THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I



Sir Frederick Pollock

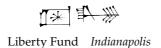


Frederic William Maitland

THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I

Volume I

By Sir Frederick Pollock and Frederic William Maitland



This book is published by Liberty Fund, Inc., a foundation established to encourage study of the ideal of a society of free and responsible individuals.

The cuneiform inscription that serves as our logo and as the design motif for our endpapers is the earliest-known written appearance of the word "freedom" (amagi), or "liberty." It is taken from a clay document written about 2300 B.C. in the Sumerian city-state of Lagash.

This is the second edition of *The History of English Law before the Time of Edward I*, which was first published in 1898 by Cambridge University Press. The first edition was published in 1895 by Cambridge University Press.

Select bibliography and notes by Professor S. F. C. Milsom, published here as an appendix, was originally published in Cambridge University Press's 1968 reissue of *The History of English Law before the Time of Edward I*. Reprinted by permission of Cambridge University Press.

Portrait of Sir Frederick Pollock, by Reginald Grenville Eves, National Portrait Gallery, London Portrait of Frederic William Maitland, by Beatrice Lock, National Portrait Gallery, London

Printed in the United States of America

All rights reserved

C 10 9 8 7 6 5 4 3 2 P 10 9 8 7 6 5 4 3 2

Library of Congress Cataloging-in-Publication Data

Pollock, Frederick, Sir, 1845-1937.

The history of English law before the time of Edward I/by Sir Frederick Pollock and Frederic William Maitland.—2nd ed.

p. cm

Originally published: 2nd ed. Cambridge: Cambridge University Press, 1898. Includes bibliographical references and index.

ısвn 978-0-86597-749-5 (hardcover: alk. paper)

ISBN 978-0-86597-752-5 (pbk.: alk. paper)

1. Law—England—History. I. Maitland, Frederic William,

1850-1906. II. Title.

кD532.Р64 2010 349.42—dc22

2008046535

Liberty Fund, Inc. 8335 Allison Pointe Trail, Suite 300 Indianapolis, Indiana 46250-1684

Contents

Preface to the Second Edition, xix

Preface to the First Edition, xxi

List of Abbreviations, xxiii

List of Texts Used, xxv

Additions and Corrections, xxxi

Introduction, xxxiii

BOOK I

Sketch of Early English Legal History

CHAPTER I. The Dark Age in Legal History, pp. 3–28

The difficulty of beginning, **3** Proposed retrospect, **3** The classical age of Roman law, **4** The beginnings of ecclesiastical law, **4** Third century. Decline of Roman law, **5** FOURTH CENTURY. Church and State, **5** FIFTH CENTURY. The Theodosian Code, **7** Laws of Euric, **8** SIXTH CENTURY. The century of Justinian, **8** The *Lex Salica*, **9** The *Lex Ribuaria*, and *Lex Burgundionum*, **10** The *Lex Romana Burgundionum*, **10** The *Lex Romana Visigothorum*, **10** Importance of The Breviary, **11** The Edict of Theoderic, **11** The Dionysian collection of canons, **11** Justinian's books, **12** Justinian and Italy, **13** Laws of Æthelbert, **14** SEVENTH AND EIGHTH

CENTURIES. Germanic laws, 15 System of personal laws, 16 The vulgar Roman law, 17 The latent Digest, 18 The capitularies, 18 Growth of canon law, 19 NINTH AND TENTH CENTURIES. The false Isidore, 20 The forged capitularies, 20 Church and State, 21 The darkest age, 22 Legislation in England, 23 England and the Continent, 24 ELEVENTH CENTURY. The Pavian law-school, 24 The new birth of Roman law, 25 The recovered Digest, 27 The influence of Bolognese jurisprudence, 27

