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THE EARLY PARLIAMENTARY FRANCHISE OF ENGLAND.

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PRIOR to the enactment of statutory law defining the Electoral Franchise in England, there had been established, by long usage and general custom, a right of voting at Parliamentary elections which had become part of the common law of the realm. The common law of England, the *lex non scripta*, is nothing but custom established by long usage and the general consent of the English people. When any public practice or usage was found to be convenient or beneficial it was naturally repeated, became a general custom, was continued from age to age, and thus grew into, and obtained the force of a law, either local or national. If the custom or usage was national, or universal, it became engrafted into, and was recognized as part of, the common or customary law of England; if particular, or applicable to this or that place, it became a local custom.

Austin defines customary law to be a rule which a custom implies (or in the observance of which a custom consists), and which derives the whole of its obligatory force from those concurring sentiments which are styled Public Opinion. It properly obtains, as a rule, through the *consensus intentionum*: its only source, or its only authors, are those who observe it spontaneously, or without compulsion by the state.¹

The common law has been well defined by Lord Hale, as "that which declares and asserts the rights and liberties, and the properties of the subject, the first known and common rule of justice and right between man and man, and the great foundation of the peace, happiness, honor and justice of this kingdom"². These principles of common right were illustrated in the early electoral franchise established in England.

There is clear evidence in the Public Records of England, that a well-recognized political right of voting had been exercised by all classes of people (*omnes inhabitantes*), in Parliamentary elections, without any condition as to the possession of a property qualification. This right, though originating in custom, was recognized and confirmed by successive sovereigns and Parliaments until 1429.

Thus, in Edward III.'s reign, an authoritative declaration of the right of election was made by the King, in answer to a petition of the Commons, respecting the election of Knights of the Shire: "The King wills that they shall be elected by the common consent of the whole county." And this right was also affirmed by the King's writs of election, some of which usually commanded the Sheriff to cause a member of the House of Commons to

1. Austin's Lectures on Jurisprudence, vol. 2, p. 553.

2. History of the Common Law of England, p. 47.