CHAPTER II.

IT was some time between Cæsar and Tacitus that individual ownership of land in England first came into existence. Just when, and the causes that led to it, cannot be ascertained with any degree of absolute certainty. The Chroniclers do not speak of it, and the little that we can learn of it is not sufficient to form more than the basis of an opinion. It is probable, however, that it arose in response to the customs of the Teutonic peoples, who always held their lands as belonging to the community. Something in which they had an inalienable right. The people had originally held their lands as "folkland," (*ager publicus*) as their own, and this was always their tenure. The feudal system was of course a purely continental custom, and did not make its appearance in England till the date of the Conquest.[1] It has been alluded to, though somewhat

[1] Hume, 1–441; Blackstone; Coke.

doubtingly, as having been instituted in England by the Angles, Saxons and Jutes, all Teutonic races, who arrived there about the year 450, with whom, of course, it had been long an established custom. One reason we can advance in contradiction of this is the absence of definite reference to it in any one of the chronicles. It is only fair to presume, had it existed, that a custom so important as it is, would have been mentioned by at least some one of the older chroniclers, but it is not.

In William of Malmsbury, we have an account touching upon the ownership of land so early as 745, in which he credits Cuthred, King of West Saxony, with confirming unto the people the gift of land made unto them by *former* kings, and this confirmation is so strongly worded that it leaves no room for doubting that Cuthred intended the persons to have *absolute ownership*, (something unknown under feudal tenure and even to-day) and all right therein. The grant itself reads: "In the name of our Lord Jesus Christ, I,

"Cuthred, King of the West Saxons, do here-
"by declare that all the gifts of former kings,
"Kentwin, Baldred, Kedwall, Ina, Ethelard
"and Ethbald, King of the Mercians, in
"country houses, and in villages and lands,
"and farms and mansions, according to
"the confirmations made to the ancient
"city of Glastonbury and confirmed by auto-
"graph and by the sign of the cross, I do,
"as was before said, hereby decree that this
"grant of former kings shall remain firm
"and inviolate, as long as the revolution of
"the pole shall carry the lands and seas
"with regular movement round the starry
"heavens."[1]

This tenure existed among these people in this state for many centuries. Of course there were many and constant changes in its ownership. Every conquest by a foreign foe would mean of necessity a change in ownership, but in that case the tenure of the conqueror was that of the vanquished. The victor held the land in the same manner as

[1] Malmsbury, 37.

its former owner. The *absolute ownership* (which I use in this connection in its full meaning, as distinguished from fee simple) existed so long as the power to enforce it was there. There was nothing feudal about it. Nothing indicating that its possessor was the vassal of any one and that he only held upon favor. It was his against every one, so long as his countrymen were strong and powerful enough to uphold their king in defending their dominions. Among themselves, each kingdom when not ravished by a foreign foe, recognized the right of individual ownership. That the people were not accustomed to the feudal system is illustrated most clearly by the manner in which they fought its institution by William the Conqueror. Had it been instituted in England by the Teutons (Angles, Saxons, and Jutes) it would at least to a degree have been a familiar system to them, and one which they would in a measure have been better able to understand and appreciate; but that they were totally ignorant of its workings

is clearly illustrated by the manner in which they fought it and tried to evade it when it was forced upon them. The Angles, Saxons and Jutes knew it well, but they did not establish it when they came to Britain.[1] The reason that they did not do so can at this late date be only surmised. A fair inference would be that coming as they did as victors, and fighting to sustain themselves and their conquests, that once gaining a foothold they did not wish to antagonize the natives in matters which were unimportant and could be avoided. And besides which when they came to England the feudal system was not in such a perfected state as it had become in William's time several centuries later. It certainly could not matter to them as a body what the tenure was so long as they had the use and occupancy. They personally and individually got as much out of the land under the existent system as they could out of their own. The feudal system became important only to the feudal lord,

[1] Blackstone's Commentaries; Coke upon Littleton.

the individual who wanted to permanently benefit from all and every particle of it. That is the main distinction between their ancient tenure and the feudal system of William I. Therefore, as they had no one great and powerful leader like William to usurp and claim authority over them as a community, where could have been their gain?