CHAPTER II. Anglo-Saxon Law, pp. 29-69

Imperfection of written records of early Germanic law, 29 Anglo-Saxon dooms and custumals, 31 Anglo-Saxon land-books, 32 Survey of Anglo-Saxon institutions, 33 Personal conditions: lordship, 34 The family, 35 Ranks: ceorl, eorl, gesíð, 37 Thegn, 37 Other distinctions, 39 Privileges of the clergy, 39 Slavery and slave trade, 39 Manumission, 40 Courts and justice, 42 Procedure, 43 Temporal and spiritual jurisdiction, 45 The king's jurisdiction, 45 The Witan, 46 County and hundred courts, 47 Private jurisdiction, 48 Subject-matter of Anglo-Saxon justice, 48 The king's peace, 49 Feud and atonement, 51 Wer, wite and bót, 53 Difficulties in compelling submission to the courts, 55 Maintenance of offenders by great men, 55 Why no trial by battle, 56 Treason, 56 Homicide, 58 Personal injuries: misadventure, 59 Archaic responsibility, 60 Theft, 61 Property, 62 Sale and other contracts, 63 Claims for stolen goods: warranty, 65 Land tenure, 66 Book-land, 66 L\u00e9n-land, 67 Folk-land, 67 Transition to feudalism, 69

CHAPTER III. Norman Law, pp. 70–85

Obscurity of early Norman legal history, 70 Norman law was
French, 72 Norman law was feudal, 72 Feudalism in Normandy, 73
Dependent land tenure, 75 Seignorial justice, 78 Limits of ducal power,
79 Legal procedure, 80 Criminal law, 80 Ecclesiastical law, 81
The truce of God, 82 Condition of the peasantry, 82 Jurisprudence,
83 Lanfranc of Pavia, 84

CONTENTS vii

CHAPTER IV. England under the Norman Kings, pp. 86–118

Effects of the Norman Conquest, 86 No mere mixture of national laws, 86 History of our legal language, 87 Struggle between Latin, French and English, 89 The place of Latin, 90 Struggle between French and English, 90 Victory of French, 91 French documents, 93 French law-books, 94 Language and law, 94

Preservation of Old English law, 95 The Conqueror's legislation, 95 Character of William's laws, 96 Personal or territorial laws, 98 Maintenance of English land law, 99 The English in court, 100 Norman ideas and institutions, 101 Legislation: Rufus and Henry I., 102 Stephen, 104 The law-books or *Leges*, 105 Genuine laws of William I., 106 The *Quadripartitus*, 106 *Leges Henrici*, 107 *Consiliatio Cnuti*, 109 *Instituta Cnuti*, 109 French *Leis* of William I., 110 *Leges Edwardi Confessoris*, 111 Character of the law disclosed by the *Leges*, 113 Practical problems in the *Leges*, 114 Practice of the king's court, 116 Royal justice, 117

CHAPTER V. Roman and Canon Law, pp. 119–144

Contact of English with Roman and Canon law, 119 Cosmopolitan claims of Roman law, 120 Growth of Canon law, 120 Gratian, 120 Decretales Gregorii, 121 The Canonical system, 122 Relation of Canon to Roman law, 124 Roman and Canon law in England, 125 Vacarius, 126 English legists and canonists, 128 Scientific work in England, 129 The civilian in England, 130

Province of ecclesiastical law, 133 Matters of ecclesiastical economy, 134 Church property, 135 Ecclesiastical dues, 135 Matrimonial causes, 136 Testamentary causes, 136 Fidei laesio, 137 Correction of sinners, 138 Jurisdiction over clerks, 139 Miserabiles personae, 139 The sphere of Canon law, 140 Influence of Canon upon English law, 140 English law administered by ecclesiastics, 142 Nature of canonical influence, 143.

viii CONTENTS

CHAPTER VI. The Age of Glanvill, pp. 145–184

The work of Henry II., 145 Constitutions of Clarendon, 146 Assize of Clarendon, 146 Inquest of Sheriffs, 147 Assize of Northampton, 147 Henry's innovations. The jury and the original writ, 147 Essence of the jury, 147 The jury a royal institution, 149 Origin of the jury: The Frankish inquest, 149 The jury in England, 151 The jury and fama publica, 151 The inquest in the Norman age, 152 Henry's use of the inquest, 153 The assize utrum, 154 The assize of novel disseisin, 155 Import of the novel disseisin, 155 The grand assize, 156 The assize of mort d'ancestor, 157 The assize of darrein presentment, 157 Assize and jury, 158 The system of original writs, 159 The accusing jury, 161

