PART ONE

RESTRAINTS ON ALIENATION
A. ALIENABILITY IN THE ABSENCE OF RESTRAINTS

DURING the century and a half which followed the Norman Conquest, the owner of land who attempted to transfer it might meet with opposition from three interested parties: his feudal overlord, his heir apparent, and his tenant. His feudal overlord might object to a transfer by way of substitution, that is, one under the terms of which the transferor did not retain a reversion, because the proposed transferee was not a suitable person to perform the feudal services due for the land. As these services were frequently of a personal or military nature, such an objection was not necessarily captious. His overlord might object with equal reason to a transfer by way of subinfeudation, that is, one under the terms of which the transferor did retain a reversion. Although in this case the transferor would remain personally responsible for the feudal services due to the overlord, the value of some of the feudal incidents of lordship might be seriously reduced. For example, if the owner died such, the overlord, by virtue of the feudal incident of wardship, would be entitled to possession of the land during the minority of the heir; whereas if the owner had transferred the land by way of subinfeudation, reserving only nominal services, such as a rose a year at midsummer, the overlord would be entitled only to those nominal services from the trans-
fere during the minority of the transferor's heir. The reason why an heir apparent might object to the alienation of his anticipated inheritance requires no elucidation. The tenant might have cogent reasons for opposing a transfer which would require him to render homage, fealty, and personal or military service to a stranger.

The extent to which the objections of the overlord, the heir, and the tenant constituted legal impediments to inter vivos alienation prior to the year 1200 is not now known and probably was far from clear at the time.¹ Early in the thirteenth century it was settled by judicial decision that neither the heir apparent nor the tenant could effectively prevent a transfer by the owner. If an owner in fee simple absolute transferred the land in his lifetime without the consent of his heir apparent, the heir could not get it back after his ancestor's death.² Although the acquiescence (attornment) of the tenant was necessary to the complete effectiveness of a transfer of land, that acquiescence could be compelled.³ The objection of the overlord was not so quickly overruled. The 1217 edition of Magna Carta expressly recognized the right of an overlord to object to alienation in some

¹ Pollock and Maitland, History of English Law Before the Time of Edward I, 310-330 (1895); 2 id. 93, 127-128, 250-253, 306-311; 3 Holdsworth, History of English Law, 3d ed., 73-87 (1923). This doubtful state of the law is not surprising in view of the then relatively recent imposition of a system of feudal tenures upon the earlier Anglo-Saxon land law, which had included a variety of tenures and of local customs not fully understood by the Normans. Scrutton, Land in Fetters 1-36 (1886).

² FitzRoger v. Arundel, Bract. N.B. pl. 1054 (1225).

cases. Nevertheless, there is reason to believe that by 1284 the courts recognized the power of an owner of land to transfer it without the consent of his overlord. However that may be, the question was settled by the enactment in 1290 of the Statute of Westminster III, commonly known as *Quia Emptores Terrarum*. This statute forbade further transfers by way of subinfeudation and provided,

“That from henceforth it shall be lawful to every freeman to sell at his own pleasure his lands and tenements, or part of them, . . . This statute extendeth but only to lands holden in fee simple.”

Although it may have been possible to transmit land

4 “No freeman from henceforth shall give or sell any more of his land, but so that of the residue of his lands the lord of the fee may have the service due to him, which belongeth to the fee.” C. 39, Barrington, *Magna Charta and Other Great Charters of England*, 2d ed., 279 (1900). This provision was repeated in 9 Hen. III, stat. 1, c. 32 (1225), 2 Coke, *Institutes* 65. The “*Grand Chartre des Franchises*” of Henry III was confirmed by 25 Edw. I, stat. 1, c. 1 (1297), 28 Edw. I, stat. 3, c. 1 (1300), and 42 Edw. III, c. 1 (1368) but without specific mention of chapter 32. It would seem that these confirmations of *Magna Carta* did not revive chapters which had been repealed or modified by later statutes. Jenk. 2, 145 Eng. Rep. 2 (1771).

5 Plucknett, *Legislation of Edward I*, 104 (1949). The Statute of Wales, 12 Edw. I, c. 10 (1284), 1 Stat. of the Realm 55, 66 (1810) prohibited specific enforcement of covenants against alienation. This statute was a codification of the existing English common law made for the purpose of extending it to Wales and, although not applicable to England, is evidence of the current state of the common law.

6 18 Edw. I, stat. 1 (1290).

