into contempt, are punishable atCommon Law; inasmuch as Christianity is part of the laws of England. *Profane cursing*, and *swearing*, and *drunkenness*, are also offences punishable by the statute law, by a summary process before a Justice of the peace. *Simony* or the corrupt presentation of any one to an ecclesiastical benefice, is also considered as an offence

against religion, as well as by reason of the sacredness of the charge, which is thus profanely bought and sold, as because it is always attended with perjury in the person presented. All manner of *indecency* and dissolute living, whereby the public morals are outraged, are obnoxious to the penalties of the laws; and lastly, the *profanation* of the Lord's Day, is punishable by the municipal law, as an offence against God and religion, and against that decency and propriety which all countries professing the Christian religion, are bound to protect.

OFFENCES AGAINST THE LAW OF NATIONS.

The law of nations is a system of rules, established by universal consent among the civilized inhabitants of the world, in order to decide all disputes, to regulate all ceremonies, and to ensure the observance of justice and good faith. The principal offences against the law of nations, animadverted on as such by the municipal law of England are,

The *Violation of Passports*, expressly granted

by the King or his Embassadors to the subjects of a foreign power in time of mutual war, or the committing acts of hostilities against such as are in amity or truce with us under a general implied safe conduct. The *Rights of Embassadors* are also established by the law of nations, and are recognised by the common law of England. The crime of *piracy*, or robbery on the high seas, is another offence against the universal law of society; and is by the common law of England, ranked as the same offence, if committed on land, would have amounted to a felony.

In my next Letter I shall proceed to those offences which more particularly appertain to our own municipal Government; and which will branch out to an extent, far greater than those which I have now enumerated.

Your's, &c.

LETTER XXVI.

PUBLIC WRONGS.

OF OFFENCES AGAINST CIVIL SOCIETY.

I. AGAINST THE KING AND HIS GOVERNMENT.

THE highest Civil Crime, which, as a member of community, any man can possibly commit, is that immediately affecting the Royal Person, his Crown, and Dignity. This amounts either to a total renunciation of that allegiance, or at least a criminal neglect of that duty, which is due from every subject to his Sovereign. By the ancient law the crime of high treason was indeterminate, whereby the creatures of tyrannical Princes had opportunities of creating

abundance of *constructive* treasons; that is, to raise by forced and arbitrary construction, offences into the crime or punishment of treason, which never were suspected to be such. In the reign of Edward III. a statute was passed, defining what offences for the future should be held to be treason; and from this statute, we shall find that all kinds of treasons are comprehended under seven distinct kinds.

HIGH TREASON.

The first species of Treason is, *compassing or imagining* the death of the King, the Queen, or their eldest son and heir. In order therefore to commit High Treason, there must be a purpose or design of the mind or will; for an accidental stroke, as in the case of Sir W. Tyrrel, does not come within the meaning. But as compassing or imagining is an act of the mind, it cannot come under judicial cognizance unless demonstrated by an open, or *overt* act. In order, therefore, to complete the crime of high treason, there must be a design of an explicit nature, and some act to

prove that design. Thus, to provide weapons for the purpose of killing the King; to assemble a force for that purpose; or consulting on the means to be employed for these purposes, are sufficient overt acts of treason. Mere words, however wicked, and punishable as misdemeanors, cannot amount to high treason; nor an unpublished writing, as in the case of Algernon Sydney, who was convicted of treason for speculative writings found in his closet.

Adultery with the wife of the King, or of the King's eldest son and heir, is another species of high treason.

Levying War against the King. This may be done not only by actual rebellion, but under pretence of reforming religion, or any abuses in the state, and this not only by actual force, but by intimidation or violence.

Aiding and assisting the King's enemies within the realm; either by giving them intelligence, by sending them arms or provisions, by treacherously surrendering fortified places, and the like. In all these species of treason already enumerated, an overt act is absolutely

necessary to bring them within this description of offence.

Counterfeiting the King's Money. This is confined to gold and silver.

Counterfeiting the King's Great or Privy Seal.

Killing the Chancellor, Judges, and all other justices, during the time they are sitting in their judicial capacity.

There are some other treasons created since this statute of Edward III. and not comprehended in it. One of which relates to the clipping and defacing the genuine coin of the kingdom, or in any way altering it, so as to make it pass for a different coin to that, which it was when issued from the Mint. Another treason since created is for the security of the Protestant succession;—to secure the crown to the House of Hanover against any attempts of the Pretender and his adherents.

The punishment of treason, is death, with some additional horrors, but which the humanity of the present age has entirely abrogated.

FELONIES INJURIOUS TO THE KING'S PREROGATIVE.