Structure of the king's courts, **162** The central court, **164** Itinerant justices, **165** Cases in the king's court, **166** Law and letters, **170** Richard Fitz Neal, **171** Dialogue on the Exchequer, **172** Ranulf Glanvill: his life, **172** *Tractatus de Legibus*, **173** Roman and Canon law in Glanvill, **175** English and continental law-books, **177**

The limit of legal memory, 179 Reigns of Richard and John, 179
The central court, 179 Itinerant justices, 181 Legislation, 181
The Great Charter, 181 Character of the Charter, 183

CHAPTER VII. The Age of Bracton, pp. 185–239

Law under Henry III., 185 General idea of law, 185 Common law, 187 Statute law. The Charters, 189 Provisions of Merton, Westminster and Marlborough, 190 Ordinance and Statute, 192 The king and the law, 193 Unenacted law and custom, 194 Local customs, 196 Kentish customs, 197 Englishry of English law, 200 Equity, 201

The king's courts, 202 The exchequer, 202 Work of the exchequer, 203 The chancery, 205 The original writs, 207 The chancery not a tribunal, 209 The two benches and the council, 210 Council and parliament, 211 Itinerant justices, 212 Triumph of royal justice, 215 The judges, 216 Clerical justices, 217

Bracton, 218 His book, 219 Character of his work: Italian form, 219 English substance, 221 Later law books, 222 Legal literature, 223

CONTENTS ix

The legal profession, 224 Pleaders, 224 Attorneys, 225 Non-professional attorneys, 226 Professional pleaders, 226 Regulation of pleaders and attorneys, 228 Professional opinion, 230 Decline of Romanism, 230 Notaries and conveyancers, 231 Knowledge of the law, 233.

English law in Wales, **234** English law in Ireland, **234** English and Scottish law, **235** Characteristics of English law, **238**

BOOK II

The Doctrines of English Law in the Early Middle Ages

CHAPTER I. Tenure, pp. 243-429

Arrangement of this book, 243 The medieval scheme of law, 243 The modern scheme, 244 Our own course, 245

§ 1. Tenure in General, pp. 246–254

Derivative and dependent tenure, 246 Universality of dependent tenure, 248 Feudal tenure, 249 Analysis of dependent tenure, 250

Obligations of tenant and tenement, 252 Intrinsec and forinsec service, 252 Classification of tenures, 254

§ 2. Frankalmoin, pp. 254–266

Free alms, 254 Meaning of "alms," 256 Spiritual service, 257

Gifts to God and the saints, 258 Free alms and forinsec service, 259

Pure alms, 260 Frankalmoin and ecclesiastical jurisdiction, 260

The assize *Utrum*, 262 Defeat of ecclesiastical claims, 262 Frankalmoin in the thirteenth century, 265

§ 3. Knight's Service, pp. 266–298

Military tenure, **266** Growth and decay of military tenure, **267** Units of military service, **268** The forty days, **269** Knight's fees, **271** Size of knight's fees, **271** Apportionment of service, **272** Apportionment between king and tenant in chief, **273** Honours and baronies,

The barony and the knight's fee, 275 Relativity of the knight's fee, 276 Duty of the military tenant in chief, 278 Position of military subtenants, 278 Knight's service due to lords who owe none, 280 Scutage, 282 Scutage between king and tenant in chief, 283 Scutage and fines for default of service, 285 Scutage and the military sub-tenants, 287 Tenure by escuage, 288 The lord's right to scutage, 290 Reduction in the number of knight's fees, 291 Meaning of this reduction, 292 Military combined with other services, 293 Castle-guard, 294 Thegnage and drengage, 295 Tenure by barony, 295 The baronage, 296 Escheated honours, 297

§ 4. Serjeanty, pp. 299–307

Definition of serjeanty, 299 Serjeanty and service, 299 Types of serjeanty owed by the king's tenants in chief, 299 Serjeanties due to mesne lords, 302 Military serjeanties due to mesne lords, 303 Essence of serjeanty, 304 The serjeants in the army, 304 Serjeanty in Domesday Book, 305 Serjeanty and other tenures, 306