7 Id., caps. 1, 3; 2 Coke, *Institutes* 500, 504. Sir Edward Coke states that the word “sell” (vendere) includes “give.” Id., 501. The statute was not construed to permit alienation by tenants in chief of the Crown without royal license [3 Holdsworth, *History of English Law*, 3d ed., 81, 83-84 (1923)] but this exception was narrowed by statutes providing that lands once held under a subordinate overlord should not be treated as being held in chief of the Crown by reason of the king’s acquiring the overlord’s estate by escheat, attainder, dissolution, or surrender. 9 Hen. III, stat. 1, c. 31 (1225); 1 Edw. III, stat. 2, c. 13 (1327); 1 Edw. VI, c. 4 (1547). Moreover, a transfer by a tenant in chief without royal license was not void but merely entitled the king to a reasonable fine. 17 Edw. II, stat. 1, c. 7 (1324); 1 Edw. III, stat. 2, c. 12 (1297). Such fines for alienation of land held of the Crown in chief were abolished by stat. 12 Car. II, c. 24, §1 (1660).
by will in the Anglo-Saxon and early Norman periods, it became settled in the twelfth century that a devise of a legal freehold estate in land was ineffective as against the heir of the testator.\textsuperscript{8} Early in the thirteenth century the device of conveying legal title to others to hold to the use of the transferor or those whom he might name was developed.\textsuperscript{9} The rights of the beneficiary of a conveyance to uses, who was known as a \textit{cestui que use}, were not initially enforcible in any tribunal, and the common-law courts never did enforce them, but from the end of the fourteenth century they were enforcible in equity.\textsuperscript{10} Such rights were conceived of as being more in the nature of a chose in action than a property interest, and choses in action were not assignable.\textsuperscript{11} Nevertheless, the interest of the \textit{cestui que use} was always alienable inter vivos, and a statute of 1483 empowered him to convey the legal title without the consent of the legal owner.\textsuperscript{12} The interest of the \textit{cestui que use} was transmissible by will, and one of the chief purposes of the use device was to avoid the rule that legal freehold estates in land could not be devised.\textsuperscript{13} This possibility

\textsuperscript{8} 2 Pollock and Maitland, \textit{History of English Law Before the Time of Edward I}, 312-328 (1895). There were exceptions to this rule as to land in towns, Id., 330.

\textsuperscript{9} Quency v. Prior of Barnwell, Bract. N.B. pl. 999 (1224).


\textsuperscript{11} Ames, \textit{"The Inalienability of Choses in Action"}, \textit{Lectures on Legal History} 210-218 (1913).


INTRODUCTION was cut off in 1535 by the Statute of Uses, which converted the interest of the beneficiary into a legal estate. 14 Five years later the power to transmit legal freehold estates by will was conferred by statute. 15

The Statute of Uses had no application to property interests other than freehold estates in land, and within a century after its enactment the High Court of Chancery created two important exceptions to its applicability to freehold interests in land. The uses excepted from the operation of the statute were the use created by a conveyance which imposed active duties upon the conveyee 16 and the use on a use. 17 In these cases and in the case of a conveyance to uses of something other than a freehold interest in land, the transaction was enforced in equity as a trust. The early decisions treated the interest of the beneficiary of a trust as a chose in action which could be transmitted by will but was not transferable inter

14 Stat. 27 Hen. VIII, c. 10 (1535). This statute is entitled, “An Act concerning Uses and Wills,” and its preamble recites as its primary purpose the abolition of wills of land. It may be that this effect of the Statute of Uses could be avoided by making a feoffment to such uses as the feoffor might by will appoint. See Sir Edward Clere’s Case, 6 Co. Rep. 17b, 77 Eng. Rep. 279 (1599).

15 Statute of Wills, 32 Hen. VIII, c. 1 (1540). The explanatory statute of 34 & 35 Hen. VIII, c. 5 (1542) limited the operation of the Statute of Wills to estates in fee simple, thus excluding estates in fee tail and estates pur autre vie. The latter were made devisable by Stat. 29 Car. II, c. 8, §12 (1676). The Statute of Wills restricted the devisability of land held by knight-service. This form of tenure was abolished and land formerly so held made freely devisable by Stat. 12 Car. II, c. 24, §1 (1660). See 1 Coke, INSTITUTES 111b (Hargrave’s note No. 138 to 13th ed., 1787). The restriction on devisability of land held by knight-service could be avoided by making a feoffment to such uses as the feoffor might by will appoint. Sir Edward Clere’s Case, note supra.


vivos. Before long, however, the property analogy prevailed and a *cestui que trust* could transfer his interest inter vivos as freely as he could an equivalent legal estate.

