be "freely and indifferently elected by them who shall attend upon the proclamation." Other writs directed that the member should be elected in full county court, and that "all that be there present, as well suitors duly summoned as others," should proceed to the election freely and indifferently. There is also on record, in the "Good Parliament" of 1376, a large number of petitions to the King, praying that the Knights of the Shire may be chosen by common election "from the better folk of the shire." But the King answered in the recognized formula, that the Knights shall be elected "by the common consent of the whole county." And when previously in 1372 a proposition was made to prevent the election of lawyers, the King gave a similar answer. Afterwards the Act 7 Henry IV., chap. 15 (1405), enacted that proclamation should be made in the full county court of the day of election, and that all who should be there present, should proceed to the election freely and indifferently. These authoritative records are but expositions of the rules and practice which established the early common law respecting the electoral franchise.

The ancient county court was a general assembly of the people, as well as an open court which had certain judicial powers, and was usually attended by large and promiscuous gatherings of the people of all classes —including persons of the lowest class, but of free condition of life.

And in the Saxon times, while legislation was the prerogative of the Sovereign and his witan, yet the mode of accepting the statutes and of carrying them into effect depended upon the consent and undertaking of the people given in a general assembly, (*tota populi generalitate*). And the popular character of these assemblies was in a great measure due to the common practice of holding them in the open air, in an open and unenclosed place, where any exclusion of persons who might, under modern political rules, be defranchised, would have been impracticable.

Nor in later times, when Parliamentary or representative government became regularly established, and the county court, or popular assembly of the inhabitants, was held in a building appropriated for that purpose, were there any customary or statutory rules under which persons having no property qualification could be excluded from voting. The only qualification recognized and enforced, first by the King's writs of election, and later in the statutes of 1405 and 1413, was that "the choosers of Knights of the Shire be also *resident* within the same shires."

In those days, there was no legal jurisdiction or proceeding for taking a scrutiny of votes at a Parliamentary election, and the usual and only practicable way of determining the result, was by a show of hands, or some other rough and ready process of ascertaining the "number of voices" for a particular candidate.[3]

The historic commentaries on those early days seem to establish that the law of custom, or, more properly, the common law, recognized the principle of Manhood Franchise, and, as a necessary sequence, the political doctrine of "one man one vote."

In an historic work published in 1662, the early right of voting was thus described: "Every inhabitant and commoner in every county had a voice in the election of Knights, *whether he were a freeholder or not*, or had a freehold of only one penny, six pence, or twelve pence by the year."[4] And a writer on election law says: "The common law placed all elections in the hands of the people." Further on he adds: "The moment the elective system was adopted in

3 "Elections were originally made by voices or by holding up hands, or such other way wherein it was easy to tell who had the majority, and yet very difficult to know the certain numbers of them; and myself, in London, was elected by holding up of hands, but I could not tell how many there were that held up their hands for me."—Per Brooke, C.J., in *Plowden's Commentaries*, p. 129.

4. Prynne's *Brevia Parliamentaria*, p. 187.