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Nor was this effect confined to the court of Elizabeth. A king of England, in the presence of absolute sovereigns, or perhaps of their ambassadors, must always feel some degree of that humiliation with which a young man, in check of a prudent father, regards the careless prodigality of the rich heirs with whom he associates. Good sense and elevated views of duty may subdue the emotion ; but he must be above human nature who is insensible to the contrast.

There must be few of my readers who are unacquainted with the animated sketch that Hume has delineated of the English constitution under Elizabeth. It has been partly the object of the present chapter to correct his exaggerated outline ; and nothing would be more easy than to point at other mistakes into which he has fallen through prejudice, through carelessness, or through want of acquaintance with law. His capital and inexcusable fault in every thing he has written on our constitution is to have sought for evidence upon one side only of the question. Thus the remonstrance of the judges against arbitrary imprisonment by the council is infinitely more conclusive to prove that the right of personal liberty existed, than the fact of its infringement can be to prove that it did not. There is something fallacious in the negative argument which he perpetually uses, that because we find no mention of any umbrage being taken at certain strains of prerogative, they must have been perfectly consonant to law. For if nothing of this could be traced, which is not so often the case as he represents it, we should remember that even when a constant watchfulness is exercised by means of political parties and a free press, a nation is seldom alive to the transgressions of a prudent and successful government. The character, which on a former occasion I have given of the English constitution under the house of Plantagenet, may still be applied to it under the line of Tudor, that it was a monarchy greatly limited by law, but retaining much power that was ill calculated to promote the public good, and swerving continually into an irregular course, which there was no

laisse pas d'en ordonner à son plaisir, et contre la volonté des estats, comme on a vu Henry VIII avoir toujours usé de sa puissance souveraine. He admitted,

however, that taxes could only be imposed in parliament. De la République, l. i. c. 8.

restraint adequate to correct. It may be added, that the practical exercise of authority seems to have been less frequently violent and oppressive, and its legal limitations better understood in the reign of Elizabeth, than for some preceding ages; and that sufficient indications had become distinguishable before its close, from which it might be gathered that the seventeenth century had arisen upon a race of men in whom the spirit of those who stood against John and Edward was rekindled with a less partial and a steadier warmth.*

* The misrepresentations of Hume as to the English constitution under Elizabeth, and the general administration of her reign, have been exposed, since the present chapter was written, by Mr. Brodie, in his *History of the British Empire from the Accession of Charles I.*

to the Restoration, vol. i. c. 3. In some respects, Mr. B. seems to have gone too far in an opposite system, and to represent the practical course of government as less arbitrary than I can admit it to have been.

CHAPTER VI.

ON THE ENGLISH CONSTITUTION UNDER JAMES I.

Quiet Accession of James — Question of his Title to the Crown — Legitimacy of the Earl of Hertford's Issue — Early Unpopularity of the King — Conduct towards the Puritans — Parliament convoked by an irregular Proclamation — Question of Fortescue and Goodwin's Election — Shirley's Case of Privilege — Complaints of Grievances — Commons' Vindication of themselves — Session of 1605 — Union with Scotland debated — Continual Bickerings between the Crown and Commons — Impositions on Merchandize without Consent of Parliament — Remonstrances against these in Session of 1610 — Doctrine of King's absolute Power inculcated by the Clergy — Articuli cleri — Cowell's Interpreter — Renewed Complaints of the Commons — Negotiation for giving up the feudal Revenue — Dissolution of Parliament — Character of James — Death of Lord Salisbury — Foreign Politics of the Government — Lord Coke's Alienation from the Court — Illegal Proclamations — Means resorted to in order to avoid the Meeting of Parliament — Parliament of 1614 — Undertakers — It is dissolved without passing a single Act — Benevolences — Prosecution of Peacham — Dispute about the Jurisdiction of the Court of Chancery — Case of Commendams — Arbitrary Proceedings in Star Chamber — Arabella Stuart — Somerset and Overbury — Sir Walter Raleigh — Parliament of 1621 — Proceedings against Mompesson and Lord Bacon — Violence in the Case of Floyd — Disagreement between the King and Commons — Their Dissolution, after a strong Remonstrance — Marriage Treaty with Spain — Parliament of 1624 — Impeachment of Middlesex.