§ 5. Socage, pp. 308–313

Socage, 308 Types of socage, 308 Extension of socage, 310 Fee farm, 310 Meaning of "socage," 311 Socage in contrast to military tenure, 311 Socage as the residuary tenure, 312 Burgage, 312 Burgage and borough customs, 312 One man and many tenures, 313

§ 6. Homage and Fealty, pp. 314–324

Homage and fealty, 314 Legal and extra-legal effects of homage, 314
The ceremony of homage, 314 The oath of fealty, 315 Liegeance, 315
Vassalism in the Norman age, 317 Bracton on homage, 318 Homage and private war, 319 Sanctity of homage, 320 Homage and felony, 321
Feudal felony, 322 Homage, by whom done and received, 323 The lord's obligation, 323

§ 7. Relief and Primer Seisin, pp. 324–336

The incidents of tenure, 324 Heritable rights in land, 325 Reliefs, 326

Rights of the lord on the tenant's death, 327 Prerogative rights of the king, 329 Earlier history of reliefs, 330 Relief and heriot, 330

Heritability of fees in the Norman age, 332 Mesne lords and heritable fees, 334 History of the heriot, 334 Relief on the lord's death, 336

CONTENTS xi

§ 8. Wardship and Marriage, pp. 337–348

Bracton's rules, 337 Wardship of female heirs, 338 Priority among lords, 339 What tenures give wardship, 339 Prerogative wardship, 340 The lord's rights vendible, 340 Wardship and the serjeanties, 341 The law in Glanvill, 342 Earlier law, 343 Norman law, 344 The Norman apology, 345 Origin of wardship and marriage, 346

§ 9. Restraints on Alienation, pp. 348–369
Historical theories, 348 Modes of alienation, 348 Preliminary distinctions, 350 Glanvill, 351 The Great Charter, 351 Bracton, 351
Legislation as to mortmain, 352 Alienation of serjeanties, 353
Special law for the king's tenants in chief, 354 Growth of the prerogative right, 355 Quia emptores, 356 Disputed origin of the prerogative right, 357 Summary of law after the Charter, 359 Older law, 359 Anglo-Norman charters, 360 Discussion of the charters, 361 Conclusions as to law of the Norman age, 363 Usual form of alienation, 364
General summary, 365 Gifts by the lord with his court's consent, 366
Alienation of seignories, 366 Law of attornment, 367 Practice of alienating seignories, 368

§ 10. Aids, pp. 369-371

Duty of aiding the lord, 369

§ 11. Escheat and Forfeiture, pp. 371–377
Escheat, **371** The lord's remedies against a defaulting tenant, **372**Action in the king's court, **372** Distress, **373** Proceedings in the lord's court, **374** Survey of the various free tenures, **375**

§ 12. Unfree Tenure, pp. 377–405

Freehold tenure, 377 Technical meaning of "freehold," 378 Villeinage as tenure and as status, 379 Villein tenure: unprotected by the king's court, 379 Want of right and want of remedy, 380 Protection by manorial courts, 381 Evidence of the "extents," 382 Attempt to define villein tenure, 383 The manorial arrangement, 383 The field system, 384 The virgates, 385 Villein services, 386 A typical case of villein services, 387 Week work and boon days, 388 Merchet and tallage, 389 Essence of villein tenure, 390 The will of the lord, 391 Villeinage and labour, 391 Uncertainty of villein services, 392 Tests of villeinage,

393 Binding force of manorial custom, 398 Treatment of villein tenure in practice, 398 Heritable rights in villein tenements, 401 Unity of the tenement, 403 Alienation of villein tenements, 404 Villein tenure and villein status, 404

§ 13. The Ancient Demesne, pp. 405–429

The ancient demesne and other royal estates, 405 Immunities of the ancient demesne, 406 Once ancient demesne, always ancient demesne, 407 Peculiar tenures on the ancient demesne, 407 The little writ of right, 407 The Monstraverunt, 410 The classes of tenants, 411

