A

SELECTION

OF

LEGAL MAXIMS,

CLASSIFIED AND ILLUSTRATED.

By HERBERT BROOM, LL.D.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW; READER IN COMMON LAW TO THE INNS OF COURT.

Maxims are the condensed Good Sense of Nations.—Sir J. Mackintosh.

Juris Præcepta sunt hæc; honeste vivere, alterum non lædere, suum cuique tribuere.—I. 1. 1. 3.

SEVENTH AMERICAN,

FROM THE FIFTH LONDON EDITION,

WITH REFERENCES TO AMERICAN CASES.

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PREFACE TO THE FIFTH LONDON EDITION.

In this Edition the text has been carefully revised, and redundant or obsolete matter has been expunged, its place having been supplied by illustrations of Legal Maxims, extracted from the most recent reported cases.

The increasing favor shown by professional and non-professional readers for this Work has stimulated my endeavors to render it more worthy of their confidence.

H. B.

The Temple,
April 28th, 1870.

PREFACE TO THE FOURTH EDITION.

In this Edition, the very numerous cases illustrative of Legal Maxims reported since the last issue of the Work have been inserted; the text has been carefully revised; and it is hoped that this Book of Principles may, in its amended form, prove useful to the Practitioner and the Student.

H. B.

The Temple,
March 30th, 1864.

PREFACE TO THE THIRD EDITION.

In again preparing this Work for the press, I have specially endeavored to preserve its elementary character, remembering that it was not designed to exhibit minute details, but as a repertory of Legal Principles.

The last Edition of these Selections of Maxims has now been carefully revised, cases accumulated during ten years have been sifted and examined, and every effort has faithfully been made to render the Book, in its present form, accurate and useful.

In regard to subjects of interest or importance to the Student, here but incidentally touched upon, occasional references have been given to my "Commentaries on the Common Law"—designed as a companion to, and therefore printed uniformly with, the present volume.

The indulgence of the learned reader must be once more solicited, to pardon errors or omissions, which, notwithstanding anxious and repeated perusal of the proofs, may have escaped detection.

H. B.

The Temple,
June 11th, 1858.

PREFACE TO THE SECOND EDITION.

THE reasonableness of the hope which I formerly ventured to express, as to the utility of a work upon Elementary Legal Principles, has, I think, been established, as well by the rapid sale of the first edition of this Treatise, as by the very flattering communications respecting it which have been made to me by some of the most distinguished members of that Profession for which it was designed. Thus kindly encouraged, I have endeavored to avail myself of the opportunity for improvement which the preparation of a new Edition affords, by making a careful revision of the entire Work, by the insertion of many important Maxims which had been previously unnoticed, and by the addition of much new matter illustrative of those originally commented upon or cited. During the interval which has elapsed since the first appearance of this Work, I have, moreover, devoted myself to a perusal of various treatises upon our own Law, which I had not formerly, from lack of time or opportunity, consulted; to the examination of an extensive series of American Reports, and also to a review of such portions of and commentaries upon the Roman Law, as seemed most likely to disclose the true sources from which very many of our ordinary rules and maxims have been ultimately derived. I trust that a very slight comparison of the present with the former Edition of this Work, will suffice to show that the time thus employed with a view to its improvement has not been unprofitably spent; but that much new matter has been collected and inserted, which may reasonably be expected to prove alike serviceable to the Practitioner and the Student.

Besides the additions just alluded to, I may observe, that the order of arrangement formerly adopted has been on the present occasion in some respects departed from. For instance, that portion of the Work which related to Property and its attributes, has now been subdivided into three sections, which treat respectively of its Acquisition, Enjoyment and Transfer: a mode of considering this subject which has been adopted, for the sake of simplicity, and with a view to showing in what manner the most familiar and ele-

mentary Maxims of our Law may be applied to the exposition and illustration of its most difficult and comprehensive branches. Further, it may be well to mention, that, in the Alphabetical List of Maxims which precedes the text, I have now inserted not only such as are actually cited in the body of the Work, but such also from amongst those with which I have become acquainted, as seem to be susceptible of useful practical application, or to possess any real value. The List, therefore, which has thus been compiled, with no inconsiderable labor, from various sources, and to which some few notes have been appended, will, I trust, be found to render this Volume more complete, as a Treatise upon Legal Maxims, than it formerly was; and will, moreover, appear, on examination, to possess some peculiar claims to the attention of the reader.

It only remains for me further to observe, that, in preparing this Volume for the press, I have anxiously kept before me the twofold object with a view to which it was originally planned. On the one hand, I have endeavored to increase its usefulness to the Practitioner by adding references to very many important, and, for the most part, recent decisions illustrative of those principles of Law to the application of which his attention must necessarily be most frequently directed; whilst, on the other hand, I have been mindful of preserving to this Work its strictly elementary character, so that it may prove no less useful than formerly to the Student as a Compendium of Legal Principles, or as introductory to a systematic course of reading upon any of the various branches of our Common Law.

In conclusion, I can truly say, that, whatever amount of time and labor may have been bestowed upon the preparation of this Work, I shall esteem myself amply compensated if it be found instrumental in extending knowledge with regard to a Science which yields to none either in direct practical importance or in loftiness of aim—if it be found to have facilitated the study of a System of Jurisprudence, which, though doubtless susceptible of improvement, presents, probably, the most perfect development of that science which the ingenuity and wisdom of man have hitherto devised.

HERBERT BROOM.

The Temple,
March 16th, 1848.

PREFACE TO THE FIRST EDITION.

In the Legal Science, perhaps more frequently than in any other, reference must be made to first principles. Indeed, a very limited acquaintance with the earlier Reports will show the importance which was attached to the acknowledged Maxims of the Law, in periods when civilization and refinement had made comparatively little progress. In the ruder ages, without doubt, the great majority of questions respecting the rights, remedies and liabilities of private individuals, were determined by an immediate reference to such Maxims, many of which obtained in the Roman Law, and are so manifestly founded in reason, public convenience and necessity, as to find a place in the code of every civilized nation. In more modern times, the increase of commerce, and of national and social intercourse, has occasioned a corresponding increase in the sources of litigation, and has introduced many subtleties and nice distinctions, both in legal reasoning and in the application of legal principles, which were formerly unknown. This change, however, so far from diminishing the value of simple fundamental rules, has rendered an accurate acquaintance with them the more necessary, in order that they may be either directly applied, or qualified, or limited, according to the exigencies of the particular case, and the novelty of the circumstances which present themselves. If, then, it be true, that a knowledge of first principles is at least as essential in Law as in other sciences, certainly in none is a knowledge of those principles, unaccompanied by a sufficient investigation of their bearing and practical application, more likely to lead into grievous error.

In the present Work I have endeavored, not only to point out the most important Legal Maxims, but also to explain and illustrate their meaning; to show the various exceptions to the rules which they enunciate, and the qualifications which must be borne in mind when they are applied. I have devoted considerable time, and

much labor, to consulting the Reports, both ancient and modern, as also the standard Treatises on leading branches of the Law, in order to ascertain what Maxims are of most practical importance, and most frequently cited, commented on and applied. I have likewise repeatedly referred to the various Collections of Maxims which have heretofore been published, and have freely availed myself of such portions of them as seemed to possess any value or interest at the present day. I venture, therefore, to hope, that very few Maxims have been omitted which ought to have found place in a work like that now submitted to the Profession. In illustrating each Rule, those Cases have in general been preferred as examples in which the particular Maxim has either been cited, or directly stated to apply. It has, however, been necessary to refer to many other instances in which no such specific reference has been made, but which seem clearly to fall within the principle of the Rule; and whenever this has been done, sufficient authorities have, it is hoped, been appended, to enable the reader, without very laborious research, to decide for himself whether the application suggested has been correctly made, or not.