This tenure then, of "folkland" always was their tenure and always remained so. Conquests did not change the system, even if they did for the time change the owner. The king, as king, had not the absolute authority over it that a feudal lord had. What he owned was his own, and he could not, according to their custom, dispose of any other land than that which was clearly and indisputably his. During the next few hundred years, as the subsequent conquests were occurring so frequently and the wars of the kingdoms of Britain continued, a change did, in a manner, take place. Whenever a kingdom, or a portion, was conquered

it meant, of course, the seizure of the land and transference of its ownership. But this conquered territory did not all belong to the new king. It belonged to the victors themselves. All who helped to conquer it wanted some. And it was allotted to them by the king, and so was known as "allod"—allodial. This was the next change or custom which afterwards through time became so deeply rooted in the minds of the people that they were utterly unable to understand or accept any other condition. They knew to hold their lands they would have to defeat a foreign invading foe, but they also knew they were at least safe at home among their own people from disturbance and eviction. But when William arrived he established such an entirely different order of things that the English could not, had they so desired, accustom themselves to it. He at once changed the tenure from "folkland" to "terra regis" and assumed absolute ownership over the whole of England.[1] He either gave it anew,

[1] Anglo-Saxon Chron.

or allowed its original owners to redeem it of him for some consideration which he would name. But from this time, all the title that the possessor had was that of "*tenancy in fee*." And that is the greatest title by which real property is held to-day, either in England or in the United States.

So when William conquered England, being a feudal lord, and knowing that tenure and custom well, he determined that the land should be crown land, not "folkland" or even "allodial," and therefore should be his, and he took it, the whole and every particle of it.[1] He was not, however, so strict nor so greedy as to hold it all in actual hostility to its former owners. Of those who opposed him, he made actual confiscation of their property and lands, and its subsequent allottment to others, without showing them any consideration or allowing them under any terms to again hold it. Of those who did not openly oppose him, he allowed them to redeem their land under certain condi-

[1] Anglo-Saxon Chronicle.

tions named by him, but in this event they held as subjects of his bounty and generosity and therefore held of him. Unless a tenant could show that he had a special grant, or else held specially by redemption through William, he had no fee nor title, and was dispossessed. In other words, all titles must be new, and date from 1066, either as new grants from William, direct to them, or as holding specially by his favor that which they previously owned.

During all the troubles of William's reign, his grants of privileges, and his endowments of abbeys, and all the concessions wrested from him, he never for one moment weakened regarding his system of tenure. He settled emphatically and in such manner that none dare dispute the fact, that all land howsoever held before the conquest, under him became "terra regis." While he reigned it was always so. Later, however, (but not in his reign) this actual state of facts became changed. Parliament came into being, and that body usurped a great many of the

powers that kings considered theirs. Although actually this change was effected to the extent of forbidding and preventing the king from taking the land and estate from his subjects, yet technically to-day the land is still "terra regis."

Had not William been so severe, so domineering, and so overbearing in this respect, the changes which occurred, would have required many more years for their accomplishment. As conqueror he could have parcelled out the land to his subjects without in any manner establishing an unknown precedent. But to give and take, and take back again, and then again distribute,[1] was too disturbing for any people of courage and fortitude to long tolerate. This principle could only exist at all when there was more than ample power to sustain it.

William's severity not only towards the English, the rightful land owners, but toward every one, even his own followers, was one of his chief traits of character. It was

[1] Anglo-Saxon Chronicle, 460.

this characteristic and the manner of meting out punishment that the very mention of his name struck terror to the heart of not only his own subjects, but of those foreigners who feared his power, and dreaded lest he force them to defend their homes.[1] At home however, in England and in Normandy, his severity came to be tolerated without any outward opposition. Every attempt to dislodge his authority, in no matter what degree or extent, only caused confiscation of lands and property. Time without number he also inflicted severe punishment. He would cut off both hands of an offender, and put out both eyes, also cut off the members of the body.[2] Such punishment as this, was well calculated to cause a wholesome respect of his authority, especially when there was more than ample power to render futile any attempt to dislodge it.