Bracton's theory, 411 Theory and practice, 414 Difficulties of classification, 415 Sokemanry and socage, 417 Later theory and practice, 419 Why is a special treatment of the ancient demesne necessary? 419 The king and the conquest settlement, 421 Royal protection of royal tenants, 423 Customary freehold, 424 No place for a tenure between freehold and villeinage, 427 The conventioners, 427 Conclusion, 429

CHAPTER II. The Sorts and Conditions of Men, pp. 430–554

Law of personal condition, 430 Status and estate, 431

§ 1. The Earls and Barons, pp. 431–434 The baronage, 431 Privileges of the barons, 432

§ 2. The Knights, pp. 434-435

Knighthood, 434

§ 3. The Unfree, pp. 435-456

The unfree, 435 General idea of serfage, 436 Relativity of serfage, 438 The serf in relation to his lord, 439 Rightlessness of the serf, 439 Serfdom *de iure* and serfdom *de facto*, 440 Covenant between lord and serf, 441 The serf in relation to third persons, 442 The serf's property, 443 Difficulties of relative serfdom, 420 The serf in relation to the state, 444 How men become serfs, 446 Servile birth, 446 Mixed marriages, 447 Influence of the place of birth, 448 Villeins by confession, 448 Serfdom by prescription, 449 How serfdom ceases, 451 Manumission, 451 The freedman, 452 Modes of enfranchisement,

CONTENTS xiii

453 Summary, 453 Retrospect. Fusion of villeins and serfs, 454 The levelling process, 455 The number of serfs, 455 Rise of villeins, 456

§ 4. The Religious, pp. 457–463

Civil death, **457** Growth of the idea of civil death, **457** Difficulties arising from civil death, **459** The monk as agent, **460** The abbatial monarchy, **461** Return to civil life, **462** Civil death as a development of the abbot's *mund*, **462**

§ 5. The Clergy, pp. 463-483

Legal position of the ordained clerk, **463** The clerk under temporal law, **464** Exceptional rules applied to the clerk, **464** Benefit of clergy, **465** Trial in the courts of the church, **467** Punishment of felonious clerks, **469** What persons entitled to the privilege, **469** What offences within the privilege, **470** The Constitutions of Clarendon, **472** Henry II.'s scheme, **472** Henry's scheme and past history, **473** Henry's allegations, **474** Earlier law: the Conqueror's ordinance, **474** The *Leges Henrici*, **475** Precedents for the trial of clerks, **475** Summary, **477** Henry's scheme and the Canon law, **479** The murderers of clerks, **481**

§ 6. Aliens, pp. 483-493

The classical common law, 483 Who are aliens? 483 Disabilities of the alien, 484 Naturalization, 485 Law of earlier times, 485 Growth of the law disabling aliens, 486 The king and the alien, 488 The kinds of aliens, 489 The alien merchants, 490 The alien and the common law, 490 Has the merchant a peculiar status? 492 The law merchant, 493

§ 7. The Jews, pp. 493–501

General idea of the Jew's position, 493 The exchequer of the Jews, 495 Relation of the Jew to the king, 497 Relation of the Jew to the world at large, 498 Law between Jew and Jew, 499 Influence of the Jew upon English law, 500

§ 8. Outlaws and Convicted Felons, pp. 501–503 Outlawry, **501** Condition of the outlaw, **503**

§ 9. Excommunicates, pp. 503–506
Excommunication, **504** Spiritual leprosy, **504** Excommunication and civil rights, **506**

XiV CONTENTS

 \S 10. Lepers, Lunatics and Idiots, pp. 506–508 The leper, **506** The idiot, **507** The lunatic, **507**

§ 11. Women, pp. 508–512

Legal position of women, 508 Women in private law, 508 Women in public law, 509 Married women, 512

§ 12. Corporations and Churches, pp. 512–538

The corporation, 512 Beginnings of corporateness, 514 Personality of the corporation, 514 The anthropomorphic picture of a corporation, 515 Is the personality fictitious? 516 The corporation at the end of the middle ages, 516 The corporation and its head, 517 The corporation in earlier times, 519 Gradual appearance of the group-person, 520 The law of Bracton's time, 521 The *universitas* and the *communitas*, 521 Bracton and the *universitas*, 522 No law as to corporations in general, 523