In arranging the Maxims which have been selected as above mentioned, the system of Classification has, after due reflection, been adopted: first, because this arrangement appeared better calculated to render the Work, to some extent, interesting as a treatise, exhibiting briefly the most important Rules of Law, and not merely useful as a book of casual reference; and, secondly, because by this method alone can the intimate connection which exists between Maxims appertaining to the same class be directly brought under notice and appreciated. It was thought better, therefore, to incur the risk of occasional false or defective classification, than to pursue the easier course of alphabetical arrangement. An Alphabetical List has, however, been appended, so that immediate reference may be made to any required Maxim. The plan actually adopted may be thus stated:—I have, in the first Two Chapters, very briefly treated of Maxims which relate to Constitutional Principles, and the mode in which the Laws are administered. These, on account of their comprehensive character, have been placed first in order, and have been briefly considered, because they are so very generally known, and so easily comprehended. After these are placed certain Maxims which are rather deductions of reason than Rules of

Law, and consequently admit of illustration only. Chapter IV. comprises a few principles which may be considered as fundamental, and not referable exclusively to any of the subjects subsequently noticed, and which follow thus: Maxims relating to Property, Marriage and Descent; the Interpretation of Written Instruments in general; Contracts; and Evidence. Of these latter subjects, the Construction of Written Instruments, and the Admissibility of evidence to explain them, as also those Maxims which embody the Law of Contracts, have been thought the most practically important, and have therefore been noticed at the greatest length. The vast extent of these subjects has undoubtedly rendered the work of selection and compression one of considerable labor; and it is feared that many useful applications of the Maxims selected have been omitted, and that some errors have escaped detection. It must be remarked, however, that, even had the bulk of this Volume been materially increased, many important branches of Law to which the Maxims apply must necessarily have been dismissed with very slight notice; and it is believed that the reader will not expect to find, in a Work on Legal Maxims, subjects considered in detail, of which each presents sufficient materials for a separate Treatise.

One question which may naturally suggest itself remains to be answered: For what class of readers is a Work like the present intended? I would reply, that it is intended not only for the use of students purposing to practise at the bar, or as attorneys, but also for the occasional reference of the practising barrister, who may be desirous of applying a Legal Maxim to the case before him, and who will therefore search for similar, or, at all events, analogous cases, in which the same principle has been held applicable and decisive. The frequency with which Maxims are not only referred to by the Bench, but cited and relied upon by Counsel in their arguments; the importance which has, in many decided cases, been attached to them; the caution which is always exercised in applying, and the subtlety and ingenuity which have been displayed in distinguishing between them, seem to afford reasonable grounds for hoping, that the mere Selection of Maxims here given may prove useful to the Profession, and that the examples adduced, and the authorities referred to by way of illustration, qualification or exception, may, in some limited degree, add to their utility.

In conclusion, I have to express my acknowledgments to several

Professional Friends of Practical experience, ability and learning, for many valuable suggestions which have been made, and much useful information which has been communicated, during the preparation of this Work, and of which I have very gladly availed myself. For such defects and errors as will, doubtless, notwithstanding careful revision, be apparent to the reader, it must be observed that I alone am responsible. It is believed, however, that the Professional Public will be inclined to view with some leniency this attempt to treat, more methodically than has hitherto been done, a subject of acknowledged importance, and one which is surrounded with considerable difficulty.

HERBERT BROOM.

The Temple,
January 30th, 1845.

*CHAPTER II. [*47]

MAXIMS RELATING TO THE CROWN.

THE principal attributes of the Crown are sovereignty or pre-eminence, perfection, and perpetuity; and these attributes are attached to the wearer of the crown by the constitution, and may be said to form his constitutional character and royal dignity. On the other hand, the principal duty of the sovereign is to govern his people according to law; and this is not only consonant to the principles of nature, of liberty, of reason, and of society, but has always been esteemed an express part of the common law of England, even when prerogative was at the highest. In the pages immediately following are collected some of the more important technical rules, embodying the above general attributes of the Crown, with remarks as to their meaning and qualifications.[1]

REX NON DEBET ESSE SUB HOMINE, SED SUB DEO ET SUB LEGE, QUIA LEX FACIT REGEM.

(Bract. Lib. i. fo. 5.)

The king is under no man, yet he is in subjection to God and to the law, for the law makes the king.

The head of the state is regarded by our law in a two-fold character—as an individual liable like any other to *the accidents of mortality and its frailties; also as a corporation [*48] sole,[2] endowed with certain peculiar attributes, the recognition

[1] See further, on the subject of this chapter, Mr. Allen's Treatise on the Royal Prerogative, ed. 1849, and Mr. Chitty's Treatise on the Prerogative of the Crown, particularly chaps. i., ii., xv., xvi.; 1 Com. by Broom & Hadley, chap. vii.; Fortescue de Laud. Leg. Ang., by Amos, chap. ix.; Finch's Law 81; Plowd. Com., chap. xi.; Bracton, chap. viii.

[2] Mr. Allen, however, observes, at page 6 of his Treatise on the Royal Prerogative, that "there is something higher, more mysterious, and more remote from reality in the conception which the law of England forms of the king than enters into the notion of a corporation sole."

whereof leads to important consequences. Politically, the sovereign is regarded in this latter character, and is invested with various functions, which the individual, as such, could not discharge. "The person of the king," it has been said,[1] "is by law made up of two bodies: a natural body, subject to infancy, infirmity, sickness, and death; and a political body, perfect, powerful, and perpetual." These two bodies are inseparably united together, so that they may be distinguished, but cannot be divided. More often, however, the sovereign would seem to be regarded by our law in his political than in his individual and natural capacity, and the attributes of his former are blended with those of his latter character. As conservator of the public peace, the Crown in any criminal proceeding represents the community at large, prosecutes for the offence committed against the public, and can alone exercise the prerogative of pardoning. As the fountain of justice, no court can have compulsory jurisdiction over the sovereign; an action for a personal wrong, [*49] therefore, will not lie against the king;[2] for which rule, *indeed, another more technical reason has been assigned—that the king cannot by his writ command himself to appear *coram judice*. As the dispenser of law and equity, the king is present in all his courts; whence it is that he cannot be nonsuit in an action, nor does he appear by attorney.[3]

The *Case of Prohibitions*[4] shows, however, that the king is not above the law, for he cannot in person assume to decide any case, civil or criminal, but must do so by his judges; the law being "the golden met-wand and measure to try the causes of the subjects, and which protected his majesty in safety and peace,"—the king being thus, in truth, *sub Deo et lege*. This case shows also that an action will not lie against the Crown for a personal tort, for it is there laid down that "the king cannot arrest a man for suspicion of treason or felony, as others of his lieges may;" the reason given being

[1] Bagshaw, Rights of the Crown of England, 29; Plowd. 212 a, 217 a, 238; Allen, Royal Pre. 26; Bac. Abr. Prerogative (E. 2).

[2] *Post.* As to proceedings by or against foreign potentates in our courts, see Wadsworth *v.* Queen of Spain, and De Haber *v.* Queen of Portugal, 17 Q. B. 171 (79 E. C. L. R.); Duke of Brunswick *v.* King of Hanover, 2 H. L. Cas. 1; Munden *v.* Duke of Brunswick, 10 Q. B. 656 (59 E. C. L. R.).

[3] 1 Com. by Broom & Hadley, 323; Finch's Law, by Pickering, 82.

[4] Prohibitions del Roy, 12 Rep. 63; Plowd. 241, 553.

that if a wrong be thus done to an individual, the party grieved cannot have remedy against the king. But although in these and other respects, presently to be noticed, the king is greatly favored by the law, being exempted from the operation of various rules applicable to the subject, he is on the whole, and essentially, beneath not superior to it, theoretically in some respects above, but practically bound and directed by its ordinances.[1]

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*Rex nunquam moritur. [*50]

(Branch, Max., 5th ed., 197.)

The king never dies.

The law ascribes to the king, in his political capacity, an absolute immortality; and, immediately upon the decease of the reigning prince in his natural capacity, the kingly dignity and the prerogatives and politic capacities of the supreme magistrate, by act of law, without any interregnum or interval, vest at once in his successor, who is, *eo instante*, king, to all intents and purposes; and this is in accordance with the maxim of our constitution, *In Angliâ non est interregnum.*[2]

"It is true," says Lord Lyndhurst,[3] "that *the kingn ever dies*, the demise is immediately followed by the succession, there is no interval; the sovereign always exists, the person only is changed."