Felony, in the general acceptation of English law, comprises every species of crime, which occasioned at common law the forfeiture of goods and chattels. Not only such offences as are capital; but others, which are not punished with death, but which subject the committer of them to forfeitures, come within the name of felony. Petit larceny, or pilfering, is a felony; suicide is a felony, because the goods and chattels of a person committing suicide are subject to forfeiture, and he is emphatically called *felo de se*. In most instances, however, where a new offence is made a felony, the law implies it shall be punished with death as well as forfeiture; unless the felon prays benefit of clergy, which all felons have a right to have once, unless expressly taken away by statute.

The first felony immediately injurious to the King's Prerogative is,

Relating to the Coin, not amounting to

treason. Besides many statutes relating to the importation of base coin, the chief offence is that of uttering and tendering base coin, knowing it to be such.

Against the King's Council. Attempting to kill a Privy Counsellor in the execution of his office. This has been mentioned in a former part of these Letters.

In serving Foreign States. This is inconsistent with the allegiance due to our own Sovereign, and is punishable by many statutes.

Embezzling Warlike Stores, or destroying, or attempting to destroy, any of the King's ships, arsenals, or magazines.

Desertion from the King's armies in time of war. These are all felonies against the King's Prerogative, and are punishable by various statutes, as well as the standing laws of the land.

PRÆMUNIRE.

A third species of offence immediately affect-

ing the King and his government, though not subject to capital punishment, is that of *Præmunire*, so called from the first words of the writ, preparatory to the prosecution thereof. *Præmunire*, is *to cite*, and the person against whom the proceedings are about to be instituted, is cited to answer the contempt of which he stands charged. It derived its origin from the exorbitant power which the Pope claimed in this kingdom, and which even our ancestors could not endure; and therefore the object of the writ of *Præmunire* and the offence which it was meant to punish, were the paying too much obedience to Papal Process, which constitutionally belonged to the King alone. In these days, however, the pains of *Præmunire* have been extended to other offences, not originally contemplated, and apply to various minor offences, chiefly omissions of duty, or contempts of the King's authority. The penalties of *Præmunire* are denounced by a great variety of statutes, yet prosecutions upon them are unheard of in our courts.

MISPRISIONS AND CONTEMPTS,

Affecting the King's government. Misprisions are such offences as are under the degree of capital, but merely bordering thereon.

Misprision of Treason, consists in the bare knowledge and concealment of treason, without any degree of assent thereto; for if by any act the party shewed himself assenting to it, it would immediately amount to treason. Forging foreign coin, not current in the realm, is also Misprision of treason; so is concealment of treasure, belonging to the King. There are also some misprisions or contempts of the King's Prerogative, which are considered high misdemeanors, and punishable as such. These consist in refusing to assist the King with advice when called upon; refusing to join him in repelling an invasion or rebellion; speaking against the King's title and government, contempts against his Courts of Justice, and tumultuous and contemptuous behaviour towards his judges sitting therein.

All these and some others are considered misprisions or contempts against the King's government, and punished by fine and imprisonment.

Your's, &c.

LETTER XXVII.

PUBLIC WRONGS.

II.—AGAINST THE COMMONWEALTH OR PUBLIC POLITY OF THE KINGDOM.

OFFENCES, which more immediately affect the Commonwealth or the Public Polity of the kingdom, are subdivided into such a number of inferior and subordinate classes that it would exceed the limits of these Letters were I to examine them all minutely, and with any degree of critical accuracy. I shall therefore confine myself to general descriptions and definitions of this great variety of offences; and shall cursorily enumerate under each head, the most important of those crimes and misdemeanors which are the objects of legal enactments.

These crimes and misdemeanors may be divided into those against Public *Justice*, against the Public *Peace*, against Public *Trade*, against the Public *Health*, and against the Public *Police* and *Economy* of the Country.

OFFENCES AGAINST PUBLIC JUSTICE.

Embezzling or falsifying Public *Records*, or other proceedings in a court of Judicature.

Obstructing the prosecution of lawful *process*. Any person opposing the execution of any process, or abusing any officer in his endeavours to execute his duty therein, is guilty of felony, and liable to seven years' transportation.

Escape is another offence punishable by our law; and is, when an officer negligently or voluntarily suffers his prisoner to escape out of his custody, when arrested on criminal process.

Breach of prison by the offender himself, if committed for felony, is felony at common law; and if confined on any inferior charge, is punishable as a high misdemeanor by fine and imprisonment.

Rescue is forcibly freeing another from an arrest or imprisonment. It amounts to the same offence in the person rescuing, as it would have been in a Gaoler voluntarily suffering an escape. The party rescued, however, must be first convicted of the offence for which he was arrested, before the rescuer can be punished.

Returning from transportation before the time that the sentence of transportation has expired, is made a capital offence.

Receiving stolen goods, knowing them to be stolen, which subjects the receiver to be indicted as an accessory.

Compounding a Felony is where the injured person agrees with the felon not to prosecute on receiving a compensation: this offence is punishable by fine and imprisonment.