It might afford an illustration of the fallaciousness of political speculations, to contrast the hopes and inquietudes that agitated the minds of men concerning the inheritance of the crown during Elizabeth's lifetime, while not less than fourteen titles were idly or mischievously reckoned up, with the perfect tranquillity which accompanied the accession of her successor.* The house of Suffolk, whose claim

Quiet accession of James.

* Father Persons, a subtle and lying jesuit, published in 1594, under the name of Doleman, a treatise entitled, "Conference about the next Succession to the Crown of England." This book is dedicated to lord Essex, whether from any hopes entertained of him, or, as was then supposed, in order to injure his fame and his credit with the queen. Sidney Papers,

i. 357. Birch's Memoirs, i. 313. It is written with much art, to show the extreme uncertainty of the succession, and to perplex men's minds by multiplying the number of competitors. This however is but the second part of his Conference, the aim of the first being to prove the right of commonwealths to depose sovereigns, much more to exclude the

was legally indisputable, if we admit the testament of Henry VIII. to have been duly executed, appear, though no public enquiry had been made into that fact, to have lost ground in popular opinion, partly through an unequal marriage of lord Beauchamp with a private gentleman's daughter, but still more from a natural disposition to favour the hereditary line rather than the capricious disposition of a sovereign long since dead, as soon as it became consistent with the preservation of the reformed faith. Leicester once hoped, it is said, to place his brother-in-law, the earl of Huntingdon, descended from the duke of Clarence, upon the throne; but

right heir, especially for want of true religion. "I affirm and hold," he says, "that for any man to give his help, consent, or assistance towards the making of a king whom he judgeth or believeth to be faulty in religion, and consequently would advance either no religion, or the wrong, if he were in authority, is a most grievous and damnable sin to him that doth it, of what side soever the truth be, or how good or bad soever the party be that is preferred." p. 216. He pretends to have found very few who favour the king of Scots' title; an assertion by which we may appreciate his veracity. The protestant party, he tells us, was wont to favour the House of Hertford, but of late have gone more towards Arabella, whose claim the lord Burleigh is supposed to countenance. p. 241. The drift of the whole is to recommend the infant, by means of perverted history and bad law, yet ingeniously contrived to ensnare ignorant persons. In his former and more celebrated treatise, Leicester's Commonwealth, though he harps much on the embarrassments attending the succession, Persons argues with all his power in favour of the Scottish title, Mary being still alive, and James's return to the faith not desperate. Both these works are full of the mendacity generally and justly ascribed to his order; yet they are worthy to be read by any one who is curious about the secret politics of the queen's reign.

Philip II. held out assurances, that if the English would aid him in dethroning Elizabeth, a free parliament should elect any catholic sovereign at their pleasure, not doubting that their choice would fall on the infant. He promised also to en-

large the privileges of the people, to give the merchants a free trade to the Indies, with many other flattering inducements, Birch's Memoirs, ii. 308. But most of the catholic gentry, it is just to observe, would never concur in the invasion of the kingdom by foreigners, preferring the elevation of Arabella, according to the pope's project. This difference of opinion gave rise, among other causes, to the violent dissensions of that party in the latter years of Elizabeth's reign; dissensions that began soon after the death of Mary, in favour of whom they were all united, though they could never afterwards agree on any project for the succession. Winwood's Memorials, i. 57. Lettres du Cardinal d'Ossat, ii. 501.

For the life and character of the famous father Persons, or Parsons, above mentioned, see Dodd's Church History, the Biographia Britannica or Miss Aikin's James I., i. 360. Mr. Butler is too favourably inclined towards a man without patriotism or veracity. Dodd plainly thinks worse of him than he dares speak. [Several letters of considerable historical importance, relative to the catholic intrigues as to the succession, are lately published in Tierney's edition of Dodd's Church History, vol. iii. A considerable part of the Catholics, especially those who had looked up to Mary personally as their rallying point, adhered to the Scottish title; and those of course were the best Englishmen. Persons and his Spanish faction, whose letters appear in the work above quoted, endeavour to depreciate them. I must add, that Mr. T. does not by any means screen this last party. 1845.]