The transferability of estates for life seems to have been conceded without serious opposition in the mediæval period. Such a transfer did not affect the overlord's feudal incident of wardship or injure the transferee's heir. Estates for years were treated as chattel interests and regarded as freely alienable, both by assignment inter vivos and by will. The law of England has always recognized the alienability of chattels personal, both inter vivos and by will.

**B. SCOPE OF PART ONE**

It thus appears that by the time English law was carried to this country in the seventeenth and eighteenth centuries it recognized that, in the absence of special restrictions on alienability imposed by the creator of the interest or by its owner, property interests, real and personal, were transferable by their owner, either inter vivos or by will. As to estates in fee simple, the incident of alienability was expressly conferred by the statute *Quia

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20 Littleton, Tenures §301 (1481); 3 Holdsworth, History of English Law, 3d ed., 123 (1923).
21 Fitz Henry v. Utdeeners, Bract. N.B. 804 (1233); Littleton, Tenures §319 (1481).
Emptores Terrarum. From an early period, English law had permitted access by judgment creditors to property which the debtor had power to transfer voluntarily. There then were and still are a number of restrictions imposed by law upon the free alienability of property. Nevertheless, by the law of England, property interests are, in general, alienable. In Part One the question for inquiry is, to what extent will the law recognize and enforce special restrictions on alienability, imposed by the creator of the interest or its owner, on property interests which, in the absence of such special restrictions, would be alienable? Such a restriction may assume the form of a prohibition on alienation, the effect of which would be, if enforced, to leave the owner still owner despite an attempt on his part to transfer his interest. It may assume the form of a provision that the interest shall revert to its creator or pass to a third party if the owner attempts to transfer it. Or it may provide for some other penalty to be suffered by the owner or his transferee in the event of a transfer.

Part One does not cover the validity of indirect restraints on alienation, that is, provisions which do not directly nullify or penalize a transfer of property but which have the indirect effect of making alienation impossible, difficult, or improbable. The creation of property interests in unborn or unascertained persons has the effect of making them inalienable, because there is no owner to alienate. The creation of a type of interest as to which the law imposes restrictions on alienation

25 18 Edw. I, stat. 1, c. 1 (1290); note 7 supra.
26 13 Edw. I, stat. 1, c. 18 (1285); Amby v. Gower, 1 Ch. Rep. 168, 21 Eng. Rep. 540 (1655); 1 Coke, INSTITUTES 191a (Butler's note No. 77, VI 9, to 13th ed. 1787).
27 As to the possibility of creating such interests, see Fratcher, "Trustor as Sole Trustee and Only Ascertainable Beneficiary," 47 Mich. L. Rev. 907-934 (1949).
has the effect of restraining its alienation although the creator of the interest may not wish this result. For example, a conveyance of land to a husband and wife creates a tenancy by the entirety which neither tenant, acting alone, can alienate, wholly or in part.\textsuperscript{28} Even though a property interest is legally transferable, its sale may be commercially impracticable if it does not entitle the owner to exclusive enjoyment of the land or goods concerned, if enjoyment is burdened with onerous servitudes, or if enjoyment is uncertain as to coming into existence or duration. Property subject to cotenancy, easements, profits, or use restrictions may be very hard to sell because of such burdens. A present interest which is subject to being defeated by the happening of an event which is not certain to occur or uncertain as to time of occurrence is likely to be unsalable. A future interest which may never become possessory unless an uncertain event occurs is almost certain to be unmarketable. There is little commercial demand for future interests, even those which are certain to become possessory, particularly if the date when enjoyment is to commence is uncertain. The law recognizes the social undesirability of too great extension of these indirect restraints upon alienation and upon free commerce in property and sets limits to them in various ways, some of which are treated in Parts Two and Three of this book. The common-law Rule Against Perpetuities, which is the subject of Part Two, restricts the creation of contingent future interests. The former statute prohibiting suspension of the absolute power of alienation for unduly long periods, which is treated in Part Three, restricted the creation of interests in unborn and unascertained persons and of interests

\textsuperscript{28} Naylor v. Minock, 96 Mich. 182, 55 N.W. 664 (1893).
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which the law makes inalienable. Part One does not extend to such indirect restraints upon alienation except where an interest is made conditional upon or subject to defeasance by alienation, or the creator or owner of an interest which is by its nature affected by an indirect restraint attempts to impose an additional restriction designed to nullify or penalize such alienation as would otherwise be legally possible.