So tender, indeed, is the law of supposing even a possibility of the death of the sovereign, that his natural dissolution is generally called his demise—*demissio regis vel coronæ*—an expression which signifies merely a transfer of property; and when we speak of the demise of the Crown, we mean only that, in consequence of the disunion of the king's natural body from his body politic,[4] the kingdom is transferred or demised to his successor; and so the royal dig-

[1] See the Debate in the House of Lords on Life Peerages, Hansard, vol. 140, pp. 263, &c. In Howard *v.* Gosset, 10 Q. B. 386 (59 E. C. L. R.), Coleridge, J., observes that "the law is supreme over the House of Commons *as over the Crown itself;*" *et vide post*, p. 53.

[2] Jenk. Cent. 205. See Cooper's Account of Public Records, vol. 2, 323, 324. Allen, Royal Prerog. 44.

[3] Visc. Canterbury *v.* A. G., 1 Phill. 322.

[4] *Ante*, p. 48.

nity remains perpetual. It has, doubtless, usually been thought prudent, when the sovereign has been of tender years, at the period of the devolution upon him of the royal dignity, to appoint a protector, guardian, or regent, to discharge the functions of royalty for a limited time; but the very necessity of such extraordinary [*51] *provision is sufficient to demonstrate the truth of that maxim of the common law, that in the king is no minority,[1] for he has no legal guardian; and the appointment of a regency must, therefore, be regarded merely as a provision made by the legislature, in order to meet a special and temporary emergency.[2]

It seems that the Duchy of Cornwall vests in the king's eldest son and heir apparent at the instant of his birth, without gift or creation, and as if minority could no more be predicated of him than of the sovereign himself.[3]

The throne then goes by descent, not by succession, and if lands be given to the king and his "heirs," this word "heirs" will be held to include the "successors" to the Crown, although on the demise of the sovereign, according to the course of descent recognised at the common law, the land might have gone in some other channel. Hence, if the king die without issue male, but leaving two daughters, lands held to him and his heirs will go to his eldest daughter as succeeding to the Crown; whereas, in the case of a subject, lands whereof he was seised would pass to his daughters, in default of male issue, as coparceners.[4] Similarly, if real estate be given to the king and his heirs, and afterwards the reigning dynasty be changed, and another family be placed upon the throne, the land in question would go to the successor, and then descend in the new line.[5] And a grant of land to the king for ever creates in him an estate [*52] of perpetual inheritance,[6] *whereas the like words would but give an estate for life to any of his subjects.

In regard also to personal property, the Crown is differently circumstanced from an individual or from a corporation sole; for,

[1] Bac. Abr. Prerogative (A.)

[2] 1 Com. by Broom & Hadley, 295; 1 Plowd. 177, 234. And see the Stat. 3 & 4 Vict. c. 52.

[3] Per Lord Brougham, C., Coop. R. 125.

[4] Grant on Corporations 627. See also the Stat. 25 & 26 Vict., c. 37, relating to the private estates of the Sovereign.

[5] Grant, Corp. 627. [6] 2 Com. by Broom & Hadley, 216.

according to the ordinary rule, such property will not, in the case of a corporation sole, go to the successor—in the king's case, by our common law, it does so.[1] And it may be worthy of remark, that the maxim, "the king never dies," founded manifestly in notions of expediency, and in the apprehension of danger which would result from an interregnum, does not hold in regard to other corporations sole. A parson, for instance, albeit clothed with the same rights and reputed to be the same person as his predecessor, is not deemed by our law to be continuously in possession of his office, nor is it deemed essential to the preservation of his official privileges and immunities that one incumbent should, without any interval of time or interruption, follow another. Such a corporation sole may, during an interval of time, cease to be visibly *in esse*, whereas the king never dies,—his throne and office are never vacant.

REX NON POTEST PECCARE.

(2 Rolle, R. 304.)

The king can do no wrong.

It is an ancient and fundamental principle of the English constitution, that the king can do no wrong.[2] But this maxim must not be understood to mean that the king is above the laws, in the unconfined sense of those words, and that everything he does is of course just *and lawful. Its true meaning is, First, that [*53] the sovereign, individually and personally, and in his natural capacity, is independent of and is not amenable to any other earthly power or jurisdiction; and that whatever may be amiss in the condition of public affairs is not to be imputed to the king, so as to render him answerable for it personally to his people. Secondly, the above maxim means, that the prerogative of the Crown extends not to do any injury, because, being created for the benefit of the people, it cannot be exerted to their prejudice, and it is therefore a fundamental general rule, that the king cannot sanction any act forbidden by law; so that, in this point of view, he is under, and not above the laws,—and is bound by them equally with his sub-

[1] Grant, Corp. 626.

[2] Jenk. Cent. 9, 308.

jects.[1] If, then, the sovereign, personally command an unlawful act to be done, the offence of the instrument is not thereby indemnified; for though the king is not himself under the coercive power of the law, yet in many cases his commands are under the directive power of the law, which makes the act itself invalid if unlawful, and so renders the instrument of execution thereof obnoxious to punishment.[2] As in affairs of state the ministers of the Crown are held responsible for advice tendered to it, or even for measures which might possibly be known to emanate directly from the sovereign, so may the agents of the sovereign be civilly or criminally answerable for lawless acts done—if that may be imagined—by his command.

The king, moreover, is not only incapable of doing wrong, but even of thinking wrong. Whenever, therefore, it happens that, by misinformation or inadvertence, *the Crown has been induced [*54] to invade the private rights of any of its subjects,—as by granting any franchise or privilege to a subject contrary to reason, or in any way prejudicial to the commonwealth or a private person,—the law will not suppose the king to have meant either an unwise or an injurious action, for *eadem mens præsumitur regis quæ est juris et quæ esse debet præsertim in dubiis*,[3] but declares that the king was deceived in his grant; and thereupon such grant becomes void upon the supposition of fraud and deception either by or upon those agents whom the Crown has thought proper to employ.[4] In like manner, also, the king's grants are void whenever they tend to prejudice the course of public justice.[5] And, in brief, to use the words of a learned judge,[6] the Crown cannot, in derogation of the right of the public, unduly limit and fetter the exercise of the prerogative which is vested in the Crown for the public good. The Crown cannot dispense with anything in which the subject has an interest,[7] nor make a grant in violation of the common law of the

[1] Chitt. Pre. Cr. 5; Jenk. Cent. 203. See Fortescue, de Laud. Leg. Ang. (by Amos) 28.

[2] 1 Hale, P. C. 43, 44, 127. Per Coleridge, J., Howard *v.* Gosset, 10 Q. B. 386 (59 E. C. L. R.).

[3] Hobart 154.

[4] Gledstanes *v.* The Earl of Sandwich, 5 Scott N. R. 719; R. *v.* Kempe, 1 Lord Raym. 49, cited Id. 720; Finch's Law 101; Vigers *v.* Dean, &c., of St. Paul's, 14 Q. B. 909 (68 E. C. L. R.).

[5] Chitt. Pre. Cr. 385. [6] See per Platt, B., 2 E. & B. 884 (75 E. C. L. R.).

[7] Thomas *v.* Waters, Hardr. 443, 448.

land,[1] or injurious to vested rights.[2] In this manner it is, that, while the sovereign himself is, in a personal sense, incapable of doing wrong, yet his acts may in themselves be contrary to law, and, on that account, be avoided or set aside by the law.

It must further be observed, that even where the king's grant purports to be made *de gratiâ speciali, certâ scientiâ, et mero motu*, the grant will, nevertheless, be *void, if it appears to the Court that the king was deceived in the purpose and intent thereof: and this agrees with a text of the civil law, which says, that the above clause *non valet in his in quibus præsumitur principem esse ignorantem;* therefore, if the king grant such an estate as by law he could not grant, forasmuch as the king was deceived in the law, his grant will be void.[3] Thus the Crown cannot by grant of lands and tenements create in them a new estate of inheritance, or give them a new descendible quality,[4] and the power of the Crown is alike restricted as regards the grant of a peerage or honor.[5] [*55]

It does not seem, however, that the above doctrine can be extended to invalidate an act of the legislature, on the ground that it was obtained by a *suggestio falsi*, or *suppressio veri*. It would indeed be something new, as forcibly observed by Cresswell, J.,[6] to impeach an Act of Parliament by a plea stating that it was obtained by fraud.