this pretension had been entirely forgotten. The more intriguing and violent of the catholic party, after the death of Mary, entertaining little hope that the king of Scots would abandon the principles of his education, sought to gain support to a pretended title in the king of Spain, or his daughter the infanta, who afterwards married the archduke Albert, governor of the Netherlands. Others, abhorring so odious a claim, looked to Arabella Stuart, daughter of the earl of Lennox, younger brother of James's father, and equally descended from the stock of Henry VII., sustaining her manifest defect of primogeniture by her birth within the realm, according to the principle of law that excluded aliens from inheritance. But this principle was justly deemed inapplicable to the crown. Clement VIII., who had no other view than to secure the re-establishment of the catholic faith in England, and had the judgment to perceive that the ascendancy of Spain would neither be endured by the nation, nor permitted by the French king, favoured this claim of Arabella, who, though apparently of the reformed religion, was rather suspected at home of wavering in her faith; and entertained a hope of marrying her to the cardinal Farnese, brother of the duke of Parma.* Considerations of public interest, however, unequivocally pleaded for the Scottish line; the extinction of long sanguinary feuds, and the consolidation of the British empire. Elizabeth herself, though by no means on terms of sincere friendship with James, and harassing him by intrigues with his subjects to the close of her life, seems to have always designed that he should inherit

* D'Ossat, ubi suprâ. Clement had, some years before, indulged the idle hope that France and Spain might unite to conquer England, and either bestow the kingdom on some catholic prince, or divide it between themselves, as Louis XII. and Ferdinand had done with Naples in 1501; an example not very inviting to the French. D'Ossat, Henry's minister at Rome, pointed out the difficulties of such an enterprise, England being the greatest naval power in the world, and the people warlike. The pope only replied, that the kingdom had been once conquered, and might be so again; and especially being governed by an old

woman, whom he was ignorant enough to compare with Joanna II. of Naples. Vol. i. 399. Henry IV. would not even encourage the project of setting up Arabella, which he declared to be both unjust and chimerical. *Mém. de Sully*, l. 15. A knot of protestants were also busy about the interests of Arabella, or suspected of being so; Raleigh, Cobham, Northumberland, though perhaps the last was a catholic. Their intrigues occupy a great part of the letters of other intriguers, Cecil and lord Henry Howard, in the Secret Correspondence with king James, published by sir David Dalrymple, vol. i. passim.

her crown. And the general expectation of what was to follow, as well from conviction of his right as from the impracticability of any effectual competition, had so thoroughly paved the way, that the council's proclamation of the king of Scots excited no more commotion than that of an heir apparent.*

The popular voice in favour of James was undoubtedly raised in consequence of a natural opinion that he was the lawful heir to the throne. But this was only according to vulgar notions of right, which respect hereditary succession as something indefeasible. In point of fact, it is at least very doubtful whether James I. were a legitimate sovereign, according to the sense which that word ought properly to bear. The house of Stuart no more came in by a clear title than the house of Brunswick; by such a title, I mean, as the statute laws of this kingdom had recog-

* The explicit declaration on her death-bed, ascribed to her by Hume and most other writers, that her kinsman the king of Scots should succeed her, is not confirmed by Carey, who was there at the time. "She was speechless when the council proposed the king of Scots to succeed her, but put her hand to her head as if in token of approbation." E. of Monmouth's *Memoirs*, p. 176. But her uniform conduct shows her intentions. See, however, D'Israeli's *Curiosities of Literature*, iii. 107. [A remarkable account of Elizabeth's last days will be found in Dodd's *Church History*; it appears to have been written by Lady Southwell, an eye-witness, who had been one of the queen's maids of honour. Tierney's edition of Dodd, vol. iii. p. 70. And this account is confirmed, so as to make it fully trustworthy, by a report from Beaumont, the French ambassador, published in Raumer's *History of the 16th and 17th Centuries illustrated*. London, 1835, vol. ii. p. 188.]

The famous story of Essex's ring, delivered by the countess of Nottingham in her dying hours to the queen, has been rejected by modern writers, as only to be traced to some memoirs published in Holland eighty years afterwards. It may be considered, whether it derives any kind of confirmation from a passage in Raumer, ii. 166. — 1845.]