C. MICHIGAN’S RECEPTION OF ENGLISH LAW

The direction and scope of the present inquiry have been defined, but discussion of the Michigan decisions relative to direct restraints on alienation must be deferred to a preliminary inquiry into the extent to which the law of England has been adopted as the rule of decision in Michigan. Until its cession to Great Britain by the Treaty of Paris of 1763, the area which now composes the State of Michigan was subject to the laws of France and of the French colonial government. By the law of England, the settlement of uninhabited territory by English colonists extends to that territory the common law and statutes of England then in force, but English law does not extend to conquered territory unless and until so extended by the king. As Michigan

The common-law rules restricting restraints on alienation, which are the subject of Part One, are sometimes confused with the statutes restricting suspension of the absolute power of alienation, which are the principal subject of Part Three. These statutes supplemented but did not supersede the common-law rules against restraints on alienation. For the distinction between a restraint on alienation and suspension of the absolute power of alienation, see Chapter 18, Section B, infra.

became British by conquest rather than by settlement, the problem of whether English law is in force here is, therefore, different from that in the seaboard states.

The British government was very slow in extending its administration to the area, no definite provision being made until it was incorporated into the Province of Quebec by the Quebec Act of 1774, which provided that the law of Canada, that is, the French law, should be the rule of decision in matters of property and civil rights. In 1791 the old Province of Quebec was divided into Upper Canada and Lower Canada, the former embracing the territory which now composes Michigan and Ontario. In the following year the legislature of Upper Canada repealed the Quebec Act insofar as it made the law of Canada the rule of decision and provided:

"That from and after the passing of this Act, in all matters of controversy relative to property and civil rights, resort shall be had to the Laws of England, as the rule for the decision of the same."

On July 14, 1795, the Governor and Judges of the Territory of the United States Northwest of the River Ohio adopted a law reading as follows:

"The common law of England, all statutes or Acts of the British parliament in aid of the common law, prior to the fourth year of the reign of King James the first discussed the vexed question of the application to colonial possessions of British statutes enacted after the settlement or conquest of the colony in an unpublished magisterial thesis entitled, A COMMENTARY FOR CANADA ON THE STATUTE OF WESTMINSTER, 1931, pp. 118-123 (1938), copies of which are deposited in the library of Wayne University.

31 Stat. 14 Geo. III, c. 83, §§1, 18. Great Britain was in actual control of Michigan from November 29, 1760 to July 11, 1796, despite the provisions of the treaties of 1783 and 1794. 1 Burton, City of Detroit 114, 154 (1922); Riddell, Michigan Under British Rule: Law and Law Courts 1760-1796, 21-26 (1926); Russell, The British Regime in Michigan and the Old Northwest 1760-1796, 16, 270n (1939).

32 Canada Act, 31 Geo. III, c. 31 (1791).

33 Stat. 32 Geo. III (Upper Canada), c. 1, §3 (1792).
(and which are of a general nature, not local to that kingdom) and also the several laws in force in this Territory, shall be the rule of decision, and shall be considered as of full force, until repealed by legislative authority, or disapproved of by Congress."

It has been suggested that this law of the Northwest Territory is the basis upon which the law of England, as altered by local statutes, is applied in Michigan, but this is probably inaccurate, for Michigan was not annexed to the Northwest Territory until July 15, 1796, and a mere cession of territory from one sovereign to another does not of itself alter the law of the land. The statute of Upper Canada would seem to be in force in Michigan, however, except insofar as repealed or modified by local statutes.

On September 16, 1810, the Governor and Judges of Michigan Territory adopted an act providing that no act of the parliament of England, no act of the parliament of Great Britain, no law of France or the French provinces of Canada or Louisiana, no law of Canada generally or of the province of Upper Canada under the British Crown, and no law of the Northwest Territory or Indiana Territory should have any force in

34 Laws of the Territory of the United States North-West of the Ohio, 175, 176 (1796). As to the validity of this law see 1 Trans. Sup. Ct. Terr. Mich., 1805-1814, xiv, xv. The similar law of Indiana Territory (Act Sept. 17, 1807, Laws of Indiana Territory, p. 323) was never effective in Michigan because Michigan was part of Indiana Territory only from July 4, 1800, to June 30, 1805.