In connection with this part of our subject, it is worthy of remark, that the power which the Crown possesses of calling back its grants, when made under mistake, is not like any right possessed by individuals; for, when it has been deceived, the grant may be recalled notwithstanding any derivative title depending upon it, and those who have deceived it must bear the consequences.[7]

The doctrine just stated applies also in the case of a patent which has in some way improvidently emanated *from the Crown. Thus, in Morgan *v.* Seward,[8] Parke, B., observed as follows: [*56]

[1] 2 Roll. Abr. 164.

[2] R. *v.* Butler, 3 Lev. 220; cited per Parke, B., 2 E. & B. 894 (75 E. C. L. R.).

[3] Case of Alton Woods, 1 Rep. 53.

[4] Per Lord Chelmsford, The Wiltes Peerage, L. R. 4 H. L. 152.

[5] The Wiltes Peerage, L. R. 4 H. L. 126.

[6] Stead *v.* Carey, 1 C. B. 516 (50 E. C. L. R.); per Tindal, C. J., Id. 522.

[7] Judgm., Cumming *v.* Forrester, 2 Jac. & W. 342.

[8] 2 M. & W. 544, cited arg. Nickels *v.* Ross, 8 C. B. 710 (65 E. C. L. R.); Beard *v.* Egerton, Id. 207; Croll *v.* Edge, 9 C. B. 486 (67 E. C. L. R.). See Reg. *v.* Betts, 15 Q. B. 540, 547 (69 E. C. L. R.).

"That a false suggestion of the grantee avoids an ordinary grant of lands or tenements from the Crown, is a maxim of the common law, and such a grant is void, not against the Crown merely, but in a suit against a third person.[1] It is on the same principle that a patent for two or more inventions, where one is not new, is void altogether, as was held in Hill *v.* Thompson,[2] and Brunton *v.* Hawkes;[3] for although the statute[4] invalidates a patent for want of novelty, and consequently by force of the statute the patent would be void, so far as related to that which was old; yet the principle on which the patent has been held to be void altogether is, that the consideration for the grant is the novelty of all, and the consideration failing, or, in other words, the Crown being deceived in its grant,[5] the patent is void, and no action maintainable upon it."

The rule upon the subject now touched upon, has been yet more fully laid down,[6] as follows:—"If the king has been deceived by any false suggestion as to what he grants or the consideration for his grant; if he appears to have been ignorant or misinformed as to his interest in the subject matter of his grant; if the language of his grant be so general, that you cannot in reason apply it to *all that might literally fall under it; or if it be couched in terms so uncertain that you cannot tell how to apply it with that precision which grants from one so especially representing the public interest ought in reason to have; or if the grant reasonably construed would work a wrong, or something contrary to law; in these and such like cases the grant will be either wholly void or restrained, according to circumstances; and equally so, whether the technical words, *ex certâ scientiâ et mero motu*, be used or not. But this is held upon the very same principle of construction on which a grant from a subject is construed, viz., the duty of effectuating the intention of the grantor." To hold the grants valid or unrestrained in the cases just put, would be, as is said, *in deceptione domini regis*, and not *secundum intentionem*.

[*57]

[1] Citing Trevell *v.* Carteret, 3 Lev. 135; Alcock *v.* Cooke, 5 Bing. 340 (15 E. C. L. R.).

[2] 8 Taunt. 375 (4 E. C. L. R.). [3] 4 B. & Ald. 542 (6 E. C. L. R.).

[4] 21 Jac. I, c. 3.

[5] "The Crown is deceived if it grants a patent for an invention which is not new," per Pollock, C. B., Hills *v.* London Gas Light Co., 5 H. & N. 340.

[6] Reg. *v.* Eastern Archipelago Co., 1 E. & B. 310, 337, 338 (72 E. C. L. R); s. c., 2 E. & B. 856 (75 E. C. L. R.); The Wiltes Peerage, L. R. 4 H. L. 126.

On the principle enunciated by the maxim under consideration, no suit or action can be brought for a personal wrong against the sovereign; as to any cause of complaint which a subject may happen to have against the sovereign in respect of some personal injury of a private nature, but distinct from a mere claim of property, the sovereign is not personally chargeable. The law will, in such a case, presume that subject cannot have sustained any such personal wrong from the Crown, because it feels itself incapable of furnishing any adequate remedy,—and want of right and want of remedy are the same thing in law.[1]

In connection with the context the following case deserves attention. The personal estate of an intestate who leaves no next of kin, belonged at common law absolutely *to the Crown. It is now paid into the Treasury, and forms part of the public revenue.[2] In The Attorney-General *v.* Köhler[3] a question arose,—could money which had erroneously been paid to the solicitor to the Treasury, as nominee of one sovereign, in virtue of the above prerogative, be recovered from the solicitor to the Treasury for the time being under a succeeding sovereign?—and in delivering his opinion adversely to the claimant, Lord Cranworth observed as follows:— [*58]

"It is very difficult to say on what ground Her Majesty or Her Majesty's Treasury can be considered as under any obligation to refund, or rather pay the money. It never came to Her Majesty's hands. The Crown is a corporation sole, and has perpetual continuance. Can a succeeding sovereign, upon the principle that 'the king never dies,'[4] be held responsible for money paid over in error to and spent by a predecessor, which that predecessor might lawfully have disposed of for his own use, supposing it to have rightfully come to his hands? Does the successor for such a purpose represent his predecessor? These are questions difficult of solution. Let me put a case between subjects, nearly analogous to the present, in which the sovereign is concerned. Suppose a bishop lord of a manor, and that on the death of the copyholder he claims a heriot, alleging such to be the custom of his manor; and suppose that the

[1] Chitt. Pre. Cr. 339, 340; Jenk. Cent. 78; Viscount Canterbury *v.* A. G., 1 Phill. 306; Buron *v.* Denman, 2 Exch. 167, 189; Feather *v.* Reg., 6 B. & S. 257 (118 E. C. L. R.); Doe *d.* Leigh *v.* Roe, 8 M. & W. 579; *ante*, p. 48.

[2] See Stat. 15 & 16 Vict. c. 3.

[3] 9 H. L. Cas. 654.

[4] *Ante*, p. 50.

heir of the copyholder, relying on the assurance of the bishop, that the heriot was due by the custom of the manor, accordingly pays to the bishop a sum of money by way of composition for the heriot; the bishop dies, and then it is discovered that no heriot was payable to the bishop in respect of the copyhold *held of him; but that it was in fact payable to the lord of an adjoining manor, who thereupon recovered it against the copyhold heir. It could not be pretended that the copyholder would have any right against the bishop's successor. His right would be against the executor of the bishop to whom the payment had been made, on an erroneous allegation by him that there was a custom in his manor entitling him to it. On the same principle, reasoning by analogy from the case as it would have stood between subject and subject, the right of the present respondents would be a right against the executors either of King George III. or King George IV., it is immaterial to consider which, certainly not against Queen Victoria."[1] Under circumstances such as were here disclosed no redress could be enforced against the Crown or its officers, though perhaps the Treasury might, with the aid of Parliament, if needful, discharge the claim put forward.

[*59]

With respect to injuries to the rights of property, these can scarcely be committed by the Crown, except through the medium of its agents, and by misinformation or inadvertency, and the law has furnished the subject with a decent and respectful mode of terminating the invasion of his rights, by informing the king of the true state of the matter in dispute, viz., by Petition of Right;[2] a remedy which is open to the subject where his land, goods or money have found their way into the possession *of the Crown, and the purpose of the petition is to obtain restitution or, if restitution cannot be given, compensation in money; or where the claim arises out of a contract as for goods supplied to the Crown or to the public service."[3]

[*60]

[1] 9 H. L. Cas. 671–2.

[2] The procedure in which has been amended by Stat. 23 & 24 Vict. c. 34.

See per Jervis, C. J., Eastern Archipelago Co. *v.* Reg., 2 E. & B. 914 (75 E. C. L. R.); De Bode *v.* Reg., 3 H. L. Cas. 449. As to the jurisdiction of a court of equity, and the rules by which it will be guided, when the proceedings are against the Crown, see per Lord Brougham, C., Clayton *v.* A. G., Coop. R. 120.