Conspiracy to indict an innocent man of felony, falsely and maliciously, who is accordingly indicted and acquitted.

Perjury is a crime, when a lawful oath is administered in some *judicial* proceed-

ing, to a person who swears wilfully and falsely in a matter *material* to the point in question.

Bribery is where a judge or other person concerned in the administration of justice, takes any reward to influence his behaviour in his office. An offence now unknown in this country.

Influencing a Jury corruptly by promises or rewards.

Negligence of Public Officers, such as Sheriffs, Coroners, and Constables.

Oppression and tyrannical partiality of Judges, Justices, and other Magistrates, in the administration of Justice, and under colour of their office. This offence is either punished by impeachment in Parliament, or by indictment in the King's Bench.

Extortion is the last offence against public justice which I will mention; and takes place when, under colour of his office, an officer takes any money that is not due to him. Fine and imprisonment are the punishment for all these offences.

OFFENCES AGAINST THE PUBLIC PEACE.

The offences of this class are either actual breaches of the peace, or constructively so, by tending to make others break it. The first of these is

The Riotous Assembling of twelve or more persons, and not dispersing after the Riot Act has been read to them by proper authority. The continuation of such unlawful assembly, after a stated time, subjects the parties to a capital offence.

Sending a threatening Letter to extort money, is a capital offence.

Affrays are the fighting of two or more persons in a public place. They may be suppressed by any person, but more especially by the Constable or similar officer.

Riots, Routs, and unlawful Assemblies, must have more than two persons to constitute them. An unlawful assembly is where two or more assemble to do an unlawful act.

Challenges to fight either by word or letter, or to be the bearer of a challenge, is an offence against the public peace.

Libels signify generally any writings or pictures of an immoral or illegal tendency; but in the sense under which we are now to consider them, are the malicious defamation of any person, and especially a magistrate, in order to provoke him to wrath, or expose him to public contempt and ridicule. The direct tendency of these libels is the breach of the public peace, by stirring up the objects of them to revenge, and perhaps to bloodshed. Of all the foregoing offences the punishment is fine and imprisonment.

In the instances where libels are punished by the English law, *the Liberty of the Press* is by no means infringed or violated. The liberty of the Press is essential to the nature of every free state; but this consists in laying no *previous* restraints upon publication, and not in freedom from censure for criminal matter when published. Every man has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or

illegal, he must take the consequences of his own temerity. To punish any dangerous or offensive writings which, when published, shall, on a fair and impartial trial, be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government, and religion, the only solid foundation of civil liberty. Thus the will of individuals is still left free; the abuse only of this free will is the object of legal punishment.

OFFENCES AGAINST PUBLIC TRADE.

Smuggling; or the offence of importing goods without paying the duties imposed on them by the laws of Customs and Excise, carried on in defiance of the laws, and under an armed force, is a capital offence. Purchasing smuggled goods, a practice so frequently done by many persons who would start at the bare idea even of a fraud, is in fact a robbery of the public revenue, as it is an encouragement to persons to pursue illicit practices. It is not unusual for persons to boast of their success and adroitness in these immoral practices,

not considering that they are but one degree removed from actual thieving.

Fraudulent Bankruptcy. This, the policy of our commercial country, has found necessary to make a capital offence.

Usury is upon a contract upon a loan of money, to receive it again with exorbitant interest. The greatest interest allowed by law is five per cent. The punishment is a forfeiture of treble the money borrowed.

Cheating is another offence against trade, and is where, under false pretences, and under false weights and measures, one person defrauds another.

Forestalling, regrating, and engrossing, are offences against trade, by which illegal monopolies are obtained, the markets raised, and undue advantages obtained over the fair trader.

Seducing Artists to leave the country and settle abroad, whereby the benefit of our arts and inventions are given to other countries. These latter offences are punishable by fine and imprisonment.

OFFENCES AGAINST PUBLIC HEALTH.

Quarantine is the remedy intended by law to prevent infection from plague or other infection. It lasts forty days.

Selling unwholesome Provisions is punished by fine and imprisonment.

OFFENCES AGAINST THE PUBLIC POLICE AND ECONOMY.

By the public police and economy are meant the due regulation and domestic order of the kingdom; whereby the individuals of the state, like members of a well-governed family, are bound to conform their general behaviour to the rules of propriety, good neighbourhood, and good manners; and to be decent, industrious and inoffensive in their respective stations. This head of offences must therefore be very miscellaneous, as it comprises all such crimes as especially affect public society, and are not comprehended under any of the preceding species. Some of these amount to felony, and others are misdemeanors only.

Clandestine Marriages are of the former description, which consist in solemnizing any marriage in any place besides a church or chapel, where banns have been usually published, except by license from the Arch-bishop of Canterbury. To solemnize a marriage without banns published, or without a license, subjects the person so solemnizing, to transportation; and to make a false entry in a register, or otherwise falsifying or destroying it, is a capital offence.