William was determined to be obeyed. His character regardless of what we may think of it from a moral standpoint, was un-

[1] Green, 1–94. [2] Florence of Worcester, 179.

doubtedly a very strong one, and with him he knew one word well, and that word was obedience.

As an illustration of the determination he had that his levies of taxes should be paid, there is that mention in both Roger of Wendover and Roger de Hovenden. The rich English who had to bear nearly all the brunt of William's avarice and extravagance, were tiring very rapidly of his continual taxation. In order to avoid it in some small degree, they secreted, as they thought, their valuables in the different monasteries throughout the kingdom, knowing that the religious houses were free from search at least.

This proceeding on their part, however, came sooner or later to the knowledge of William, and so angered him that he ordered a complete and thorough search of all the monasteries throughout England, and finding the secreted valuables, confiscated them entirely, and sent them over to Normandy.[1]

[1] Florence of Worcester, 174; Roger de Hovenden, 1–145; Matthew of Westminster, 2–4.

Acts of this kind did little to increase the love of the people for him, especially those who lost through his sternness; but it did a good deal towards increasing a respect for his decrees and prevented, sixteen years later, a trial of the same thing, when in 1086 he prepared his Domesday Book,[1] in which he had entered a complete and thorough list of everything taxable throughout England. At this time there was no concealment. He learned the value of everything there was most minutely, and it was so written down and recorded that he could always know its condition.

William's first act after the battle of Hastings was to undertake to restore order among the people, and to divide the lands among his followers. This, as we have seen, he did in a manner peculiarly and entirely satisfactory to himself. The lands of the English nobles were, of course, immediately confis-

[1] Anglo-Saxon Chronicle; Roger of Wendover, 1–349; Matthew of Westminster, 2–11; Florence of Worcester, 184; Roger de Hovenden, 1–168.

cated and parcelled out among his followers, the Norman barons, who, as we have seen, all held of him under the continental or Norman feudal system. He never once granted any lands to an English noble, but, in order to pacify the people, he did, among other things, restore in some instances, to the English nobility, land that he had previously confiscated and taken from them.[1] This he did always for a consideration of some kind, and never voluntarily. But under no circumstances did he ever allow any dignity, civil, ecclesiastical or military, to be conferred upon nor held by a native. This he did in order to keep all power well within his control. It was not till the reign of Henry I. that any Englishman occupied a see.[2] In fact his every act towards the English, while tolerant, was one of suppression, and for him who obeyed implicitly, he granted favors and privileges, but to him who disobeyed and proved fractious, a terrible punishment was sure to be meted out.

[1] Malmsbury, 287. [2] Green, 1–113.

The lands which William parcelled out among his Norman followers were supposed to be held by them under the same conditions that lands were held under previously to the conquest, as under the law of King Edward the Confessor. In fact, William said in his coronation oath, that he would govern the Normans and English as nearly alike as possible without disturbing their customs. But William's whims were at times a source of as much annoyance to his own countrymen in this respect, as they had originally been to the natives. Any slight offence to him, by one of his barons, inadvertent or intentional, caused with them likewise a confiscation of their lands, and this frequency with which he would give land and retake it, on any pretext whatever, and sometimes without any reason, was one of the very irritating points to his barons. Later, those who held, held rather by "act of time" than favor, and so considered themselves as hereditary owners of the estate which had been assigned to them by Wil-

liam. But it was their doubt in this respect which stimulated their desire to secure, if possible, this entailed tenancy in such manner that it would descend to their posterity unfettered. Here we have the early seeds of discontent first cropping out between the king and his barons, and this it is that over one hundred years later had its outgrowth in the Magna Charta of King John.