It is impossible to justify Elizabeth's conduct towards James in his own kingdom. What is best to be said for it is, that his indiscretion, his suspicious intrigues at Rome and Madrid, the dangerous influence of his favourites, and the evident purpose of the court of Spain to make him its tool, rendered it necessary to keep a very strict watch over his proceedings. If she excited the peers and presbyters of Scotland against their king, he was not behind her in some of the last years of her reign. It appears by a letter from the earl of Mar, in Dalrymple's *Secret Correspondence*, p. 2., that James had hopes of a rebellion in England in 1601, which he would have had no scruple in abetting. And in a letter from him to Tyrone, in the Lansdowne MSS. lxxxiv. 36., dated 22d Dec. 1597, when the latter was at least preparing for rebellion, though rather cautious, is full of expressions of favour, and of promises to receive his assistance thankfully at the queen's death. This letter being found in the collection once belonging to sir Michael Hicks, must have been in lord Burleigh's, and probably in Elizabeth's hands; it would not make her less inclined to instigate conspiracies across the Tweed. The letter is not an original, and may have been communicated by some one about the king of Scots in the pay of England.

nized. No private man could have recovered an acre of land without proving a better right than they could make out to the crown of England. What then had James to rest upon? What renders it absurd to call him and his children usurpers? He had that which the flatterers of his family most affected to disdain—the will of the people; not certainly expressed in regular suffrage or declared election, but unanimously and voluntarily ratifying that which in itself could surely give no right, the determination of the late queen's council to proclaim his accession to the throne.

It is probable that what has been just said may appear rather paradoxical to those who have not considered this part of our history; yet it is capable of satisfactory proof. This proof consists of four propositions: 1. That a lawful king of England, with the advice and consent of parliament, may make statutes to limit the inheritance of the crown as shall seem fit;—2. That a statute passed in the 35th year of king Henry VIII. enabled that prince to dispose of the succession by his last will signed with his own hand;—3. That Henry executed such a will, by which, in default of issue from his children, the crown was entailed upon the descendants of his younger sister Mary, duchess of Suffolk, before those of Margaret, queen of Scots;—4. That such descendants of Mary were living at the decease of Elizabeth.

Of these propositions, the two former can require no support; the first being one that it would be perilous to deny, and the second asserting a notorious fact. A question has however been raised with respect to the third proposition; for though the will of Henry, now in the chapter-house at Westminster, is certainly authentic, and is attested by many witnesses, it has been doubted whether the signature was made with his own hand, as required by the act of parliament. In the reign of Elizabeth, it was asserted by the queen of Scots' ministers, that the king being at the last extremity, some one had put a stamp for him to the instrument.* It is

* See Burnet, vol. i. Appendix, 267., for secretary Lethington's letter to Cecil, where he tells a circumstantial story so positively, and so open, if false, to a con-

tradiction it never received, that those who lay too much stress on this very equivocal species of presumption would, if the will had perished, have reckoned

true, that he was in the latter part of his life accustomed to employ a stamp instead of making his signature. Many impressions of this are extant; but it is evident on the first inspection, not only that the presumed autographs in the will (for there are two) are not like these impressions, but that they are not the impressions of any stamp, the marks of the pen being very clearly discernible. It is more difficult to pronounce that they may not be feigned; but such is not the opinion of some who are best acquainted with Henry's handwriting*; and what is still more to the purpose, there is no pretence for setting up such a possibility, when the story of the stamp, as to which the partizans of Mary pretended to adduce evidence, appears so clearly to be a fabrication. We have therefore every reasonable ground to maintain, that Henry did duly execute a will, postponing the Scots line to that of Suffolk.

The fourth proposition is in itself undeniable. There were descendants of Mary, duchess of Suffolk, by her two daughters, Frances, second duchess of Suffolk, and Eleanor,

its forgery beyond question. The king's death approaching, he asserts, "some as well known to you as to me caused William Clarke, sometimes servant to Thomas Heneage, to sign the supposed will with a stamp, for otherwise signed it was never;" for which he appeals to an attestation of the late lord Paget in parliament, and requests the depositions of several persons now living to be taken. He proceeds to refer him "to the original will surmised to be signed with the king's own hand, that thereby it may most clearly and evidently appear by some differences, how the same was not signed with the king's hand, but stamped as aforesaid. And albeit it is used both as an argument and calumination against my sovereign by some, that the said original hath been embezzled in queen Mary's time, I trust God will and hath reserved the same to be an instrument to relieve [prove] the truth, and to confound false surmises, that thereby the right may take place, notwithstanding the many exemplifications and transcripts, which being sealed with the great seal, do run abroad in England." Lesley, bishop of Ross, repeats the same story with some additions. Bedford's Hereditary Right,