Bigamy is also a felony, liable to be punished by transportation, and is when a man or woman marries, their former husband or wife being still alive.

Common Nuisances, or such as affect the public, are various; among others is the obstruction of the highways, bridges, or public rivers,—carrying on manufactures or trades injurious to health,—disorderly houses of all sorts,—making or selling, or throwing fireworks about the streets,—vagrancy, to suppress which there are numerous acts of vagrancy designated by the Legislature, and

which it would be unnecessary for me to enumerate,—gaming,—and many others, which subject the parties to various penalties and punishments, according to the nature of the offence, and the aggravated degree of it.

Your's, &c.

LETTER XXVIII.

PUBLIC WRONGS.

OFFENCES AGAINST INDIVIDUALS.

In all injuries against individuals, besides the private wrong, which such individual sustains, there is also an offence against the state. Were offences confined to individuals only, and did they affect none but their immediate object, they would fall absolutely under the notion of private wrongs; but as such offences cannot be committed without a violation of the laws of nature, of the moral as well as political rules of right; without a breach of the public peace, or without danger to civil order and society; it is therefore, that the Government calls upon the offender to submit to public punishment

for the public crime. The prosecution of these offences is also on these grounds always at the suit of the King, in whose person the executory power of the laws, and the representation of the Government, entirely reside.

These crimes and misdemeanors against private subjects, are of three kinds: against their *Person*, against their *Habitation*, and against their *Property*.

OFFENCES AGAINST THE PERSON.

The most important crime that can be committed against the person is that of taking away life, and of which no man can be entitled to deprive himself or another, but in some manner expressly commanded or evidently deducible from the laws of nature and revelation. Homicide, or the killing of any human creature, may be either *justifiable*, *excusable*, or *felonious*.

Justifiable Homicide has no guilt at all, as it may arise either from some unavoidable *necessity*, without any will, intention, or desire; without any negligence or inadver-

tence; and therefore without any blame; as in the case of a public executioner, who puts the sentence of death on a malefactor into execution. Or it may be committed for the *advancement* of justice; as when an officer, in the execution of his office, kills a person that assaults or resists him. Or it may be committed for the *prevention* of a crime; as where a person attempts to rob or murder another, the death of the assailant will be justifiable. This only applies to robberies committed by force, or under bodily fear.

Excusable Homicide may be committed by *accident*, when, in doing some legal act, one man unfortunately kills another; or it may be committed in self-defence upon a sudden affray, when it must appear that there were no other probable means of escaping from the assailant. In both these kinds of homicide the law inflicts no punishment, but the Court directs a verdict of acquittal.

Felonious Homicide, which is killing of a human creature without justification or excuse, is either Self-murder, Manslaughter, or

Murder. *Self-murder* is considered by our law as a felony in the party committing it, and is the offence of a man deliberately putting an end to his own existence. In order to commit this crime, the party must be in his senses at the time, otherwise the same incapacity which would acquit him of a crime against another, will save him guiltless of one committed against himself. As no punishment can be inflicted on the self-murderer besides the usual forfeiture of goods and property, consequent on all felonies, and as the object of all punishment is the prevention of offences, the law has denied him christian burial, in order to deter others from committing a crime so repugnant to the laws of God and man. *Manslaughter* is where, from want of sufficient care, from a sudden quarrel, and generally in all those acts where there is not previous malice, nor time for the passions to cool, one man causes the death of another. But where the intention is premeditated and deliberate, then the offence of killing another person amounts to murder. The great distinction, therefore, between jus-

tifiable and excusable homicide, manslaughter and murder, seems to be this: that in homicide there is no malice at all; in manslaughter a sudden and uncontrollable malice only, arising on the instant from heat and passion, and impossible, from the weakness and infirmity of our nature, to be suppressed; and in murder, a premeditated malicious intention, actuating and influencing the murderer to take away the life of his fellow creature. According, therefore, to the *absence*, *existence*, and *continuance* of malice, will the same act become *homicide*, *manslaughter*, or *murder*. *Murder*, then, is when a person of sound memory and discretion unlawfully kills any reasonable creature in being with malice aforethought, either expressed or implied. It follows therefore, that lunatics and infants are incapable of committing murder; that the person killed must be unlawfully killed, without warrant or excuse; that he must be a reasonable creature in being, whether actually born, or only in its progress to birth; and that the crime must be perpetrated with malice aforethought, either by an ex-

pressed evil design, or by an implied malice, which the law will presume according to circumstances. In addition to the crime of actual murder, is the attempt to take away life, although unsuccessful, which the law equally punishes with death.

Mayhem is another offence against the person, and is where any person of malice aforethought, and lying in wait, unlawfully wounds or disfigures the person of another, by cutting and maiming him. This crime is also punished with death.