All of the kings were petitioned time and again to grant and recognize the right of ownership in the lands of the barons. They wished the king to acknowledge that they as barons were of a position to be considered, that they had a dignity of their own definitely established, that they formed a part of the government, and that they held their lands in ownership to descend to their sons, and that they did not hold as vassals subject to the wish or whim of a king. That what the king gave them he could not take back. They did not want the temporary use of the land. They wanted the fee. It was William's refusal to grant this request that

caused the disaffection among the more influential of his barons, to whom he had allotted lands, and for this refusal he was later called upon to fight and again defend his usurped crown.[1]

Among other depressing and saddening events there occurred in 1069 a most dreadful famine. Roger de Hovenden speaks of this year in no uncertain terms. It must indeed have been terrifying and awful. "The "famine prevailed to such a degree that, "compelled by hunger, men ate human "flesh and that of horses, dogs and cats, and "whatever was repulsive to notions of civili- "zation; some persons went so far as to sell "themselves into perpetual slavery, pro- "vided only they could in some way or other "support a miserable existence; some depart- "ing from their native country into exile, "breathed forth their exhausted spirits in "the midst of the journey.

"It was dreadful to behold human corpses "rotting in the houses, streets and high-

[1] Wendover, 1-344; Hovenden, 1-142.

"roads, and as they reeked with putrefac-
"tion, swarming with worms and sending
"forth a horrid stench; for all the people
"having been cut off, either with the sword
"of famine, or else having through hunger
"left their native country, there were not
"sufficient left to inter them. Thus during
"a period of nine years did the land, de-
"prived of its cultivators, extend far and
"wide a mere dreary waste. Between York
"and Durham there was not one inhabited
"town; the dens of wild beasts and robbers,
"to the great terror of the traveler, were
"alone to be seen."

It was about 1070 that matters were getting to a crisis and William's extreme oppression of the clergy, in addition to that of the barons, caused them to take sides with the barons in asserting their strength for those rights which they in turn considered theirs. The declaration of the Abbot of St. Alban's that they, the barons, clergy and people, would recognize Edgar Atheling,

[1] Hovenden, 1-143.

who came of the Saxon line, as their king, had a very material effect upon William. He was astute enough to see that he could no longer rule with a haughty and iron hand, and that he could not defy a whole united people, his own countrymen of among them; so at a conference which took place at Berkenstead, in Hertfordshire, he swore upon the holy Evangelists and the relics of St. Alban's Abbey, that "he would observe the good, approved and ancient laws of the kingdom, which the holy and pious kings, his predecessors and chiefly King Edward, had ordained." Having done this, and the more to appease the malcontents and quiet them, William's next move was to issue writs directing that twelve "wise and noble Saxons in every county should enquire and certify what the ancient laws really were." But this act, however, was only a blind, for he again modified this promise and desired to make some new laws regarding forfeitures. In this matter he was again beseeched not to change the laws, but to order those of Ed-

ward the Confessor "who had bequeathed him the kingdom and whose laws these were" to remain and be in force. He reluctantly consented to this after a time, and then ordered that all the laws of Edward the Confessor should be the laws of the land, except where in special cases he had ordered otherwise specifically. Even this promise he did not keep, for later he dispossessed and continued to dispossess the English of their lands, and gave or sold them to the Normans. Consequently during his reign there seems to have been no settled law or rule regarding the tenure of land. William held whenever he could, coercing the weak and catering to the strong, yet notwithstanding this, there was one fact uppermost in the people's mind, that such land as they held, they held through the generosity of William. Whether or not this generosity was a forced one matters little. It gratified William to know that the land was held "terra regis," and it gratified the English people to know that they held it in any manner, no matter what the

term. But to hold it during his reign was not such a great privilege as one would suppose, for the taxes upon it were so enormous as to amount to a heavy rental. Indeed in 1084 he levied a tax of six shillings upon every hide throughout England.[1]

This levying of taxes was another of William's acts which was very oppressive to all, Normans and English alike. He was always in want of money, always hording it up, and so always taxing. He wanted besides to get all that was due him in taxes when he levied them, and so he wanted to know for this purpose the amount of land in all England and its value. To effect this he appointed commissioners to survey all England and take account of all the property and the value therein and report to him. This report is what constitutes the wonderful Domesday Book, and the following extract relating to it is taken from the Anglo-Saxon Chronicle. "He sent his men all over Eng-" land, into every shire and caused them to

[1] Hovenden, 1-167.