p. 197. A treatise of Hales, for which he suffered imprisonment, in defence of the Suffolk title under the will, of which there is a manuscript in the British Museum, Harl. MSS. 537., and which is also printed in the appendix to the book last quoted, leads me to conjecture that the original will had been mislaid or rather concealed at that time. For he certainly argues on the supposition that it was not forthcoming, and had not himself seen it; but "he has been informed that the king's name is evidently written with a pen, though some of the strokes are unseen, as if drawn by a weak and trembling hand." Every one who has seen the will must bear witness to the correctness of this information. The re-appearance of this very remarkable instrument was, as I conceive, after the Revolution; for Collier mentions that he had heard it was in existence; and it is also described in a note to the *Acta Regia*.

* It is right to mention, that some difference of opinion exists as to the genuineness of Henry's signature. But as it is attested by many witnesses, and cannot be proved a forgery, the legal presumption turns much in its favour.

countess of Cumberland. A story had indeed been circulated that Charles Brandon, duke of Suffolk, was already married to a lady of the name of Mortimer at the time of his union with the king's sister. But this circumstance seems to be sufficiently explained in the treatise of Hales.* It is somewhat more questionable, from which of his two daughters we are to derive the hereditary stock. This depends on the legitimacy of Lord Beauchamp, son of the earl of Hertford by Catherine Grey. I have mentioned in another place the process before a commission appointed by Elizabeth, which ended in declaring that their marriage was not proved, and that their cohabitation had been illicit. The parties alleged themselves to have been married clandestinely in the earl of Hertford's house by a minister whom they had never before seen, and of whose name they were ignorant, in the presence only of a sister of the earl, then deceased. This entire absence of testimony, and the somewhat improbable nature of the story, at least in appearance, may still perhaps leave a shade of doubt as to the reality of the marriage. On the other hand, it was unquestionable that their object must have been a legitimate union; and such a hasty and furtive ceremony as they asserted to have taken place, while it would, if sufficiently proved, be completely valid, was necessary to protect them from the queen's indignation. They were examined separately upon oath to answer a series of the closest interrogatories, which they did with little contradiction, and a perfect agreement in the main; nor was any evidence worth mentioning adduced on the other side; so that, unless the rules of the ecclesiastical law are scandalously repugnant to common justice, their oaths entitled them to credit on the merits of the case.† The earl of Hertford, soon after the tranquil accession of James,

Legitimacy
of the earl
of Hertford's
issue.

* Bedford's (Harbin's) Hereditary Right Asserted, p. 204.

† A manuscript in the Cottonian library, Faustina, A. xi., written about 1562, in a very hostile spirit, endeavours to prove from the want of testimony, and from some variances in their depositions (not very material ones), that their allegations of matrimony could not be admitted, and that they had incurred an ecclesiastical censure for fornication. But

another, which I have also found in the Museum, Harl. MSS. 6286., contains the whole proceedings and evidence, from which I have drawn the conclusion in the text. Their ignorance of the clergyman who performed the ceremony is not perhaps very extraordinary; he seems to have been one of those vagabond ecclesiastics, who, till the marriage act of 1752, were always ready to do that service for a fee.

having long abandoned all ambitious hopes, and seeking only to establish his children's legitimacy and the honour of one who had been the victim of their unhappy loves, petitioned the king for a review of the proceedings, alleging himself to have vainly sought this at the hands of Elizabeth. It seems probable, though I have not met with any more distinct proof of it than a story in Dugdale, that he had been successful in finding the person who solemnized the marriage.* A commission of delegates was accordingly appointed to investigate the allegations of the earl's petition. But the jealousy that had so long oppressed this unfortunate family was not yet at rest. Questions seem to have been raised as to the lapse of time and other technical difficulties, which served as a pretext for coming to no determination on the merits.† Hertford, or rather his son, not long after, endeavoured indirectly to bring forward the main question by means of a suit for some lands against lord Monteagle. This is said to have been heard in the court of wards, where a jury was impanelled to try the fact. But the law officers of the crown interposed to prevent a verdict, which, though it could not have been legally conclusive upon the marriage, would certainly have given a sanction to it in public opinion.‡ The house of Seymour was now compelled to seek a renewal of their honours by another channel. Lord Beauchamp, as he had uniformly been called, took a grant of