[3] Feather *v.* Reg., 6 B. & S. 294 (118 E. C. L. R.), following Tobin *v.* Reg.,

If, for instance, a legacy is claimed under the will of a deceased sovereign, it seems that the only course to be pursued by the claimant, for the recovery of such legacy, is by Petition of Right to the grace and favor of the reigning sovereign. "Is there any reason," said Lord Langdale, in a modern case,[1] "why a Petition of Right might not have been presented? I am far from thinking that it is competent to the king, or rather to his responsible advisers, to refuse capriciously to put into a due course of investigation any proper question raised on a Petition of Right. The form of the application being, as it is said, to the grace and favor of the king, affords no foundation for any such suggestion."

In another remarkable case,[2] the petitioner by Petition of Right claimed compensation from the Crown for damage alleged to have been done in the preceding reign to some property of the petitioner, while Speaker of the House of Commons, by the fire which, in the year 1834, destroyed the two Houses of Parliament; and the question consequently arose, whether, assuming that the parties whose negligence caused the fire were the servants of the *Crown (it being contended that they were the servants of the Commissioners of Woods and Forests), the sovereign was responsible for the consequences of their negligence. The argument, with reference to this point, turned chiefly upon the meaning of the legal maxim—that *the king can do no wrong;* and the Lord Chancellor, in deciding against the petitioner, intimated an opinion, that since the sovereign is clearly not liable for the consequences of his own personal negligence, he cannot be made answerable for the acts of his servants. "If it be said," continued Lord Lyndhurst, "that the master is answerable for the negligence of his servant, because it may be considered to have arisen from his own misconduct or negligence in selecting or retaining a careless servant, that principle cannot apply to the sovereign, to whom negligence or misconduct cannot be imputed, and for which, if they occur in fact, the law affords no remedy." [*61]

16 C. B. N. S. 310 (111 E. C. L. R.); Churchward *v.* Reg., 6 B. & S. 807 (118 E. C. L. R.).

[1] Ryves *v.* Duke of Wellington, 9 Beav. 579, 600. In his Treatise on the Exchequer Practice (2d ed. p. 84), Mr. Serjeant Manning suggests that the prayer of the petition, although to the grace and favor of the king, seems to be within the words and spirit of Magna Charta—*nulli negabimus justitiam.*

[2] Viscount Canterbury *v.* A. G., 1 Phill. 306.

"The maxim that the king can do no wrong applies," it has been said, "to personal as well as to political wrongs; and not only to wrongs done personally by the sovereign, if such a thing can be supposed to be possible, but to injuries done by a subject by the authority of the sovereign. For from the maxim that the king cannot do wrong it follows, as a necessary consequence, that the king cannot authorize wrong. For to authorize a wrong to be done is to do a wrong, inasmuch as the wrongful act when done becomes in law the act of him who directed or authorized it to be done. It follows that a Petition of Right which complains of a tortious act done by the Crown, or by a public servant by the authority of the Crown, discloses no matter of complaint which can entitle the petitioner to redress. As in the eye of the law no such wrong can be done, so [*62] in law no right to redress can arise, *and the petition therefore which rests on such a foundation falls at once to the ground."[1] The authority of the Crown would however afford no defence to an action brought for an illegal act committed by an officer of the Crown.[2]

The ordinary maxim, *respondeat superior*,[3] has then no application to the Crown, for the Crown cannot, in contemplation of law, command a wrongful act to be done. It may be stated moreover, as a rule of the common law, that the Crown cannot be prejudiced by the *laches* or acts of omission of any of its officers. Of which rule an apt illustration presents itself in Reg. *v.* Renton.[4] There a person had been taken into custody under a writ of extent, issued at suit of the Crown, for certain penalties incurred by a violation of the excise laws; whilst in custody he was, by order of the Commissioners of Excise, and without a *habeas corpus ad testificandum* having first been obtained, removed from prison, with a view to his giving evidence touching matters connected with the writ of extent; and it was contended that this removal out of legal custody operated in law as an escape, so that the defendant's liability was in fact discharged. The Court of Exchequer held that the escape having been permitted by the *laches* of the Commissioners could not so operate as to prejudice the Crown, for "the Crown cannot be prejudiced by the misconduct or negligence of any of its officers, whether

[1] Judgm., Feather *v.* Reg., 6 B. & S. 395–6 (118 E. C. L. R.).
[2] Id., *post*.
[3] *Post*, Chap. IX.
[4] 2 Exch. 216.

with respect to the rights of property, or the right to the custody of the debtor, till the debt is paid."[1]

Further, if it be asked, what remedy is afforded to the *subject for such public oppressions, or acts of tyranny, as have [*63] not, in fact, been instigated by bad advisers, but have proceeded from the personal delinquency of the monarch himself,—the answer is, that there is no legal remedy, and that to such cases, so far as the ordinary course of law is concerned, the maxim must be applied that the sovereign can do no wrong.[2] And lastly, if a subject, when appearing as suitor in a court of justice, has aught to complain of, it is against the judge that his remedy (if any) must be taken—not against the Crown: the Court indeed, even at the behest of the king, can neither deny nor delay to do justice.[3]

NON POTEST REX GRATIAM FACERE CUM INJURIA ET DAMNO ALIORUM.

(3 Inst. 236.)

The king cannot confer a favor on one subject which occasions injury and loss to others.

It is an ancient and constant rule of law,[4] that the king's grants are invalid when they destroy or derogate from rights, privileges, or immunities previously vested in another subject: the Crown, for example, cannot enable *a subject to erect a market or fair [*64] so near that of another person as to affect his interests

[1] Per Pollock, C. B., 2 Exch. 220. [2] Bla. Com., by Stewart, 256.

[3] The Stat. 20 Ed. 3, c. 1, contains these remarkable words:—"We have commanded all our justices that they shall from henceforth do equal law and execution of right to all our subjects, rich and poor, without having regard to any person, and without omitting to do right for any letters or commandment which may come to them *from us*, or from any other or by any other cause." Thus does our law, holding that the "king can do no wrong," in some cases incapacitate him from doing it by express and positive ordinances.

[4] 3 Inst. 236; Vaugh. R. 338. The maxim commented on *supra*, was cited per Talfourd, J., in the Eastern Archipelago Co. *v.* Reg., 2 E. & B. 874 (75 E. C. L. R.). A similar doctrine prevailed in the civil law. See Cod. 7. 38. 2.

therein.[1] Nor can the king grant the same thing in possession to one, which he or his progenitors have granted to another.[2] If the king's grant reciting that A. holds the manor of Blackacre for life, grants it to B. for life; in this case the law implies that the second grant is to take effect after the determination of the first.[3] And if the king, being tenant for life of certain land, grant it to one and his heirs, the grant is void, for the king has taken upon himself to grant a greater estate than he lawfully could grant.[4]

On the same principle, the crown cannot *at common law*[5] pardon an offence against a penal statute after information brought, for thereby the informer has acquired a private property in his part of the penalty. Nor can the king pardon a private nuisance while it remains unredressed, or so as to prevent an abatement of it, though afterwards he may remit the fine; and the reason is that, though the prosecution is vested in the Crown, to avoid multiplicity of suits, [*65] yet (during its continuance) this *offence savors more of the nature of a private injury to each individual in the neighborhood, than of a public wrong.[6] So, if the king grant lands, forfeited to him upon a conviction for treason, to a third person, he cannot afterwards, by his grant, devest the property so granted in favor of the original owner.

[1] Chitt. Pre. Cr. 119, 132, 386; Earl of Rutland's Case, 8 Rep. 57; Alcock *v.* Cooke, 5 Bing. 340 (15 E. C. L. R.); Gledstanes *v.* Earl of Sandwich, 5 Scott N. R. 689, 719. Re Islington Market Bill, 3 Cl. & F. 513. See Mayor of Exeter *v.* Warren, 5 Q. B. 773 (48 E. C. L. R.).