"ascertain how many hundred hides of land "it contained and what lands the king pos- "sessed therein, what cattle there were in "the several counties and how much rev- "enue he ought to receive yearly from each. "He also caused them to write down how "much land belonged to his Archbishops, to "his Bishops, his Abbots and his Earls, and "that I may be brief, what property every "inhabitant of all England possessed in land "or in cattle, and how much money it was "worth. So very narrowly did he cause the "survey to be made that there was not a "single hide nor a rood of land nor—it is "shameful to relate that which he thought "no shame to do—was there an ox nor a "cow or a pig passed by, and that was not "set down, and then all these writings were "brought to him."

He was determined to have his full measure of taxes, and he got them, but it was only by the means so much disliked and hated by his subjects. They would not have tolerated it if they could have done otherwise.

Matters went on in this way till 1087. This year was a particularly hard one all throughout England in very many ways. The land was beset with a fever and many thousands died. The fever was followed by a famine, caused by the drought, so that many of those who recovered from the fever only lived to die a worse death by starvation. The famine this year also proved particularly disastrous, carrying off vast numbers.[1] All the chroniclers speak of this as a most grievous year. If these things alone were not enough for the people to bear without the added torments of William's oppressive taxes, he took their lands from them and sold them, whenever he wanted more money, and he sold them to the highest bidder, taking them away from the purchaser, and again selling to one who would bid higher. And then again would he sell to a third, who would bid higher even than the other two.[2]

[1] Florence of Worcester, 185; Matthew of Westminster, 2-13; Henry of Huntingdon, 217.

[2] Anglo-Saxon Chron., 460; Henry of Huntingdon, 217.

In addition to all these things the country was visited with a plague of fires. "Many monasteries and most of the large towns were burned. Oh, how sad and deplorable was this year which brought forth so many calamities."[1]

And this same year William died.

"If any one would know what manner of "man King William was, the glory that he "obtained, and of how many lands he was "lord, then will we describe him as we have "known him, we who have looked upon "him, and who once lived in his court. This "King William of whom we are speaking, "was a very wise and a great man and more "honored and more powerful than any of "his predecessors. He was mild to those "good men who loved God, but severe be-"yond measure toward those who withstood "his will . . . . in his days the great mon-"astery at Canterbury was built, and many "others also throughout England; . . . . "King William was also held in much re-

[1] Anglo-Saxon Chron., 460.

"verence; he wore his crown three times "every year when he was in England: at "Easter he wore it at Winchester; at Penta- "cost at Westminster, and at Christmas at "Gloucester. And at these times all the men "of England were with him, Archbishops, "Bishops, Abbots and Earls, Thanes, and "Knights: so also was he a very stern and "wrathful man, so that none durst do any- "thing against his will, and he kept in prison "those earls who acted against his pleasure. "He removed Bishops from their sees, and "Abbots from their offices, and he im- "prisoned Thanes, and at length spared not "his own brother Odo.

"Amongst other things, the good order "that William established is not to be for- "gotten; it was such that any man, who "was himself aught, might travel over the "kingdom with a bosom full of gold unmo- "lested; and no man durst kill another how- "ever great the injury he might have re- "ceived from him. He reigned over England "and being sharp-sighted to his own interest,

"he surveyed the kingdom so thoroughly
"that there was not a single hide of land
"throughout the whole of which he knew
"not the possessor, and how much it was
"worth, and this he afterward entered in his
"register. The King was also of great
"sternness, and he took from his subjects
"many marks of gold and many hundred
"pounds of silver and this, either with or
"without right, and with little need. He
"was given to avarice and greatly loved
"gain. He made large forests for the deer
"and enacted laws therewith so that whoso-
"ever killed a hart or hind should be blinded.
"As he forbade killing the deer, so also the
"boars and he loved the tall stags as if he
"were their father. The rich complained
"and the poor murmured, but he was so
"sturdy that he recked ought of them. They
"must will all that the king willed if they
"would live, or would keep their lands, or
"would hold their possessions, or would be
"maintained in their rights. We have writ-
"ten concerning him these things, both good

"and bad that virtuous men might follow
"after the good, and wholly avoid the evil,
"and might go in the way that leadeth to
"the kingdom of Heaven."[1]

[1] Anglo-Saxon Chron., 461.