Forcible Marriage, commonly called stealing an heiress, is a crime now unknown in England, though sometimes still practised in our sister kingdom.

Rape is the last capital felony which I shall enumerate.

The less offences and misdemeanors against the personal security of the subject, are assaults, batteries, woundings, false imprisonment, and kidnapping. These offences, in addition to the private remedy which the party injured may obtain by a civil action, are also indictable

as offences against the King's peace, and are punishable by fine and imprisonment, and that according to the nature and degree of the offence committed.

OFFENCES AGAINST THE HABITATIONS OF INDIVIDUALS.

There are two offences against the habitations of individuals, both punished with death: Arson, and Burglary.

Arson, from the Latin word *ardeo*, to burn, is the malicious and wilful setting fire to the house, out-houses, and premises of another. It must be malicious, as accidentally setting fire to the house or premises, is only a trespass. The crime of arson may also be committed by setting fire to a person's own premises, if done maliciously to defraud an insurance office.

Burglary is nocturnal housebreaking, and is an offence which derives additional heinousness, from its being committed at a time when people are less able, from sleep and darkness, to protect their property from the invasion of

others. To constitute a burglary, the offence must be committed by night, that is, when the light of the sun is inefficient for the purposes of seeing and distinguishing objects. It must also be in a dwelling house, or premises adjoining to, and attached to the dwelling house. It must also be by breaking and entering; that is, not merely by force and actual fracture, but by removing any obstacle however trifling, which has been used as a fastening. The lifting of a latch is sufficient, but where the door or windows are open, it cannot be a burglary. The least degree of entering with any part of the body, or with any part of the instrument, used to assist in the robbery, is sufficient: and it must be committed with an intent to commit a felony, which felonious intent is generally deducible from the circumstance of the breaking and entering; but where it is not, the question of intent must be left to the jury.

OFFENCES AGAINST THE PROPERTY OF INDIVIDUALS.

Theft, or Larceny, so called from the Latin

word *latrocinium*, is of two sorts, simple or petit larceny, being plain theft unaccompanied by any atrocious circumstance; and compound or grand larceny, which also includes in it the aggravation of the taking from the house or person.

Petit Larceny is the felonious taking and carrying away of the personal goods of another. It follows, therefore, that it must be against the will of another, and that although goods may have been delivered to another for any particular purpose, as letting a horse to hire, entrusting property to a servant, or to a carrier; yet if the intention of theft is manifested in the person to whom it has been entrusted, such conversion will amount to larceny. There must also be a taking; not merely a touching of the property, but an actual moving of it from the place it occupied; and though that moving be only an inch, yet the law considers the taking completed. It must also be personal goods, and not property attached to the realty. To steal corn growing, or apples on a tree, is not felony; but to steal corn when

cut, or apples when fallen down or gathered, is a theft of personal property. The punishment for petit-larceny is transportation or imprisonment; that is, the offence is capital, but except in some particular cases of grand larceny, such as horse stealing, sheep stealing, and some others, the benefit of clergy is allowed. The benefit of clergy is an exemption for the first offence, from capital punishment; and though the same culprit should be again tried for a similar offence, yet where no proof is given that he has already received the benefit of clergy, yet it is always granted.

Compound or grand Larceny is, where, in addition to petit larceny, the thing stolen is either from the house or person.

Larceny from the *house*, tent, or booth in a fair or market, in the day time, accompanied by a breaking, any person being therein; or by putting such person in fear without a breaking, if the value of the thing stolen is above twelve pence; or privately stealing goods by day or night in a house, &c. no person being therein, above the value of five shillings; and

lastly, larcenies to the value of forty shillings, in a dwelling or out-house, although the same be not broken into, and whether any person is therein or not. All these larcenies are punishable with death; though in most instances, the humanity of juries, and the mercy of the Crown, seldom inflict it.

Larceny from the *Person*, is either by picking a pocket privately, or by open assault and violence, usually called highway or footpad robbery: both these offences are also punishable by death.

Malicious Mischief is another offence against individuals, and, like the crime of arson against the habitations of men, so is this against their property. Innumerable Acts of Parliament have been passed, some inflicting death, as in the case of killing horses, sinking ships at sea; and others inflicting transportation or imprisonment, according to the circumstances of the case. By a late Act of Parliament, mischievously destroying or damaging fences, buildings, &c., is liable to a summary proceeding before a Magistrate, who has the

power of convicting the offender to the amount of the damage done, if under £.5, or if unpaid, of committing the offender to the House of Correction.

Forgery is another offence against the property of individuals, and is the fraudulent making and altering a writing to the prejudice of another's right. The punishment for forgery is generally death, and even the having forged banked notes in the possession, knowing them to be forged, is punishable by transportation for life. In a country like this, where commerce and trade are carried on to such an extent, unless the facility of committing the crime of forgery, and the consequences when committed, are checked, it would be impossible for civil government to exist.