[2] Per Cresswell, J., 1 C. B. 523 (50 E. C. L. R.); arg. R. *v.* Amery, 2 T. R. 565; Chitt. Pre. Cr. 125. But the grant of a mere license or authority from the Crown, or a grant during the king's will is determined by the demise of the Crown. (Id. 400.) See n. 1, *supra*.

[3] Earl of Rutland's Case, 8 Rep. 56 b.

[4] Case of Alton Woods, 1 Rep. 44 a.

[5] By Stat. 22 Vict. c. 32, the Crown is empowered "to remit, in whole or in part, any sum of money which, under any Act now in force, or hereafter to be passed, may be imposed as a penalty or forfeiture on a convicted offender, although such money may be, in whole or in part, payable to some party other than the Crown."

[6] Vaugh. R. 333.

NULLUM TEMPUS OCCURRIT REGI.

(2 Inst. 273.)

Lapse of time does not bar the right of the Crown.

In pursuance of the principle, already considered, of the sovereign's incapability of doing wrong, the law also determines that in the Crown there can be no negligence or laches; and, therefore, it was formerly held, that no delay in resorting to his remedy would bar the king's right; for the time and attention of the sovereign must be supposed to be occupied by the cares of government, nor is there any reason that he should suffer by the negligence of his officers, or by their fraudulent collusion with the adverse party;[1] and although, as we shall hereafter see, the maxim *vigilantibus et non dormientibus jura subveniunt* is a rule for the subject, yet *nullum tempus occurrit regi* is, in general, the king's plea.[2] From this doctrine it followed, not only that the civil claims of the Crown sustained no prejudice by lapse of time, but that criminal prosecutions for felonies or misdemeanors might be commenced at any distance of time from the commission of the offence; and this is, to some extent, still law, though it has been qualified by the *legislature in modern times; for by stat. 9 Geo. 3, c. [*66] 16, in suits relating to landed property, the lapse of sixty years and adverse possession for that period operate as a bar even against the prerogative, in derogation of the above maxim,[3] that is, provided the acts relied upon as showing adverse possession are acts of ownership done in the assertion of a right, and not mere acts of trespass not acquiesced in on the part of the Crown.[4] Again, the Statute of Limitations, 21 Jac. 1, c. 16, s. 3, does not bind the king;[5] but, by 32 Geo. 3, c. 58, the Crown is barred, in informa-

[1] Godb. 295; Hobart 347; Bac. Abr., 7th ed., "*Prerogative*," (E. 6); *ante* p. 62.

[2] Hobart 347.

[3] See Doe *d.* Watt *v.* Morris, 2 Scott 276: Goodtitle *v.* Baldwin, 11 East 488.

[4] Doe *d.* William IV. *v.* Roberts, 13 M. & W. 520. "The Crown certainly may dedicate a road to the public, and be bound by long acquiescence in public user:" per Lord Denman, C. J., Reg. *v.* East Mark, 11 Q. B. 882-3 (63 E. C. L. R.).

[5] Judgm., Lambert *v.* Taylor, 4 B. & C. 151, 152 (10 E. C. L. R.); Bac. Abr., 7th ed., "*Prerogative*" (E. 5).

tions for usurping corporate offices or franchises, by the lapse of six years;[1] and by statute 7 Will. 3, c. 3, an indictment for treason (except for an attempt to assassinate the king) must be found within three years after the commission of the act of treason.[2] And under the 11 & 12 Vict. c. 12,[3] a period of limitation is prescribed within which to prosecute for the offences mentioned in the Act.

An important instance of the application of the doctrine, *nullum tempus occurrit regi*, presents itself where church preferment lapses to the Crown. Lapse is a species of forfeiture, whereby the right of presentation to a church accrues to the ordinary, by neglect of the patron to present,—to the metropolitan, by neglect of the ordi-
[*67] nary,—*and to the Crown, by neglect of the metropolitan: the term in which the title to present by lapse accrues from one of the above parties to the other is six calendar months, after the expiration of which period the right becomes forfeited by the person neglecting to exercise it. But no right of lapse can accrue when the original presentation is in the Crown; and in pursuance of the above maxim, if the right of presentation lapses to the Crown, prerogative intervenes, and, in this case, the patron shall never recover his right till the Crown has presented; and if, during the delay of the Crown, the patron himself presents, and his clerk is instituted, the Crown, by presenting another, may turn out the patron's clerk, or, after induction, may remove him by *quare impedit*;[4] though if neither of these courses is adopted, and the patron's clerk dies incumbent, or is canonically deprived, the right of presentation is lost to the Crown.[5]

Again, if a bill of exchange be seized under an extent before it has become due, the neglect of the officer of the Crown to give notice of dishonor, or to make presentment of the bill, will not discharge the drawer or indorsers; and this likewise results from the

[1] See Bac. Abr., 7th ed., "*Prerogative*" (E. 6), 467, and stat. 7 Will. 4 & 1 Vict. c. 78, s. 23; R. *v.* Harris, 11 A. & E. 518 (39 E. C. L. R.).

[2] See also stat. 5 & 6 Vict. c. 51, s. 1.

[3] S. 4. See further, as to the period of limitation in criminal procedure, Arch. Cr. Pl., 16th ed., 68.

[4] 6 Rep. 50.

[5] 2 Com. by Broom and Hadley, 450, 452; cited arg. Storie *v.* Bishop of Winchester, 9 C. B. 90 (67 E. C. L. R.); and 17 C. B. 653 (84 E. C. L. R.); Baskerville's Case, 7 Rep. 111; Bac. Abr., 7th ed., "*Prerogative*" (E. 6); Hobart 166; Finch's Law 90.

general principle above stated, that laches cannot be imputed to the Crown.[1]

To high constitutional questions involving the prerogative, the maxim under our notice must doubtless be applied with much caution, for it would be dangerous and *absurd to hold that a power which has once been exercised by the Crown—no matter at how remote soever an epoch—has necessarily remained inherent in it, and we might vainly attempt to argue in support of so general a proposition. During the discussion in the House of Lords on life peerages, it was said that although the rights and powers of the Crown do not suffer from lapse of time, nevertheless one of the main principles on which our Constitution rests is the long-continued usage of Parliament, and that to go back for several centuries in order to select a few instances in which the Crown has performed a particular act by virtue of its prerogative before the Constitution was formed or brought into a regular shape—to rely on such precedents, and to make them the foundation of a change in the composition of either House of Parliament, would be grossly to violate the principles and spirit of our Constitution.[2] But although the most zealous advocate of the prerogative could not by precedents, gathered only from remote ages, shape successfully a sound Constitutional theory touching the powers and privileges of the Crown, it would be far from correct to affirm that its rights can fall into desuetude, or, by mere non-user, become abrogated. *Ex. gr.* Assuming that the right of veto upon a bill which has passed through Parliament has not been exercised for a century and a half, none could deny that such a right is still vested in the Crown.[3] [*68]

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*Quando Jus Domini Regis et Subditi Concurrunt, Jus Regis præferri debet. [*69]

(9 Rep. 129.)

Where the title of the king and the title of a subject concur, the king's title shall be preferred.[4]

In the above case, *detur digniori* is the rule,[5] and accordingly, if a chattel be devised to the king and another jointly, the king shall

[1] West on Extents 28, 30.
[2] Hansard, vol. 140, p. 263 *et seq.*
[3] Id. p. 284.
[4] Co. Litt. 30 b.
[5] 2 Ventr. 268.

have it, there being this peculiar quality inherent in the prerogative that the king cannot have a joint property with any person in one entire chattel, or such a property as is not capable of division or separation; where the titles of the king and of a subject concur, the king shall have the whole. The peculiarity of this doctrine of our law, so favorable to the prerogative, may justify the giving a few illustrations of its operations:—1st. As regards chattels real: if the king either by grant or contract become joint tenant of such a chattel with another person, he will *ipso facto* become entitled to the whole in severalty. 2dly. As regards chattels personal: if a horse be given to a king and a private person, the king shall have the sole property therein; if a bond be made to the king and a subject, the king shall have the whole penalty; if two persons possess a horse jointly, or have a joint debt owing them on bond, and one of them assigns his part to the king, the king shall have the horse or debt; for our law holds it not consistent with the dignity of the Crown to be partner with a subject, and where the king's title and that of a subject concur or are in conflict, the king's title is to be preferred.[1] By applying this maxim to one possible state of facts, a rather curious *result is arrived at: if
[*70] there be two joint tenants of a chattel, one of whom is guilty of felony, this felonious act works a forfeiture of one undivided moiety of the chattel in question to the Crown, and the Crown being thus in joint possession with a subject, takes the whole.[2]

Further, the king's debt shall, in suing out execution, be preferred to that of every other creditor who had not obtained judgment before the king commenced his suit.[3]

The king's judgment formerly affected all land which the king's debtor had at or after the time of contracting his debt;[4] but now no debts or liabilities to the Crown incurred after November 1, 1865, affect land as to a *bonâ fide* purchaser for valuable consideration, or a mortgagee, whether with or without notice, unless registration of the writ or process of execution has, previously to the conveyance or mortgage, been executed.[5]

[1] 2 Com. by Broom & Hadley 603, 604.