36 Laws of the Territory of Michigan, x (1871).

37 In Denison v. Tucker, 1 Trans. Sup. Ct. Terr. Mich. 1805-1814, 385 (1807), Chief Judge Woodward of the Territorial Supreme Court held that a statute of Upper Canada authorizing slavery ceased to operate in July, 1796, but on the ground it was superseded by the anti-slavery provisions of the Ordinance of 1787.
Michigan.\textsuperscript{38} The legislative authority of the Governor and Judges was limited to the adoption of "laws of the original states."\textsuperscript{39} In token of conformity to this limitation, the act of September 16, 1810, recites that the part of it relative to British statutes and laws of the Northwest and Indiana territories is taken from the law of Virginia, and that relative to French and Canadian law from the law of Vermont. The writer has been unable to find any Virginia statute repealing the laws of the Northwest Territory or Indiana Territory, or any Vermont statute repealing the laws of Upper Canada. In consequence, the validity of the act of September 16, 1810, would seem to be dubious. Nevertheless, the Supreme Court of Michigan has held that it was effective to repeal English statutes of Henry VIII, Elizabeth I, and Charles II.\textsuperscript{40}

\textsuperscript{38} 1 Laws Terr. Mich. 210, 900 (1871). This act was expressly excepted from the act of the Legislative Council of April 13, 1827 which repealed most of the early territorial legislation. 3 id., 602, 603. Since Michigan has become a state there have been only two attempts to revise and reenact completely all the statutory law, Rev. Stat. 1838 and 1846. Neither revision appears to repeal the 1810 act.


\textsuperscript{40} Grant v. Earl of Selkirk, 1 Trans. Sup. Ct. Terr. Mich. 1814-1824, 431 (1818) (Lord's Day Act, 29 Car. II, c. 7, 1676. The court held, however, that the statute was merely declaratory of the common law, which is in force in Michigan); Bruckner's Lessee v. Lawrence, 1 Dou. 19 (Mich. 1843) (Stat. 32 Hen. VIII, c. 9, 1540); Trask v. Green, 9 Mich. 358 (1861) (Statute of Uses, 27 Hen. VIII, c. 10, 1535); Ready v. Kearsley, 14 Mich. 215 (1866) (id.); Methodist Episcopal Church of Newark v. Clark, 41 Mich. 730, 3 N.W. 207 (1879) (Statute of Charitable Uses, 43 Eliz., c. 4, 1601.) In this case the court did not recognize that the Statute of Charitable Uses was declaratory of the common law despite the convincing evidence to that effect presented by Horace Binney in Vidal v. Girard's Executors, 2 How. (43 U.S.) 127 (1844). In his dissenting opinion in Laraviere v. Campau, 1 Trans. Sup. Ct. Terr. Mich. 1825-1836, 305 at 312, Judge Sibley suggested that all English statutes passed before the colonization of America were part of the common law in force in Michigan. There are dicta by Justice Christiancy in Trask v. Green, 9 Mich. 358 at 365 (1861) and Chief Justice Campbell in In the Matter of Lamphere, 61 Mich. 105 at 108, 27 N.W. 882 (1886), suggesting that the English statutes were never
In a case decided in 1845, counsel contended that the common law was repealed by the Schedule to the Constitution of 1835 or by the Revised Statutes of 1838. This contention was rejected by the Supreme Court, which held that the common law is in force in Michigan. Assuming the soundness of this decision and of those holding that the act of September 16, 1810, repealed the Tudor and Stuart statutes, are the statutes of the Plantagenet kings in force in Michigan? In his astonishing opinion in *Grant v. Earl of Selkirk*, Judge Woodward stated that the common law "became complete, and insusceptible of any additions" upon the coronation of Richard the Lion-Hearted, September 3, 1189. Such a view would restore trial by ordeal and wager of battle; it would deny that even *Magna Carta* and the English case law of the thirteenth through sixteenth centuries are part of the common law and would be effective in Michigan, but they are clearly erroneous. In his dissenting opinion in *Dalby v. State Highway Commissioner*, 283 Mich. 609, 278 N.W. 694 (1938), at pp. 625-627, Justice Potter expressed the view that the Act of 1810 was void and that the English statutes have been since 1796 and still are a part of the law of Michigan.

41 Stout v. Keyes, 2 Doug. 184 (Mich. 1845). Accord: Lorman v. Benson, 8 Mich. 18 (1860); Reynolds v. McMullen, 55 Mich. 568, 22 N.W. 41 (1885). A better argument would have been that, as it was the Upper Canada Act of 1792 (note 33 supra) which extended the common law to this area, the repeal of that act in 1810 repealed the common law. The schedules to the Constitutions of 1850 and 1908 provide that the common law shall remain in force until altered or repealed. 1 Mich. Comp. Laws (1948) pp. 105 and 151. In *Stanton v. Loranger*, 1 Trans. Sup. Ct. Terr. Mich. 1825-1836, 282 (1825) it was held that a common-law rule does not apply here unless the facts and principles upon which it was founded exist here.