Before I quit this subject, I will mention one branch of our Jurisprudence, intended for the *prevention* of crime. This is the power of any person who is assaulted, or who is in fear of receiving bodily harm, to require either sureties of the peace or for the good behaviour, under a penalty to the King, to be forfeited

upon a breach of such recognizance. All Justices are also empowered by virtue of their office to bind over all persons acting against the peace of the King, in whatever way that peace is violated, either by actual violence, or by a general disorderly and scandalous life. Generally speaking, the object of all law is to prevent future crimes, rather than to expiate the past; and all punishments may be classed, either as those which tend to the amendment of the offender, to deprive him of all power to do future mischief, or to deter others by his example. But recognizances to keep the peace or to be of good behaviour, are intended merely for prevention in the party himself, without any crime having been actually committed, but arising from a probable suspicion that some crime is intended, or likely to be committed.

Your's, &c.

LETTER XXIX.

PUBLIC WRONGS.

OF COURTS OF A CRIMINAL JURISDICTION.

I WILL now point out to you the several courts of Criminal Jurisdiction, wherein offenders may be prosecuted to punishment; and deduce to you in their natural order, and explain the several proceedings therein.

THE HIGH COURT OF PARLIAMENT

Is the Supreme Court in the kingdom; not only for the making, but for the execution of the laws, by the trial of great and enormous offenders in the method of impeachment. The articles of impeachment are like bills of indict-

ment, found by the House of Commons, and afterwards tried by the Lords.

THE COURT OF THE HIGH STEWARD

Is a court instituted for the trial of Peers, indicted for treason or felony. When a Peer is indicted for either of these offences, the indictment is removed into this court, and a Lord High Steward appointed for the time, and all the Lords of Parliament are summoned to attend the trial.

THE COURT OF KING'S BENCH

Takes cognizance of all criminal causes from high treason down to the most trivial misdemeanor, or breach of the peace. Into this court all indictments of inferior courts may be removed, and either tried at bar, or, as I have before explained to you, at the assizes in the different counties, where a commission of *oyer and terminer* (to hear and determine) and of general *gaol delivery*, is issued by the Crown to such judges, as are about to preside at the courts of *Nisi Prius*.

THE HIGH COURT OF ADMIRALTY

Is held before the Lord High Admiral of England, or his deputy, styled the Judge of the Admiralty, and some of the common law judges joined with him in the commission, for the trial of offences and crimes, committed either on the sea, or on the coasts out of the extent of any English county.

The Courts of OYER AND TERMINER *and general* GOAL DELIVERY,

Are held twice every year in each county in the kingdom, excepting in the four northern, where they are held only once; and in Middlesex, where they are held eight times a year: the King's commission is directed to the Judges and others therein named to *inquire, hear, and determine*, all treasons, felonies, and misdemeanors. These courts are known by the general name of the Assizes, which, as I have explained to you in a former Letter, include both civil causes at *Nisi Priùs*, and all criminal causes under this commission of Oyer and Terminer, and general Gaol Delivery.

THE COURTS OF GENERAL QUARTER SESSIONS

Are held four times a year in every county; and are composed of all the acting justices of the peace, with a chairman to preside, chosen by themselves, out of their own body. Their duty is to hear all appeals, in matters relating to the poor rates, and other orders and convictions imposed by the justices out of sessions, and respecting which the laws have allowed an appeal. Besides an infinity of other business of a local nature, they have the power of trying all felonies and misdemeanors, for which the punishment is a limited transportation, fine or imprisonment; and they have the direction of all the county expenses relating to the bridges, gaol, and house of correction, as well as the direction of all matters of a public and local nature in the county.

THE COURT OF THE CORONER

Is also a Court of Record, to inquire into the causes of sudden or violent death, and to find their verdict accordingly. The effect of which answers to an indictment found by

a grand jury, to put the accused person on his trial.

The proceedings in courts of criminal jurisdiction, are either summary or regular.

A *summary* proceeding, is where an information is laid before a justice of the peace, and certain penalties, either of fine or imprisonment, as directed by the Act of Parliament under which the information is laid, are imposed on conviction of the offender.

The *regular* proceeding in a court of criminal jurisdiction is the trial of an offender before a judge and a jury of his country; and, as I have before given you a description of a trial in a civil action, I will now briefly describe to you the proceedings in a criminal prosecution.

