



The History of the Common Law of England (Pocket Essentials)

Matthew Hale

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From Content: "Laws of England may aptly enough be divided into two Kinds, viz. Lex Scripta, the written Law: and Lex non Scripta, the unwritten Law: For although (as shall be shewn hereafter) all the Laws of this Kingdom have some Monuments or Memorials thereof in Writing, yet all of them have not their Original in Writing; for some of those Laws have obtain'd their Force by immemorial Usage or Custom, and such Laws are properly call'd Leges non Scriptae, or unwritten Laws or Customs. Those Laws therefore, that I call Leges Scriptae, or written Laws, are such as are usually called Statute Laws, or Acts of Parliament, which are originally reduced into Writing before they are enacted, or receive any binding Power, every such Law being in the first Instance formally drawn up in Writing, and made, as it were, a Tripartite Indenture, between the King, the Lords and the Commons; for without the concurrent Consent of all those Three Parts of the Legislature, no such Law is, or can be made: But the Kings of this Realm, with the Advice and Consent of both Houses of Parliament, have Power to make New Laws, or to alter, repeal, or enforce the Old. And this has been done in all Succession of Ages. Now, Statute Laws, or Acts of Parliament, are of Two Kinds, viz. First, Those Statutes which were made before Time of Memory; and, Secondly, Those Statutes which were made within or since Time of Memory; wherein observe, That according to a juridical Account and legal Signification, Time within Memory is the Time of Limitation in a Writ of Right; which by the Statute of Westminster 1. cap. 38. was settled, and reduced to the Beginning of the Reign of King Richard I or Ex prima Coronatione Regis Richardi Primi, who began his Reign the 6th of July 1189, and was crown'd the 3d of September following: So that whatsoever was before that Time, is before Time of Memory; and what is since that Time, is, in a legal Sense, said to be within or since the Time of Memory. And therefore it is, that those Statutes or Acts of Parliament that were made before the Beginning of the Reign of King Richard I and have not since been repealed or altered, either by contrary Usage, or by subsequent Acts of Parliament, are now accounted Part of the Lex non Scripta, being as it were incorporated thereinto, and become a Part of the Common Law; and in Truth, such Statutes are not now pleadable as Acts of Parliament, (because what is before Time of Memory is supposed without a Beginning, or at least such a Beginning as the Law takes Notice of) but they obtain their Strength by meer immemorial Usage or Custom."

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