

# TUDOR SOCIAL TRANSFORMATION AND LEGAL CHANGE\*

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The century 1540-1640 in England was a period of profound change, almost universally regarded as the dividing line between the old and the new. At a point half-way in that hundred-year span the educated Englishman's mind and world were still more than half medieval; at its end they were more than half modern. Recent work in fifteenth century agrarian history and investigations into fifteenth century commerce and trade have blurred the black and white of any abrupt transition from feudal to capitalist England by emphasizing the non-feudal elements already at work in medieval society and heralding its disintegration. In the same way, studies in eighteenth century social stratification and commercial and agricultural organization have made clear how distant the society of that age still was from the industrial and finance capitalism of our own day. Thus exaggerated and excessively sharp lines have been softened and the extravagant claims sometimes still made for the period sensibly reduced. Nevertheless, it remains true that in the years between 1540 and 1640 disruptive and creative forces accelerated the normal process of change to a degree that makes the century, unless we except our own, the most conspicuous example of rapid and many-sided transformation in English history.

Revealed equally well whether one looks at religion or science, politics or economics, literature, music, medicine or architecture, the changes took place against a background of continuity, with the clash and fusion of old and new on every side. Accurate scientific observation did not drive astrology at once and *in toto* out of the medical treatises, nor did medieval ideas on the supremacy of law disappear in the face of growing parliamentary sovereignty. Rather both subsisted side by side, incompatible and essentially irreconcilable, waiting, in the case of one, further emancipation from tradition, or in the case of parliament, a resolution dictated by the turn of future events. So in the subject with which I am particu-

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larly concerned here: the dilution of a preponderantly agricultural economy by the infiltration of commercial capital occurred only slowly, nor was the transition from a feudal to a bourgeois or embryonic-capitalist society accomplished everywhere or at once. If in London and the home counties the changes were marked and disagreeable, in Cornwall, the North, and the marches of Wales, life continued much as it had in the days of Edward III.

Contrary to the circumscribed opportunities of his no less acquisitive predecessors, there was no limit to the variety of financial adventures open to the Tudor merchant. A man of mixed enterprise, his economic activities never were confined to ventures of a particular type nor specialized within a limited range. Patents and monopolies, loans secured by mortgages or penal bonds, the purchase and sale of goods of whatever description if a suitable profit might reasonably be anticipated, the financing of slaving voyages or piratical expeditions; nothing out of which wealth might accrue escaped his eye. But the means of profit brought most frequently to hand by the exigencies of the age, with its rising prices and consequent depreciation of fixed incomes, was land. Here the merchant was joined by the enterprising yeoman who had amassed capital, whether by land or sheep farming, by lawyers who like Coke, Popham, Ellesmere and Walmesley had made money in the law, by distinguished civil servants and crown officials of varying descriptions, and by others—all representatives of much the same indeterminate middle class. Just as their fathers had prospered on monastery lands at the dissolution, this bourgeoisie fattened on the lands of the ancient aristocracy, heirs of great but frozen wealth, with properties dispersed in a dozen different counties, who found themselves caught in the price spiral incumbered by the dead weight of huge and passive estates, long leases, static dues, fixed freehold and copyhold rents, and the great disadvantage of what had now become wasteful and irrational methods of estate management.

The method of the new agricultural capitalists was to work the land as a commercial undertaking, to watch costs and yields, to charge an economic rather than a customary rent, to keep careful accounts, to shrink from neither grasping chicanery nor evasion, and to take at all times a realistic view of the cash nexus. Given a knowledge of the ropes, a manor could be refloated as easily as a mill. To the purchaser with the capital and capacity to undertake

it, modernization was as profitable as it was unpopular with his tenants. Customary payments dwindling, the new landlord could get rid of unprofitable copyholders and small freeholders by buying them up, or as more often happened, by twisting manorial custom, screwing up admission fines to unreachable sums, litigating fanciful flaws in title until the limited assets of his tenant were exhausted, or if these failed, by threats, duress, or intimidation. If the pressure of the price rise could be avoided only if leases were granted for periods of not more than seven years, there were a variety of unscrupulous means by which holders of longer leases, for life or for several lives, could be discouraged and ousted. If there were common lands, these might be usurped and brought into cultivation. The records of the Star Chamber bear witness to hundreds of such cases and the despairing outcries of the villagers in their answers to charges of riot and the casting down of enclosures. They plead ancient rights of common, immemorial rights of grazing for their cattle, and resent bitterly the rapacity of the new rack-renting landlords, merchants and lawyers from London, men of business and speculators, who have taken the place of the old feudal landlords. Into this hated but rapidly rising class fell, as well, those noble landlords who moved with the times, for such peers, living on the profits and rents of commercial farming, are indistinguishable from the merchant or trader—all equally products of capitalist transformation.