An offender charged with having committed a felony, may be arrested by any person without a warrant, at the time the felony is in the act of being committed; and indeed, if there is probable ground of suspicion, any constable may arrest him without any warrant or authority, besides that which his office as conservator of the peace, gives him. The safest and

the best way however is, for an information on oath to be laid before a justice of the peace, of the offence committed, and of the party suspected; when a warrant is issued by the justice for his apprehension. Upon the accused being brought before the justice, proofs on oath, sufficient to put the offender upon his trial, to answer the charge, are required; which, if satisfactory to the justice, and not negatived by the prisoner, the warrant of commitment to gaol, is made out and signed, and the accused is sent to prison, to take his trial at the next Gaol Delivery. If, however, the offence is of a capital nature, then he must be committed to the assizes, inasmuch as the sessions have no power over a capital felony. On the day of trial, the indictment, specifying and charging him with the offence, is laid before the grand jury, which consists of a certain number of the first gentlemen of the county, who examine the witnesses on oath, and determine, if there is sufficient ground, to call upon the accused to answer the complaint. If they think there is not, they write on the back of the bill of indictment, *No Bill*, and the

accused is discharged. But if they think there is sufficient proof to convict him of the crime alleged, unless negatived by him, they return the bill into court, with the words, *True Bill* written on it. A grand jury, therefore, is to determine whether the prisoner ought to be made to answer the charge; and the petit jury, before whom he is to be tried, is to hear that answer, and bring in their verdict accordingly. Thus admirably guarded are the life and liberty of the subject, not only from actual danger, but even from the risk of it.

When the offender is to be tried, he is brought to the bar of the court, and the indictment or accusation is read over to him. He is then called upon to plead, either guilty or not guilty. If the former, he has subjected himself to the same penalty of the law, as if he had been found guilty by a verdict against him. But if he pleads the latter, and which does not always mean that he is innocent, but that he calls upon his accuser to prove the accusation, then the jury are sworn "to try the issue between the "King and the prisoner at the bar, and a true "verdict give according to the evidence." If

the prisoner objects to any of the jury for partiality or any other cause, he has a right to do so, before they are sworn, and another juryman will be called in his place. The trial then proceeds. If treason, or any heinous charge, the counsel for the Crown opens the proceedings, states the case, and calls the witnesses to prove it. In common felonies, however, the case is not opened by counsel, but after the indictment is read, the counsel for the prosecution proceeds immediately to call the witnesses. The prisoner is at liberty either by himself, or his counsel, to cross-examine the witnesses against him, and when the case for the prosecution is closed, to make his defence himself. His counsel may examine his witnesses for him, but cannot make a speech in his defence, except in cases of misdemeanor. The Judge, on the close of the defence, sums up the facts proved, to the jury, making such remarks on the law, or on the facts, as he may think necessary. The jury then consider their verdict. If there is any difficulty, they may retire to consult; but generally after a short deliberation among themselves in court, they return their verdict.

If not guilty, the prisoner is discharged. But if guilty, the Judge then passes the sentence of the law; where he has a discretionary power as to the extent of the punishment, he may exercise it at the time; but where the offence is capital, he either leaves the condemned prisoner for execution, or reprieves him, preparatory to the King's pardon being received; which is either total; or conditional, to suffer some less punishment in its place.

The advantages of this open trial to the prisoner, before a jury of his countrymen, taken promiscuously from a number returned by the Sheriff, and who alone decide upon the facts, which are either to acquit or condemn him, are incalculable, and are justly the pride and glory of our English laws. Besides which, the prisoner has other advantages, by which though not altering or affecting the truth of the accusation, yet upon general principles of jurisprudence, he is allowed to benefit. Any mistake in the indictment of a wrong name, or in the description of the property in the wrong person, vitiates the whole, and he is immediately to be acquitted; it being of infinitely

more consequence, that the laws should be administered according to a fixed and undeviating rule, and thus ten guilty men escape; than that by an uncertain and vacillating administration of justice, one innocent man should suffer.

Thus I have cursorily described to you, the proceedings in our criminal court; and I think that you will acknowledge that however dreadful it may be to know, that many of our fellow creatures are daily standing at our criminal bar, to answer for those offences, which the temptations of the world, bad education, bad example, and bad associates, are constantly inducing them to commit; yet that it is impossible for human wisdom, justice, and mercy, to regulate or assign a better and more humane mode of putting in force the necessary penalties of the law.

Your's, &c.

LETTER XXX.

PUBLIC WRONGS.

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

HAVING in my preceding Letters given you a short and summary account of the Laws of England, as regards the Rights of Persons, and the Rights of Things; and also having explained to you the Wrongs which affect mankind either in their private capacity as individuals, or in their public capacity as citizens; I will now recal to your memory some of the principal outlines of the legal Constitution of this country, by a short historical review of the most considerable revolutions that

have taken place in the Laws of England from the earliest to the present times: and in doing so, I will divide the state of our legal polity into six distinct periods, each memorable for some important change in the administration of the law, as well as its improvement.