Church lands, 523 The owned church, 524 The saints as persons, 525 The saint's administrators, 527 Saints and churches in Domesday Book, 527 The church as person, 528 The church as *universitas* and *persona ficta*, 528 The temporal courts and the churches, 530 The parish church, 530 The abbatial church, 531 The episcopal church, 532 Disintegration of the ecclesiastical groups, 533 Communal groups of secular clerks, 534 Internal affairs of clerical groups, 535 The power of majorities, 536 The ecclesiastical and the temporal communities, 537 The boroughs and other land communities, 537

§ 13. The King and the Crown, pp. 538–554
Is there a crown? 538 Theories as to the king's two bodies, 538
Personification of the kingship not necessary, 539 The king's rights as intensified private rights, 539 The king and other lords, 540
The kingship as property, 540 The king's rights can be exercised by him, 542 The king can do wrong but no action lies against him, 542 King's land and crown land, 545 Slow growth of a law of "capacities," 546 No lay corporations sole, 547 Is the kingdom alienable? 548 The king can die, 549 The king can be under age, 550 Germs of a doctrine of "capacities," 551 Personification of the crown, 552 Retrospect, 553

CHAPTER III. Jurisdiction and the Communities of the Land, pp. 555–725

Place of the law of jurisdiction in the medieval scheme, 555 All temporal jurisdiction proceeds from the king, 556 The scheme of courts, 557 Division of the land, 557 The county court, 558 The hundred court, 558 The sheriff's turn, 558 Seignorial courts, 559 Feudal courts, 559 Franchise courts, 560 Leets, 560 Borough courts, 560 The king's courts, 560

§ 1. The County, pp. 561–585

The county, 561 The county officers, 561 The county community, 563
The county court, 564 Identity of county and county court, 564
Constitution of the county court, 565 Suit of court no right, but a burden, 565 Suit of court is laborious, 566 Sessions of the court, 566
Full courts and intermediate courts, 567 The suitors, 569 Suit is a "real" burden, 569 "Reality" of suit, 570 The vill as a suit-owing unit, 571 Inconsistent theories of suit, 572 The court in its fullest form, 573
The communal courts in earlier times, 574 Struggle between various principles, 575 Suit by attorney, 575 Representative character of the county court, 576 The suitors as doomsmen, 576 A session of the county court, 578 The suitors and the dooms, 579 Powers of a majority, 581 The buzones, 582 Business of the court, 582 Outlawry in the county court, 583 Governmental functions, 583 Place of session, 584

§ 2. The Hundred, pp. 585–589

The hundred as a district, 585 The hundred court, 586 Hundreds in the king's hands, 586 Hundreds in private hands, 587 Duties of the hundred, 587 The sheriff's turn, 588

§ 3. The Vill and the Township, pp. 589–597

England mapped out into vills, **589** Vill and parish, **590** Discrete vills, **590** Hamlets, **591** Vill and village, **592** Vill and township, **593**Ancient duties of the township, **593** Statutory duties, **594** Contribution of township to general fines, **595** Exactions from townships, **595** Miscellaneous offences of the township, **596** Organization of the township, **597**

§ 4. The Tithing, pp. 597-601

Frankpledge, 597 The system in the thirteenth century, 597 Township and tithing, 598 The view of frankpledge, 599 Attendance at the view, 600 Constitution of tithings, 600

§ 5. Seignorial Jurisdiction, pp. 601–625 Regalities and feudal rights, 601 Acquisition of regalities, 602 Theories of royal lawyers, 602 Various kinds of franchises, 604 Fiscal immunities, 604 Immunities from personal service, 604 Immunities from forest law, 604 Fiscal powers, 605 Jurisdictional powers, 606 Contrast between powers and immunities, 607 Sake, soke, toll and team, 608 Sake and soke in the thirteenth century, 609 View of frankpledge, 610 The leet, 610 The vill and the view, 611 The assize of bread and beer, 612 High justice, 612 High franchises claimed by prescription, 614 The properly feudal jurisdiction, 615 The feudal 617 Civil litigation: personal actions, 617 Actions for freehold land, 618 Actions for villein land, 619 Litigation between lord and man, 619 Presentments, 620 Governmental powers and by-laws, 620 Appellate jurisdiction, 621 Constitution of the feudal court, 622 The president, 622 The suitors, 623