The first response to this landslide, accurately diagnosed to be responsible to no minor degree for the ever-present threat of serious social dislocation that hung over the Tudor age, was repression. In 1535, Thomas Cromwell contemplated an act 'that no merchant shall purchase more than £40 lands by the year'; in 1552 it was Edward VI's belief 'that this country can bear no merchant to have more land than £100'; in 1559 Lord Burghley proposed to set at a convenient figure a legal maximum to the real property merchants and traders might buy; in 1576 the future acquisition of land by clothiers was limited to twenty acres. But if the peer, his wealth locked up in frozen assets, preferred to keep the *parvenu* in his place, the latter, unfortunately, had the money which the former was at his wits' end to obtain. Indeed, stronger objections came from the gentry: those who had established themselves earlier and were not averse to having the door selfishly closed to

others who now sought to follow along the same promising path. General legislation on this focal point never materialized, and by the end of our hundred-year span opposition to the unpleasant, grasping, crude, land-grabbing gentry, the exploiting and rack-renting lord of the manor, was becoming limited to parliamentary acts curbing his more violent interferences with tradition. He remained, of course, an apt subject for the satire of dramatists and the sermons of country clergy, but already the words were changing from 'grasping' to 'thrifty' and from 'rapacious' to 'enterprising', foreshadowing his transformation into the altogether admired, solid and sober country gentleman of the eighteenth century.

If the Tudor agricultural capitalist farmed his lands, as those generally did who came to the gentry from the class of smaller yeomen, he could sell his produce in a rising market. If he dealt in land as a commercial speculation, he could count on reselling at a profit to newer recruits, fresh from trade, anxious to vary the risks of commerce by the decorous stability of what was regarded as a gilt-edge investment. What better use for money so gained by profitable sales of produce or through shrewd speculative enterprise than the purchase of larger manors and broader acres? By 1620 if not earlier, it was difficult to find a prominent London merchant or lawyer who was not also a constant dealer in land. Coke owned at his death ninety-nine manors, but twice that number had passed through his hands. The same is true of countless others. The land market was most active in the home counties, where prices rose rapidly and length of tenure was short, reflecting the spectacular growth of London and the profits that lay in supplying its inhabitants, but what was true of the forty miles about London was only slightly less true of the environs of other growing cities, for example, Bristol. Elsewhere, though the passage of land from owner to owner was slower, manors moved with a tempo unknown in the middle ages.

Some members of this species, which was later to be the admiration of the world, survived and prospered; others struck no permanent roots. Since land often was in no way distinguished from other business enterprises by a class in which agricultural, commercial, and industrial interests were inextricably intertwined, it was equally and readily subject to the ebb and flow of business fortune. Reached by recognisance, statute merchant, and statute

staple, mortgaged, re-mortgaged or liquidated as reverses required or as more lucrative opportunities elsewhere were offered, property floated from hand to hand, coming to rest at intervals only again to resume its wanderings as financial embarrassment, bankruptcy, or the promise of larger profits called the turn. Of 2,500 manors in seven counties whose owners can be traced, 33 per-cent were sold between 1560 and 1600; 36 per-cent between 1601 and 1640. Of 600 manors in Hertfordshire and Surrey, close enough to London to feel the wash of the whirlpool, 40 per-cent changed hands in the same periods. Of the gentry who had purchased land in Bedfordshire by 1620, two-thirds were said to have sold out by 1668, and the remark that half the properties in conservative Staffordshire had changed hands in sixty years does not appear too implausible.

Other crises set the wheel spinning at an even faster rate. Between 1558 and 1633 crown lands to the value of £2,250,000 (much of the total after 1605, to satisfy the government's deficit spending of the war years) were sold, largely to syndicates of London financiers, who bought in substantial blocks, subdivided, and resold, partly to subsidiary rings of middlemen, partly to the public. Thus political conditions combined with economic to erode the upper strata of the social pyramid—the crown and the peerage—and to increase the amount of property that passed into new hands.