[2] See Hales *v.* Petit, Plowd. 253.

[3] Stat. 33 Hen. 8, c. 39, s. 74; see also 32 & 33 Vict. c. 46.

[4] 13 Eliz. c. 4.

[5] 28 & 29 Vict. c. 104, s. 4. See further as to former legislation on the above subject, Williams, Real Prop., 8th ed. 85–87.

Again, the rule of law is, that, where the sheriff seizes under a fi. fa., and, after seizure, but before sale,[1] under such writ, a writ of extent is sued out and delivered to the sheriff, the Crown is entitled to the priority, and the sheriff must sell under the extent, and satisfy the Crown's debt, before he sells under the fi. fa. Nor does it make any difference whether the extent is in chief or in aid, *i. e.* whether it is directly against the king's debtor, or brought to recover a debt due from some third party to such debtor; it having been the practice in very ancient times, that, if the king's debtor was unable to satisfy the king's debt out of his own *chattels, the king would betake himself to any third person who [*71] was indebted to the king's debtor,[2] and would recover of such third person what he owed to the king's debtor, in order to get payment of the debt due from the latter to the Crown.[3] And the same principle was held to apply where goods in the hands of the sheriff, under a fi. fa., and before sale, were seized by the officers of the customs under a warrant to levy a penalty incurred by the defendant for an offence against the revenue laws; the Court observing, that there was no sound distinction between a warrant issued to recover a debt to the Crown and an extent.[4]

In Reg. *v.* Edwards,[5] decided under the former bankrupt law, the facts were as under:—An official assignee having been appointed to a bankrupt's estate, later on the day of his appointment an extent issued at the suit of the Crown against the bankrupt for a Crown debt, and the question was which should have priority, the Court decided that where the title of the Crown and the subject accrue on the same day, the king's title shall be preferred. The seizure under the extent, therefore, was upheld, and the title of the official assignee was ignored. The decision in Reg. *v.* Edwards may however be supported on a principle other than that just stated, viz: that "whether between the Crown and a subject, or between subject and subject, judicial proceedings are to be considered as having

[1] See R. *v.* Sloper, 6 Price 114.

[2] See R. *v.* Larking, 8 Price 683.

[3] Giles *v.* Grover, 9 Bing. 128, 191 (23 E. C. L. R.), recognising R. *v.* Cotton, Parker R. 112. See A. G. *v.* Trueman, 11 M. & W. 694; A. G. *v.* Walmsley, 12 M. & W. 179; Reg. *v.* Austin, 10 M. & W. 693.

[4] Grove *v.* Aldridge, 9 Bing. 428 (23 E. C. L. R.).

[5] 9 Exch. 32, 628.

taken place at the earliest period of the day on which they are done."[1]

[*72] *In connection with the maxim before us we may add, that the king is not bound by a sale in market overt, but may seize to his own use a chattel which has passed into the hands of a *bonâ fide* purchaser for value.[2]

ROY N'EST LIE PER ASCUN STATUTE, SI IL NE SOIT EXPRESSEMENT NOSME.

(Jenk. Cent. 307.)

The king is not bound by any statute, if he be not expressly named to be so bound.[3]

The king is not bound by any statute, if he be not expressly named therein, unless there be equivalent words, or unless the prerogative be included by necessary implication; for it is inferred, *primâ facie*, that the law made by the Crown, with the assent of the Lords and Commons, is made for subjects, and not for the Crown.[4] Thus in considering the question—What is the occupation of real property which is liable to be rated under the stat. 43 Eliz. c. 2, s. 1? it has been observed[5] that "the only occupier of property exempt from the operation of the Act is the king, because he is not named in the statute, and the direct and immediate servants of the Crown, whose occupation is the occupation of the Crown itself, also come within the exemption. . . . . No exemption is thereby

[*73] given to charity or to public purposes beyond *that which is strictly involved in the position that the Crown is not bound by the Act." So the provisions in the C. L. Proc. Act, 1852, relating to the abolition of writs of error (ss. 148–158), have been held not

[1] Wright *v.* Mills, 4 H. & N. 491; Judgm. 9 Exch. 631. See Evans *v.* Jones, 3 H. &. C. 423.

[2] 2 Inst. 713. [3] Jenk. Cent. 307: Wing. Max. 1.

[4] Per Alderson, B., A. G. *v.* Donaldson, 10 M. & W. 123, 124, citing Willion *v.* Berkley, Plowd. 236; De Bode *v.* Reg. 13 Q. B., 373, 5, 8 (66 E. C. L. R.). Per Lord Cottenham, C., Ledsam *v.* Russell, 1 H. L. Cas. 697; Doe *v.* Archbishop of York, 14 Q. B. 81, 95 (68 E. C. L. R.).

[5] Per Lord Westbury, C., Mersey Docks *v.* Cameron, Jones *v.* Mersey Docks, 11 H. L. Cas. 501, 503; Reg. *v.* McCann, L. R. 3 Q. B. 141, 145, 146.

to apply to judgments of outlawry in civil suits, for as soon as judgment of outlawry has been given, the Crown becomes interested.[1] So the prerogative of the Crown to remove into the Court of Exchequer a cause which touches its revenue, is unaffected by the County Court Acts.[2] Nor does the Lands Clauses Consolidation Act (8 & 9 Vict. c. 18) affect the interests of the Crown.[3] Neither is the prerogative of the Crown to plead and demur without leave to a Petition of Right under 23 & 24 Vict. c. 34, affected by that statute.[4]

The rule above stated seems, however, to apply only where the property or peculiar privileges of the Crown are affected; and this distinction is laid down, that where the king has any prerogative, estate, right, title, or interest, he shall not be barred of them by the general words of an Act, if he be not named therein.[5] Yet, if a statute be intended to give a remedy against a wrong, the king, though not named, shall be bound by it:[6] and the king is impliedly bound by statutes passed for the public good, the preservation of public rights, and the suppression of public wrongs, the relief and maintenance *of the poor, the general advancement of learning, religion, and justice, or for the prevention of fraud;[7] [*74] and, though not named, he is bound by the general words of statutes which tend to perform the will of a founder or donor;[8] and the king may likewise take the benefit of any particular Act, though he be not especially named therein.[9]

[1] Arding *v.* Holmer, 1 H. & N. 85. [2] Mountjoy *v.* Wood, 1 H. & N. 58.

[3] Re Cuckfield Burial Board, 19 Beav. 153. See also Reg. *v.* Beadle, 7 E. & B. 492 (90 E. C. L. R.).

[4] Tobin *v.* Reg., 14 C. B. N. S. 505 (108 E. C. L. R.); s. c. 16 Id. 310; Feather *v.* Reg.. 6 B. & S. 293.

[5] Magdalen College Case, 11 Rep. 74 b, cited Bac. Abr. "*Prerogative*" (E. 5): Com. Dig. "*Parliament*" R. 8. See the qualifications of this proposition laid down in Dwarr. Stats., 2d ed., 523, *et seq.*

[6] Willion *v.* Berkley, Plowd. 239, 244. See the authorities cited arg. R. *v.* Wright, 1 A. & E. 436 *et seq.* (28 E. C. L. R..)

[7] Magdalen College Case, 11 Rep. 70 b, 72; Chit. Pre. Crown 382.