* "Hereupon I shall add, what I have heard related from persons of great credit, which is, that the validity of this marriage was afterwards brought to a trial at the common law; when the minister who married them being present, and other circumstances agreeing, the jury (whereof John Digby of Coleshill, in com. War. esquire, was the foreman) found it a good marriage." *Baronage of England*, part ii. 369. Mr. Luders doubts the accuracy of Dugdale's story; and I think it not unlikely that it is a confused account of what happened in the Court of Wards.

† I derive this fact from a Cotton MS. Vitellius, C. xvi. 412., &c.; but the volume is much burned, and the papers confused with others relative to lord Essex's divorce. See as to the same suit, or rather perhaps that mentioned in the next note, Birch's *Negotiations*,

p. 219., or Aikin's *James the First*, i. 225.

‡ "The same day a great cause between the lord Beauchamp and Monteagle was heard in the court of wards, the main point whereof was to prove the lawfulness of E. of Hertford's marriage. The court sat until five of the clock in the afternoon, and the jury had a week's respite for the delivery of their verdict." Letter of Sir E. Hoby to Sir T. Edmonds, Feb. 10. 1606. "For my lord of Hertford's cause, when the verdict was ready to be given up, Mr. Attorney interposed himself for the king, and said that the land that they both strove for was the king's, and until his title were decided, the jury ought not to proceed; not doubting but the king will be gracious to both lords. But thereby both land and legitimation remain undecided." The same to the same, March 7. Sloane MSS. 4176.

the barony of Beauchamp, and another of the earldom of Hertford, to take effect upon the death of the earl, who is not denominated his father in the patent.* But after the return of Charles II., in the patent restoring this lord Beauchamp's son to the dukedom of Somerset, he is recited to be heir male of the body of the first duke by his wife Anne, which establishes (if the recital of a private act of parliament can be said to establish any thing) the validity of the disputed marriage.†

The descent from Eleanor, the younger daughter of Mary Brandon, who married the earl of Cumberland, is subject to no difficulties. She left an only daughter, married to the earl of Derby, from whom the claim devolved again upon females, and seems to have attracted less notice during the reign of Elizabeth than some others much inferior in plausibility. If any should be of opinion that no marriage was regularly contracted between the earl of Hertford and lady Catherine Grey, so as to make their children capable of inheritance, the title to the crown, resulting from the statute of 35 H. 8. and the testament of that prince, will have descended, at the death of Elizabeth, on the issue of the countess of Cumberland, the youngest daughter of the duchess of Suffolk, lady Frances Keyes, having died without issue.‡ In neither case could the house of Stuart have a lawful claim. But I may, perhaps, have dwelled too long on a subject which, though curious and not very generally understood,

* Dugdale's Baronage. Luders' Essay on the Right of Succession to the Crown in the Reign of Elizabeth. This ingenious author is, I believe, the first who has taken the strong position as to the want of legal title to the house of Stuart which I have endeavoured to support. In the entertaining letters of Joseph Mede on the news of the day, Harl. MSS. 389., it is said that the king had thought of declaring Hertford's issue by lady Catherine Grey illegitimate in the parliament of 1621, and that lord Southampton's commitment was for having searched for proofs of their marriage. June 30. 1622.

† Luders, ubi supra.

‡ I have not adverted to one objection which some urged at the time, as we find by Persons's treatises, Leicester's Com-

monwealth, and the Conference, to the legitimacy of the Seymours. Catherine Grey had been betrothed, or perhaps married, to lord Herbert, son of the earl of Pembroke, during the brilliant days of her family, at the close of Edward's reign. But on her father's fall, Pembroke caused a sentence of divorce to be pronounced, the grounds of which do not appear, but which was probably sufficient in law to warrant her subsequent union with Hertford. No advantage is taken of this in the proceedings, which seems to show that there was no legal bond remaining between the parties. Camden says she was divorced from lord Herbert, "being so far gone with child, as to be very near her time." But from her youth at the time, and the silence of all other writers, I conclude this to be unworthy of credit.

can be of no sort of importance, except as it serves to cast ridicule upon those notions of legitimate sovereignty and absolute right, which it was once attempted to set up as paramount even to the great interests of a commonwealth.