Since land was an instrument of social prestige and political power, its mobilization had other effects, and the shifting center of gravity in the State, to which rather more attention has been paid by historians, affords an opportunity to view the leveling process from another side. Of 135 peers in the House of Lords in 1640, over half had obtained their titles since 1603: the creation by the Stuarts of a new nobility through the sale of titles to knights and esquires with an income from land of £1000 a year was nothing beyond a simple recognition of economic realities. Such translations obscure the picture, but peers so recruited from the gentry, though they sometimes bore ancient names, had neither the wealth, power, nor prestige of those who earlier had sat in their seats. The landslide had turned the upper ranges of English society from a precipitous mountain chain to an undulating high table land, on which variations in altitude were recognizable but, compared with

the tremendous peaks of an earlier age, small. The richer gentry had the income of Earls and in 1628 it was quite properly observed that the Commons could buy the House of Lords three times over. Clearly the substantial gentry entrenched in the Commons, commanding most of the land and therefore most of the wealth of an England still largely agricultural, held the keys to what seemed the indefinite future in its hands. Nor would this be altered in essentials until the factories and the long industrial streets came to modify the face of England and transmute one world of privilege into another.

If the repercussions of the 1540-1640 redistribution of landed property were many and of profound importance in English history, I touch upon them only to illustrate the extent to which land had been transferred from crown and peerage to a gentry closely allied with, in fact indistinguishable from, the merchant class. The flow of commercial capital into land, which rationalized estate management, likewise modernized portions of the law of real property. Such changes seldom took the form of sharp reversals of earlier rules, but a shift in emphasis, a choice of alternatives, a heightened importance given to a case formerly ignored, the sudden blossoming of a doctrine barely hinted at earlier, the broader construction of statutory words, mark the transformation well enough.

Security, for example, was a matter of the greatest concern to purchasers, who feared most the remote or dormant title, brought forward without warning, against which the law left them helpless. These fears were well founded, for financially pinched sellers did not scruple to defraud the business men and speculators, ruthless bargainers determined to force acceptance of the lowest prices, who were insinuating themselves into the land. The common law did not require disclosure of defects in title and afforded no means for destroying outstanding claims. Rather, in true medieval fashion, it preserved indefinitely the rights of heirs and remaindermen and protected latent titles against purchasers of every kind. In the interests of security legal ingenuity sanctioned by the judiciary developed the common recovery, at best a bare-faced fraud since there was no possibility of recompense from the common vouchee, but a fraud to which the courts resolutely closed their eyes, thus depriving heirs in tail, by an obvious fiction, of their inheritances.

A questionable antiquity was given the device by alleging as its origin a singularly obscure case of 1472, though the common recovery itself did not become usual until almost a century later. *De donis* had enacted expressly that a fine was no bar to the issue in tail and a statute of 1536, dealing with the general subject of fines, did not repeal it. Nevertheless, a strained judicial interpretation of the act declared it to be a bar and set a five-year statute of limitations running against remaindermen and reversioners which barred their rights absolutely and finally. Though it made the fine 'a piece of firm ground in the midst of shifting quicksands', this reading of the statute was implausible enough to raise questions, but it was quickly confirmed in 1540. Since the fee tail, a fully recognized and legal estate, now could be barred by fine or recovery, efforts were made to create estates tail that could not be so upset, a legitimate aim for an owner seeking to establish a landed family. But judges, more concerned with the fact that 'titles would be wholly uncertain' and the plight of a prospective purchaser of property so encumbered than with the owner's aspirations, found all such devices void. They continued to emphasize the destructible nature of estates in tail until the end of the seventeenth century, when they became willing to accept the work of conveyancers creating entails impossible to break—a reversal closely tied in with the diversion of commercial money from land to industry in the eighteenth century and the re-establishment of a large-landed aristocracy.

Among the more conspicuous signs of agricultural backwardness in 1550 was the lease for lives, most frequently found on the estates of the aristocracy, which had been granted when falling, not rising, prices had been the great landholder's problem and fixed rents for long terms were an insurance. Manors whose lands were held on long leases at low rentals attracted the Tudor speculator prepared to modernize, whose profit was measured by the difference between the improved and old rents. Short-term leases were the standard answer to the price rise, and as they became common the position of the tenant for years improved considerably. Precarious in an earlier age that had regarded land as the permanent and normal economic basis for the family and had distrusted the termor, who more often than not was a money-lender evading the law against usury, the entrepreneurial activity of the termor was so far condoned that freeholders, envying the means given him for recovering his

term, secured the same advantages to themselves by the fictitious demise in the action of ejectment.