43 Id. at 436. In fairness to Judge Woodward, it should be noted that he did use English cases decided after 1189 as precedents, probably upon the theory that, although the common law remains complete, static, and unchangeable, judges find or declare it from time to time as occasion requires. No doubt the modern concept, necessitated by the research of legal historians, of the common law as a constantly growing and developing system, moulded by the judges to fit new conditions, would have been anathema to Judge Woodward.
confine that term to a primitive system which is virtually unknown and certainly unsuited to a modern community. Sir Matthew Hale thought that the statutes enacted prior to 1327 or 1336 should be treated as part of the common law,\textsuperscript{44} and even a most conservative view would include later non-statutory judicial developments, at least through the period of the Year Books. Although there is reason to believe that parts of the two Plantagenet statutes which are most significant in the law of restraints on alienation, \textit{De Donis Conditionalibus}\textsuperscript{45} and \textit{Quia Emptores Terrarum},\textsuperscript{46} declared pre-existing common law,\textsuperscript{47} the view that thirteenth and fourteenth century statutes were mere custumals, solely declaratory of the common law and effecting no change in it whatever, has been effectively refuted.\textsuperscript{48}

The English polity of the thirteenth and fourteenth centuries knew no clear differentiation among executive, legislative, and judicial functions. The king in his council, of which the royal judges were important members, was chief executive, supreme legislator, and chief judge. His formal enactments, orders in council, written and oral instructions to judges about to go on circuit, and decisions of litigated cases were alike sources of law. The judges had administrative as well as judicial functions and their pronouncements were sometimes legislative, sometimes administrative, sometimes judicial, and some-


\textsuperscript{45} 13 Edw. I, stat. 1, c. 1 (1285).

\textsuperscript{46} 18 Edw. I, stat. 1 (1290).

\textsuperscript{47} Plucknett, \textit{Legislation of Edward I}, 104 (1949); Plucknett, \textit{Statutes and Their Interpretation in the First Half of the Fourteenth Century} 10, 130-131 (1922).

\textsuperscript{48} \textit{Id.}, 26-31; Venour v. Blund, S.S.Y.B. 3 & 4 Edw. II, 159, 162 (1310).
times all three. In later centuries, when Parliament, the Council, and the courts had become sharply distinct, compilers chose to print some of the early royal charters, proclamations, and orders with the acts of Parliament. Many, perhaps most, of the rules which were not so printed had origins which were equally as legislative as those which were printed.\textsuperscript{49} The law of the thirteenth and fourteenth centuries cannot be divided into statute law and common law as can that of later eras. Any attempt to adopt the common law of those centuries and reject the statutes produces disconnected fragments of what was a unified legal system, selected according to arbitrary modern standards which would be unintelligible to contemporary lawyers. We must adopt Plantagenet law as a whole or reject it entirely.

To Americans generally, the English common law is the general system of jurisprudence, including statutes and their judicial interpretation, expounded in the \textit{Institutes} of Sir Edward Coke. The usual view, exemplified by the law of the Northwest Territory of 1795,\textsuperscript{50} that the law of England, statutory and otherwise, as it was at the time of the settlement of Virginia in 1607, is in force in this country \textsuperscript{51} is consistent with this concept. It provides a complete and integrated system of law upon which American courts and legislatures may engrat such changes and additions as our social conditions and development require. The unfortunate territorial law of September 16, 1810, and the decisions


\textsuperscript{50} Note 34 \textit{supra}.

\textsuperscript{51} 1 Kent, \textit{Commentaries on American Law}, 11th ed., 515-516, notes (a), (b) (1867); 1 Blackstone, \textit{Commentaries}, (Cooley's 2d ed.) 67, Cooley's note (3) (1872).
that the statutes of the Tudors and Stuarts were repealed by it prevent Michigan from being fully in accord with the general American view. They do not prevent a decision that the Plantagenet statutes are part of that common law which is declared to be in force by the Schedule to the Constitution of Michigan.

52 Note 40 *supra.*

53 Note 41 *supra.* In his great opinion in Mandlebaum v. McDonell, 29 Mich. 78 at 95 (1874), Justice Christiancy suggested that, whether or not the statute *Quia Emptores Terrarum* is in force as such here, its principles have always been basic in the law of the western states.