There is much reason to believe that the consciousness of this defect in his parliamentary title put James on magnifying, still more than from his natural temper he was prone to do, the inherent rights of primogenitary succession, as something indefeasible by the legislature; a doctrine which, however it might suit the schools of divinity, was in diametrical opposition to our statutes.* Through the servile spirit of those times, however, it made a rapid progress; and, interwoven by cunning and bigotry with religion, became a distinguishing tenet of the party who encouraged the Stuarts to subvert the liberties of this kingdom. In James's proclamation on ascending the throne, he set forth his hereditary right in pompous and perhaps unconstitutional phrases. It was the first measure of parliament to pass an act of recognition, acknowledging that, immediately on the decease of Elizabeth, "the imperial crown of the realm of England did by inherent birthright, and lawful and undoubted succession, descend and come to his most excellent majesty, as being lineally, justly, and lawfully, next and sole heir of the blood royal of this realm."† The will of Henry VIII. it was tacitly agreed by all parties to consign to oblivion: and this most wisely, not on the principles which seem rather too much insinuated in this act of recognition, but on such substantial motives of public expediency as it would have shown an equal want of patriotism and of good sense for the descendants of the house of Suffolk to have withstood.

James left a kingdom where his authority was incessantly thwarted and sometimes openly assailed, for one wherein the royal prerogative had for more than a century been strained to a very high pitch, and where there had not occurred for above thirty years the least appearance of rebellion and hardly of tumult. Such a posture of the English common-

* Bolingbroke is of this opinion, considering the act of recognition as "the æra of hereditary right, and of all those exalted notions concerning the power of

prerogative of kings and the sacredness of their persons." *Dissertation on Parties*, Letter II.

† Stat. 1 Jac. c. 1.

wealth, as well as the general satisfaction testified at his accession, seemed favourable circumstances to one who entertained, with less disguise, if not with more earnestness, than most other sovereigns, the desire of reigning with as little impediment as possible to his own will. Yet some considerations might have induced a prince who really possessed the king-craft wherein James prided himself, to take his measures with caution. The late queen's popularity had remarkably abated during her last years.* It is a very common delusion of royal personages to triumph in the people's dislike of those into whose place they expect shortly to come, and to count upon the most transitory of possessions, a favour built on hopes that they cannot realize and discontents that they will not assuage. If Elizabeth lost a great deal of that affection her subjects had entertained for her, this may be ascribed, not so much to Essex's death, though that no doubt had its share, as to weightier taxation, to some oppressions of her government, and above all to her inflexible tenaciousness in every point of ecclesiastical discipline. It was the part of a prudent successor to preserve an un-deviating economy, to remove without repugnance or delay the irritations of monopolies and purveyance, and to remedy those alleged abuses in the church, against which the greater and stronger part of the nation had so long and so loudly raised its voice.

The new king's character, notwithstanding the vicinity of Scotland, seems to have been little understood by the English at his accession. But he was not long in undeceiving them, if it be true that his popularity had vanished away before his arrival in London.† The kingdom

* This is confirmed by a curious little tract in the British Museum, Sloane MSS. 827., containing a short history of the queen's death, and new king's accession. It affords a good contemporary illustration of the various feelings which influenced men at this crisis, and is written in a dispassionate manner. The author ascribes the loss of Elizabeth's popularity to the impoverishment of the realm, and to the abuses which prevailed. Carte says "foreigners were shocked on James's arrival at the applause of the populace

who had professed to adore the late queen, but in fact she had no huzzas after Essex's execution. She was in four days' time as much forgot as if she had never existed, by all the world, and even by her own servants." Vol. iii. p. 707. This is exaggerated, and what Carte could not know; but there is no doubt that the generality were glad of a change.