English land law was organized about the concept of seisin: neither possession nor ownership but a combination of both. To have seisin one must enter upon land and stay there, though the seisin so acquired might or might not be superior to another's older and better seisin. A conception peculiar to the middle ages, it was unsatisfactory in an age when property moved rapidly and in which buyers dealt in land they had never seen and did not expect to occupy. The growth of the concept of title, only hinted at before Elizabethan times, is reflected in the new importance given title-deeds, originally simply memoranda of livery of seisin. Actions for their recovery became frequent and their simple deposit was held in 1673 to effect a valid mortgage. In the light of this separation of title from possession, seisin was equated with the latter. Livery of seisin—an actual, complete, and public change in the occupancy of land—declined into mere form as title was transferred by bargain and sale or by lease and release. At these and other points, often technical and small but not unimportant as harbingers of the future, transformation was slowly taking place.

To the speculating Elizabethan purchaser buying to improve and sell, or to hold subject to the reconversion of his capital into enterprises of other kinds, there was much that seemed antiquated in the English law of real property. To the Elizabethan merchant acquiring two or three thousand acres with the intention of establishing a landed family of significance in the county, the law of real property, a product of the heroic age of feudalism when the nexus between lord and tenant had been not merely economic, but military, social, and psychological, was an outrage. Though he might buy knowing nothing of, and caring less about, his lord paramount, in legal contemplation his land was held of a superior in the feudal pyramid and, if held by knight service, a tenure more likely than any other, was subject to substantial burdens surviving from the feudal-age. The most severe of these, wardship and marriage, took effect at the tenant's death, seriously limiting the estate passed on to his heir and interfering to a prominent degree with his dynastic pretensions. For centuries intermittent skirmishes had been fought against the feudal incidents, tenants in every age having been anxious to transmit their lands free of their burden. The Statute

of Uses, four years before our period begins, had closed off the most useful evasory device. But in the second half of the sixteenth century the hundred-year war began in earnest. Fought through the Elizabethan and Jacobean courts, its battles enshrined in case after case in the black-letter reports, the long struggle was technical in the extreme and left as its monument a mass of subtlety and misdirected ingenuity whose effect on our property law was considerable and greatly to its detriment.

Since the principle that lay at the root of both prerogative and simple wardship was that it attached to one who entered as heir of the deceased tenant, the problem was to enable the heir to succeed to the land by some means other than inheritance. The rule in *Shelley's* case fixed the character of heirs upon persons whom conveyancers had represented to be purchasers, but this was a simple and obvious device, easily penetrated. At the bidding of their clients, lawyers resorted to progressively elaborate and increasingly technical schemes, some to take effect *inter vivos* others only at death, to make heirs purchasers, even at a number of removes from the donor. The contingent remainder, which makes its first appearance in Elizabeth's reign, is a product of this effort, as are shifting and springing uses: all directed toward the same end. Since there were other ingenious means of solving the problem, the long term of years, 99 years or 999 years, unknown in the middle ages, comes into prominence: not being an estate of inheritance, the feudal incidents did not attach to it. The running battle of wits may be traced in the books, but efforts to transmit land free of its medieval dues and incidents were doomed to failure when carried on within the traditional law of real property, itself painfully forged for the governance of a feudal society in which those very dues and incidents were of major importance. Casuistical alterations in detail accomplished something, but more often raised frightening problems of other kinds, notably the perpetuity, like the others a problem first grappled with in the Elizabethan age. The courts moving slowly from case to case met the question always as one of *meum et tuum*, for if sixteenth century landholders as tenants felt the feudal incidents intolerable, as lords they were anxious not to be deprived unjustly of rights guaranteed them by law. Pressure was less ambiguous and more readily felt in Parliament. The incidents of tenure were abolished in 1660, unfortunately without the concomitant abolition of the

tortured law of real property to which they had given rise, a law that was to confound judges for two centuries and disprove the maxim *cessat causa, cessat effectus*.

The slow emergence of contract from tort and the halting development of assumpsit in a strikingly active commercial society pose problems for the sociological jurist and have led historians into alternate misconceptions. To some, familiar with the extent to which business economy pervaded contemporary life, the needs of commerce in the sixteenth century were served in the local courts. But it can be nothing more than unlikely that yokels in the country were the beneficiaries of a commercial law, developed locally, while the large-scale trade of Elizabethan London or Bristol made do with the rudimentary contractual concepts of the common law. Other historians have postponed the emergence of developed commercial activity in England until *Slade's case*, or at least until *Strangborough v. Warner* (1588) in an effort to balance the equation by manipulating its other variable. But there can be little doubt that the turbulent business activity of the sixteenth century took place, as might be expected, within inherited forms. The ubiquitous bond, the recognisance, the statute merchant, and the statute staple, all were medieval and all had their origins in the simple relationship of debtor and creditor.