§ 6. The Manor, pp. 625-636

The manor, 625 "Manor" not a technical term, 626 Indefiniteness of the term, 627 A typical manor, 627 The manor house, 628 Occupation of the manor house, 629 Demesne land, 630 The freehold tenants, 631 The tenants in villeinage, 632 The manorial court, 633 Size of the manor, 634 Administrative unity of the manor, 635 Summary, 636

§ 7. The Manor and the Township, pp. 637–667

Coincidence of manor and vill, 637 Coincidence assumed as normal, 638 Coincidence not always found, 639 Non-manorial vills, 640

Manors and sub-manors, 640 The affairs of the non-manorial vill, 642 Permanent apportionment of the township's duties, 642

Allotment of financial burdens, 643 The church rate, 644

Apportionment of taxes on movables, 647 Actions against the hundred,

CONTENTS xvii

648 Economic affairs of the non-manorial vill, 649 Intercommoning vills, 651 Return to the manorial vill, 652 Rights of common, 652 Rights of common and communal rights, 653 The freeholder's right of common, 653 The freeholder and the community, 654 Freedom of the freeholder, 655 Communalism among villeins, 656 The villein community, 657 Communalism and collective liability, 660 The community as farmer, 661 Absence of communal rights, 662 Co-ownership and corporate property, 662 The township rarely has rights, 664 The township in litigation, 665 Transition to the boroughs, 666

§ 8. The Borough, pp. 667–725

Cities and boroughs, 667 The vill and the borough, 667 The borough and its community, 668 Sketch of early history, 669 Borough and shire, 669 The borough as vill, 670 The borough's heterogeneity, 670 The borough and the king, 671 The borough and the gilds, 672 Transition to the thirteenth century, 673

Inferior limit of burgality, 673 Representation in parliament, 674 The typical boroughs and their franchises, 676 Jurisdictional privileges, 676 Civil jurisdiction, 677 Criminal jurisdiction, 678 Return of writs, 678 Privileged tenure, 678 Mesne tenure in the boroughs, 679 Seignorial rights in the boroughs, 680 Customary private law, 680 Emancipation of serfs, 682 Freedom from toll, 683 The firma burgi, 684 What was farmed, 684 The farm of the vill and the soil of the vill, 686 Lands of the borough, 687 Waste land, 687 The borough's revenue, **689** Chattels of the borough, **690** Elective officers, 691 Borough courts and councils, 692 By-laws and selfgovernment, 694 Limits to legislative powers, 695 Enforcement of by-laws, 696 Rates and taxes, 697 The borough's income, 698 Tolls, 698 The gild merchant, 699 The formation of a gild, 699 The gild and the government of the borough, 700 Objects of the gild, 701 The gild and the burgesses, 702 The gild courts, 702 The borough as a franchise-holder, 703

Corporate character of the borough community, **703** Corporateness not bestowed by the king, **704** Gild-like structure of the community, **705** Admission of burgesses, **706** The title to burgherhood, **706**

xviii CONTENTS

The "subject" in the borough charters, **708** Discussion of the charters, **708** Charters for the borough, the county and the whole land, **709** Charters and laws, **710** The burgesses as co-proprietors, **711** The community as bearer of rights, **712** Inheritance, succession and organization, **712** Criminal liability of the borough, **713** Civil liability, **715** The communities in litigation, **716** Debts owed to the community, **717** The common seal, **719** The borough's property, **721** The borough's property in its tolls, **721** The ideal will of the borough, **722** The borough corporation, **722** The communities and the nation, **724**

Preface to the Second Edition

In this edition the first chapter, by Prof. Maitland, is new. In Book II, c. ii. § 12, on "Corporations and Churches" (formerly "Fictitious Persons"), and c. iii. § 8, on "The Borough," have been recast. There are no other important alterations: but we have to thank our learned critics, and especially Dr. Brunner of Berlin, for various observations by which we have endeavoured to profit. We have thought it convenient to note the paging of the first edition in the margin.

F. P.

F. W. M.