I. FROM THE EARLIEST TIMES TO THE NORMAN CONQUEST.

In what state our legal polity was from the earliest times to the reign of King Alfred, is a matter of great uncertainty, and therefore our inquiries must be very fruitless and defective; but when the government of the whole country was vested in Alfred, as sole monarch of all the petty states, which had hitherto been under distinct Rulers, he new-modelled the constitution; and rebuilt it on a plan which has been strengthened rather than weakened by time. To him we are indebted for the reduction of the kingdom, under one regular and gradual subordination of government, the subdivision of England into tithings and hundreds, all under the influence and administration of one supreme

Magistrate, the King; and we are also indebted to him, for collecting the various customs which were dispersed all over the kingdom into a reduced and digested form, and one uniform Code of laws. Among the most important of the Saxon laws, may be reckoned also the general assemblies of the principal men in the nation, called the Wittenagemote, the origin of our present Parliament, the descent of the Crown when once hereditary, and the palladium of our liberties, the Trial by Jury.

II. FROM THE NORMAN CONQUEST TO THE REIGN OF EDWARD III.

Among the first of the alterations which took place in our laws, at the conquest, may be reckoned the separation of the Ecclesiastical courts from the civil, effected by the Conqueror, to ingratiate him with the Popish Clergy, whom he considered it absolutely necessary to gain over to his interests. Another violation of the law was the depopulation of whole districts, to convert them into forests, for the King's diversion of hunting, and subjecting them to the

unreasonable severities of the forest laws, whereby the slaughter of a beast, was made equivalent to the death of a man. Another great alteration was by narrowing the remedial influence of the county courts, the great seats of Saxon justice, and creating a court, called the *Aula Regis*, with unbounded power and uncontrolled authority. But the most important of all the changes, introduced at the conquest, was the introduction of the Feudal tenures, which drew after it a numerous and oppressive train of servile appendages. The laws too, as well as the prayers, were administered in an unknown tongue; and above all, every body was obliged to disperse, and fire and candle to be extinguished at the sound of the melancholy *Curfew*. Some things, however, were done in the reign of Henry II. to ameliorate the condition of the people; and in the reign of King John, when the grievances under which the country groaned became intolerable, the memorable charter was extorted from him at Runnymead, when English liberty began once again to rear its head, from

among the oppressions which still held her in subjection.

III. FROM THE REIGN OF EDWARD I. TO THE REFORMATION.

It would be endless to enumerate all the regulations, which were sanctioned and confirmed by Edward I. called the English Justinian; I will mention the most important only. Among others, he confirmed the great Charter; he limited and confined the bounds of Ecclesiastical jurisdiction; he secured the property of the subject, by abolishing all taxes without the consent of the national council; and he new-modelled the administration of justice between party and party, which has continued nearly the same through all ages to this day. From this time to Henry VII. the civil wars gave no leisure for furthur judicial improvement, and in this King's reign, his ministers were more anxious in hunting out prosecutions upon old and forgotten laws, than in framing any new regulations. But,

IV. FROM THE REFORMATION TO THE RESTORATION OF CHARLES II.

A new scene was opened in Ecclesiastical affairs, the usurped power of the Pope being for ever routed and destroyed; and the religious liberties of the nation being established on, I trust, an eternal basis. All the grievances introduced by the Norman conquest were gradually shaken off, and our Saxon constitution restored with considerable improvements. Many laws were passed of a salutary nature, tending to improve and strengthen the constitution, by abolishing many previous encroachments; and though the misguided conduct of Charles I. clouded the morning of his reign, which afterwards ended in blood, yet many salutary laws were passed, and great progress was made towards perfecting the fabric of our jurisprudence.

V. FROM THE RESTORATION OF CHARLES II. TO THE REVOLUTION IN 1688.

To the reign of Charles II. marked with the increase of every species of vice and pro-

fligacy, we are indebted to that bulwark of our liberties, the Habeas Corpus Act. Magna Carta indeed declared, that no man should be imprisoned contrary to law; but the Habeas Corpus Act points out the effectual means of carrying that Charter into execution.

VI. FROM THE REVOLUTION IN 1688, TO THE PRESENT TIME.

During this period many laws have passed, all strengthening and perfecting the English Constitution. The Bill of Rights—the Toleration Act—the Act of Settlement—the Law of Libel—and many others, all of which have tended to protect the subject from the power of the Crown, and yet, at the same time, to uphold theCrown from too great encroachments on its just rights and prerogatives.

I have thus for your amusement and instruction endeavoured, in this Abridgement of Blackstone's Commentaries on the Laws of England, to give you a general idea of the Laws, and of that glorious Constitution, under which it is your happiness to be born. Of a

constitution so wisely contrived, so strongly raised, and so highly finished, it is difficult to speak with that praise, which is justly its due: —the thorough and attentive contemplation of it, will furnish its best panegyrick. May the noble pile be preserved in all its strength and beauty from this to all succeeding ages; and may the LIBERTY OF BRITAIN be transmitted to posterity, as their best birthright, and their noblest inheritance.

Your's, &c.

FINIS.

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