I need not expand on the familiar bond under seal, usually drawn to twice the amount due and defeasible by payment of half face value, nor on the action of debt that was used to enforce it. A creditor could avoid the necessity of having to bring an action of debt by having his debtor appear before a superior court, or more frequently before a clerk in the offices of the chancery of exchequer, and there enter into a recognisance, duly enrolled, whereby he acknowledged the indebtedness and submitted to immediate execution upon non-payment. His position was the same as if he had been successfully sued upon a writ of debt. The Statute of Merchants of 1285 set up registries in a number of towns before whom the creditor might have his debtor appear and acknowledge the debt. If this form of assurance was adopted, rather more drastic remedies were available on default. The debtor was forthwith committed to prison; during his first three months there he had facilities for selling his chattels and lands to satisfy the debt, but if he failed to do so, all his chattels then were given to the creditor, to be sold

and deducted from the amount due. If this was insufficient, all his lands were transferred to the creditor until the remainder of the debt was discharged out of their issues. The Statute of Staples of 1353 provided much the same method of acknowledgment, but before the Mayor of any Staple town, and similarly direct methods of collection. It seems to have been intended only for Merchant-Staplers, but the general public nevertheless continued to use it until the statute of 1532 confined it to Staplers and created for others the 'recognisance in the nature of a statute staple' entered into before the chief justices of either bench or the recorder of London.

Situations later recognized as within the sphere of the normal contract relation were dealt with in the sixteenth century and later by means of these devices. Defeasible bonds, statutes merchant or statutes staple, served the purposes of the unilateral contract. *A* bound himself in a bond of £1200 to *B* and *C* defeasible on his paying each of Richard Hooker's four daughters £100 at her full age. *A* bound himself in the sum of £20 to deliver certain goods at Boston, Lincolnshire. *A* bound himself on a bond defeasible on his rebuilding a tenement, barn, and watermill. *A* bound himself in a bond of £100 to *B*, it to be of no effect if *B* did not cure him of the pox. The same instruments also served the purposes of the bilateral contract. *A* gave his bond of £500 to the purchaser of his land defeasible on his making the buyer a sufficient estate prior to a fixed date; in return *B* gave his bond of £500 defeasible on payment of the purchase price. *A* agreed to sell goods at £800 payable the 15th of August; *B* agreed to buy. But these preliminary negotiations were further assured by the exchange of £1000 bonds: *A*'s to remain in full force until he transferred the goods; *B*'s until payment was made. *A* agreed to marry *B*'s daughter, *B* to make an estate to *A*, the daughter, and the heirs of their bodies. Here likewise, final arrangements took the form of an exchange of defeasible bonds. The same results could be achieved by the recognition of reciprocal statutes merchant or staple containing similar defeasances, transactions already common in the fifteenth century.

It is a tempting hypothesis that the cases that came before the common law courts during the sixteenth century, out of which the action of *assumpsit* grew, were those in which the preliminary bargain had not been followed by the exchange of assurances, either because of the insignificance of the sums involved or the inexperience

of the parties. The cases which together comprise the traditional history of contracts have an unmistakable flavor of unsophistication and leave the impression that Tudor commercial activity was confined to the dealings of petty traders bargaining for twenty quarters of wheat or for the payment of a £5 debt. In such cases a false prominence is given the wager of law, a survival from the middle ages when men and transactions were local and known to all, but which had long been obviated in transactions of importance by the bond or statutory recognisance. The hypothesis is best supported by the marriage settlements that play their part in the evolution of the informal contract. Transactions such as these were by no means new: lands, often of immense value, and money had for centuries been assured by parents on the marriage couple, using the standard procedures of bonds and counter-bonds, simultaneous fines, or feoffments on condition. No instruments are more common in family archives. The settlements litigated in the common law courts of the sixteenth and seventeenth centuries, on the other hand, seem without exception to be concerned only with small estates and to mirror only unsophisticated suitors and their parents acting in the absence of legal, or even of reasonably informed, advice.