[8] Vin. Abr., "*Statutes*" (E. 10), pl. 11; 5 Rep. 146; Willion *v.* Berkley, Plowd. 236.

[9] Judgm., R. *v.* Wright, 1 A. & E. 447 (28 E. C. L. R.). In A. G. *v.* Radloff, 10 Exch. 94, Pollock, C. B., observes, that "the crown is not bound with reference to matters affecting its property or person, but is bound with respect to the practice in the administration of justice."

But, as above stated, Acts of Parliament which would devest the king of any of his prerogatives do not, in general, extend to or bind the king, unless there be express words to that effect: therefore, the Statutes of Limitation and Set-off are irrelevant in the case of the king, nor does the Statute of Frauds relate to him,[1] nor does a local Act imposiog tolls and duties affect the Crown.[2] Also, by mere indifferent statutes, directing that certain matters shall be performed as therein pointed out, the king is not, in many instances, prevented from adopting a different course in pursuance of his prerogative.[3]

In fine, the modern doctrine bearing on the subject before us, is said[4] to be that by general words in an Act of Parliament, the king may be precluded of such inferior claims as might belong indifferently to him or to a *subject (as the title to an advowson or a landed estate), but not stripped of any part of his ancient prerogative, nor of those rights which are incommunicable and appropriate to him as essential to his regal capacity.

[*75]

NEMO PATRIAM IN QUA NATUS EST EXUERE NEC LIGEANTIÆ DEBITUM EJURARE POSSIT.

(Co. Lit. 129 a.)

A man cannot abjure his native country nor the allegiance which he owes to his sovereign.

Of the above maxim we shall here very briefly state the significance at common law,—important modifications of its operation being projected by the legislature.

"The law of England, and of almost all civilized countries, ascribes to each individual at his birth two distinct legal states or conditions; one by virtue of which he becomes the subject of some

[1] Chit. Pre. Crown 366, 383; R. *v.* Copland, Hughes 204, 230; Vin. Abr. "*Statutes*" (E. 10).

[2] Mayor, &c., of Weymouth *v.* Nugent, 6 B. & S. 22, 35 (118 E. C. L. R.).

[3] Chit. Pre. Crown 383, 384.

[4] Dwarr. Stats., 2d. ed., 523–4. See also Mayor, &c., of London *v.* A. G., 1 H. L. Cas. 440. As to the mode of construing grants from the Crown, see the maxim "*Verba chartarum fortius accipiuntur contra proferentem*," *post*, Chap. VIII.

particular country, binding him by the tie of natural allegiance, and which may be called his political *status;* another by virtue of which he has ascribed to him the character of a citizen of some particular country, and, as such, is possessed of certain municipal rights, and subject to certain obligations, which latter character is the civil *status* or condition of the individual, and may be quite different from his political *status.* The political *status* may depend on different laws in different countries, whereas the civil *status* is governed universally by one single principle, namely, that of domicile, which is the criterion established by law for the purpose of determining civil *status;* for it is on this basis that the personal rights of the party, that is to say, the law which determines his majority or *minority, his marriage, succession, testacy, or intestacy, must depend."[1] [*76]

Allegiance is defined, by Sir E. Coke, to be "a true and faithful obedience of the subject due to his sovereign."[2] And in the words of the late Mr. Justice Story, "Allegiance is nothing more than the tie or duty of obedience of a subject to the sovereign under whose protection he is; and allegiance by birth is that which arises from being born within the dominions and under the protection of a particular sovereign. Two things usually occur to create citizenship: first, birth, locally within the dominions of the sovereign; secondly, birth, within the protection and obedience, or, in other words, within the legiance of the sovereign. That is, the party must be born within a place where the sovereign is, at the time, in full possession and exercise of his power, and the party must also, at his birth, derive protection from, and consequently owe obedience or allegiance to, the sovereign as such *de facto.* There are some exceptions, which are founded upon peculiar reasons, and which indeed illustrate and confirm the general doctrine."[3]

Allegiance is the tie which binds the subject to the Crown, in

[1] Per Lord Westbury, Udny *v.* Udny, L. R. 1 Sc. App. 457. See Moorhouse *v.* Lord, 10 H. L. Cas. 272; Shaw *v.* Gould, L. R. 3 H. L. 55.

[2] Calvin's Case, 7 Rep. 5; s. c. Broom's Const. L. 4, and Note thereto, Id. 26, *et seq.*, where the cases which concern allegiance at common law, and the operation of the statutes hitherto passed affecting it, are considered. And see the stat. 21 & 22 Vict. c. 93 (and as to Ireland the stat. 31 & 32 Vict. c. 20), which enables a person to establish, under the circumstances specified in and as provided by the Act, his right to be deemed a natural-born subject.

[3] 3 Peters (U. S.) R. 155.

return for that protection which the Crown affords to the subject, and is distinguished by our customary law into two sorts or species, the one natural, *the other local. Natural allegiance is such [*77] as is due from all men born within the dominions of the Crown, immediately upon their birth; and to this species of allegiance it is that the above maxim is applicable.[1] It cannot be forfeited, cancelled or altered by any change of time, place, or circumstance, nor by any thing but the united concurrence of the legislature. The natural-born subject of one prince cannot, by any act of his own, not even by swearing allegiance to another, put off or discharge his natural allegiance to the former,[2] *origine propriâ neminem posse voluntate suâ eximi manifestum est*;[3] for this natural allegiance was intrinsic and primitive, and antecedent to the other, and cannot be devested without the concurrent act of that prince to whom it was first due.[4] Hence, although a British subject may, in certain cases, forfeit his rights as such by adhering to a foreign power, he yet remains at common law always liable to his duties; and if, in the course of such employment, he violates the laws of his native country, he will be exposed to punishment when he comes within reach of her tribunals.

The tie of natural allegiance may, however, be severed with the concurrence of the legislature—for instance, upon the recognition of the United States of America, as free, sovereign, and independent states, it was decided that the natural-born subjects of the English Crown adhering to the United States ceased to be subjects of the Crown of England, and became aliens and incapable of inheriting lands in England.[5]

[*78] *We shall merely add, that local allegiance is such as is due from an alien or stranger born whilst he continues

[1] Foster, Cr. Law 184.

[2] Vide per Jervis, C. J., Barrick *v.* Buba, 16 C. B. 493 (81 E. C. L. R.); citing Albretcht *v.* Sussman, 2 Ves. & B. 323.

[3] Cod. 10. 38. 4.

[4] See Foster, Cr. Law 184; Hale, P. C. 68; Judgm., Wilson Marryat, 8 T. R. 45; s. c., affirmed in error, 1 B. & P. 430.

[5] Doe *d.* Thomas *v.* Acklam, 2 B. & C. 779 (9 E. C. L. R.); Doe *d.* Stansbury *v.* Arkwright, 5 C. & P. 575 (24 E. C. L. R.). In Blight's Lessee *v.* Rochester, 7 Wheaton (U. S.) R. 535, it was held, that British subjects born before the Revolution, are equally incapable with those born after of inheriting or transmitting the inheritance of lands in the United States.

within the dominion and protection of the Crown; but it is merely of a temporary nature, and ceases the instant such stranger transfers himself from this kingdom to another. For, as the prince affords his protection to an alien only during his residence in this realm, the allegiance of an alien is confined, in point of time, to the duration of such his residence, and, in point of locality, to the dominions of the British Empire;[1] the rule being, that *protectio trahit subjectionem et subjectio protectionem*[2]—a maxim which extends not only to those who are born within the king's dominions, but also to foreigners who live within them, even though their sovereign is at war with this country, for they equally enjoy the protection of the Crown.

Upon the maxims concerning allegiance and protection above noticed, innovations have been announced by the Government as contemplated, which, when fully developed and carried out by international arrangements, will restrict within comparatively narrow limits their operation.

[1] Chit. Pre. Crown 16. See Wolff *v.* Oxholm, 6 M. & S. 92; R. *v.* Johnson, 6 East 583.

[2] Calvin's Case, 7 Rep. 5; Craw *v.* Ramsay, Vaughan, R. 279; Co. Litt. 65 a.