A law of contracts that lags behind the growth of commercial activity presents an awkward stumbling block to the acceptance of a theory of roughly concomitant social and legal change, but in fact the lag is illusory. Commercial transactions were handled by means of self-executing, medieval forms ingeniously adapted to post-medieval enterprises. Consequently the run of commercial cases bypassed the common law courts, for defences to a bond under seal or to an execution sued on a statutory recognisance had of necessity to be heard in chancery. If relief could not be had there, a seventeenth century chancery reporter noted, 'men would do that by covenant which now they do by bond'. Under such conditions, contract doctrine remained undeveloped and inadequate: Blackstone's treatment of contracts does not quite fill one chapter, and that is hidden in a volume devoted to property and conveyancing; Lord Mansfield looked for contract theory to Pothier, chancery practices, mercantile usages, and natural law. Only later to come into its own, the law of contracts then was provided with a history; if prior to the late eighteenth century the informal contract was not the form commercial agreements took, that history cannot fail to be confused, disappointing, and economically anachronistic.

I pass over the well-worn subject of the sixteenth century legitimation of interest, though it aptly illustrates the title of this paper, and mention only in passing the series of Tudor bankruptcy statutes and acts against fraudulent conveyances that constitute direct legal responses to growing commercial sophistication. The connection between social change and precedent is not quite that clear.

Medieval political and legal thought reflect essentially a society not yet complicated by problems beyond *meum et tuum* and secure in an ethic, accepted by all, based upon the solid bedrock of undifferentiated and universal belief. Under such conditions, the hypothesis that justice provided the ultimate touchstone of human behaviour, and was an ascertainable absolute to be recognized by reason in every case with immediately apprehended confidence, was not an untenable one. If reason worked well enough in an essentially static society, or one in which the rate of change was slow, the sixteenth century found it not altogether an advantage to be ruled by a judge's intuitive feeling for what was right. In the first year of our hundred-year period it was pointed out that 'our law ys infynyte and without ordur or end. Ther ys no stabyl grounde therin nor sure stay, but everye one that can coloure reson makyth a stope to the best law that ys before tyme devysed. There is no stabyl ground in our commyn law to leyne unto and the jugys are not bounden, as a rule, but aftur theyr owne lyberty they have authoritey to juge as the cyrcumstance of the cause doth them move.' Those engaged in trade, whether of lands or goods, would be particularly interested in what Max Weber called 'the calculability of chances', preferring prediction to ethical imperatives no longer either clearly enunciated or unambiguous. Francis Bacon's experience in chancery, the court to which most commercial cases came, led him to insist that certainty was the primary necessity of law, nor is he here to be contrasted with Coke, who substantially delimited the 'reason' of the middle ages when he recognized that 'causes which concern the life or inheritance or goods or fortunes of subjects are not to be decided by natural reason, but by the artificial reason and judgment of the law'. If in 1502 Bracton's (and Justinian's) well-known adage '*non exemplis; sed rationibus adjudicandum est*' could still be cited with approval, by 1602 precedent, a word which appears first in 1557, was becoming a small but recog-

nizable part of judicial technique. Still far from Lord Mansfield, and farther from the industrialized nineteenth century's insistence on predictability, it is nevertheless difficult to escape the fact that rudimentary but none the less real principles of certainty and of the consistency of decision were coming into use.

This already over-long paper may be aptly brought to a close by four quotations which seem to me to raise a fundamental question—the separation of law from ethics. In 1370: *'Nam licet in rescripto principis exprimatur, ut iudex recusari non possit, nihilominus ex justa causa poterit recusari. Recusatio enim species est defensionis, quam, cum sit de jure naturae, princeps in suo rescripto etiam expresse tollere nequit. Manifestum est, quod cum voluntas principis ab aequitate, justitia et ratione deviet, non est lex.'* In 1503: *'si le roy granta a une home destre justice de peas licet ipsemet sit pars, cest grant est void.'* In 1606: 'One cannot be judge in his own case, and it appears in our books that in many cases the common law will control acts of parliament and adjudge them to be utterly void'. In 1765: 'if an act of parliament gives a man power to try all causes that arise within his manor of Dale, yet if a cause should arise in which he himself is party, the act is construed not to extend to that, because it is unreasonable that any man should determine his own quarrel. Yet if we should conceive it possible for the parliament to enact that he should try as well his own causes as those of other persons, there is no court that has power to defeat the legislature when couched in such evident and express words as leave no doubt whether it was the intent of the legislature or no'.