† Carte, no foe surely to the house of Stuart, says: "By the time he reached London, the admiration of the intelligent world was turned into contempt." On

was full of acute wits and skilful politicians, quick enough to have seen through a less unguarded character than that of James. It was soon manifest that he was unable to wield the sceptre of the great princess whom he ridiculously affected to despise*, so as to keep under that rising spirit, which might perhaps have grown too strong even for her control. He committed an important error in throwing away the best opportunity that had offered itself for healing the wounds of the church of England. In his way to London, the malecontent clergy presented to him what was commonly called the Millenary Petition, as if signed by 1000 ministers, though the real number was not so great.† This petition contained no demand inconsistent with the established hierarchy. James, however, who had not unna-

Conduct
towards the
puritans.

this journey he gave a remarkable proof of his hasty temper and disregard of law, in ordering a pickpocket taken in the fact to be hanged without trial. The historian last quoted thinks fit to say in vindication, that "all felonies committed within the verge of the court are cognisable, in the court of the king's household," referring to 33 H. 8. c. i. This act however contains no such thing; nor does any court appear to have been held. Though the man's notorious guilt might prevent any open complaint of so illegal a proceeding, it did not fail to excite observation. "I hear our new king," says Sir John Harrington, "has hanged one man before he was tried; it is strangely done: now if the wind bloweth thus, why may not a man be tried before he has offended?" *Nugæ Antiquæ*, vol. i. p. 180.

Birch and Carte tell us on the authority of the French ambassador's despatches, that on this journey he expressed a great contempt for women, suffering them to be presented on their knees, and indiscreetly censuring his own wife; that he offended the military men by telling them they might sheathe their swords, since peace was his object; that he showed impatience of the common people, who flocked to see him while hunting, driving them away with curses, very unlike the affable manners of the late queen. This is confirmed by Wilson, in *Kennet's Complete History*, vol. ii. p. 667.

[It is also mentioned in the extracts from the reports of Beaumont, the French

ambassador, published in Raumer's *Illustrations of the History of the 16th and 17th Centuries*. (Lord F. Egerton's translation, 1835, vol. ii. pp. 196. 202.) These extracts give a most unfavourable picture of the conduct of James at his accession, as those from other ambassadors do at a later period.]

* Sully being sent over to compliment James on his accession, persisted in wearing mourning for Elizabeth, though no one had done so in the king's presence, and he was warned that it would be taken ill; "dans une cour où il sembloit qu'on eût si fort affecté de mettre en oubli cette grande reine, qu'on n'y faisoit jamais mention d'elle, et qu'on évitoit même de prononcer son nom." *Mém. de Sully*, l. 14. James afterwards spoke slightly to Sully of his predecessor, and said that he had long ruled England through her ministers.

† It was subscribed by 825 ministers from twenty-five counties. It states, that neither as factious men desiring a popular party in the church, nor as schismatics aiming at the dissolution of the state ecclesiastical, they humbly desired the redress of some abuses. Their objections were chiefly to the cap and surplice, the cross in baptism, baptism by women, confirmation, the ring in marriage, the reading of the Apocrypha, bowing at the name of Jesus, &c.; to non-residence and incapable ministers, the commendams held by bishops, unnecessary ex-communications, and other usual topics. Neal, p. 408. Fuller, part ii. p. 22.

turally taken an extreme disgust at the presbyterian clergy of his native kingdom, by whom his life had been perpetually harassed, showed no disposition to treat these petitioners with favour.* The bishops had promised him an obsequiousness to which he had been little accustomed, and a zeal to enhance his prerogative which they afterwards too well displayed. His measures towards the non-conformist party had evidently been resolved upon before he summoned a few of their divines to the famous conference at Hampton-Court. In the accounts that we read of this meeting, we are alternately struck with wonder at the indecent and partial behaviour of the king and at the abject baseness of the bishops, mixed, according to the custom of servile natures, with insolence towards their opponents.† It was easy for a monarch and eighteen churchmen to claim the victory, be the merits of their dispute what they might, over four abashed and intimidated adversaries.‡ A very few alterations were made in the church-service after this conference, but not of such moment as to reconcile probably a single minister to the established discipline.§ The king soon afterwards put forth a proclamation, requiring all ecclesiastical and civil officers to do their duty by enforcing conformity, and admonishing all men not to expect nor attempt any further alteration in the pub-

* The puritans seem to have flattered themselves that James would favour their sect, on the credit of some strong assertions he had occasionally made of his adherence to the Scots kirk. Some of these were a good while before; but on quitting the kingdom he had declared that he left it in a state which he did not intend to alter. Neal, 406. James however was all his life rather a bold liar than a good dissembler. It seems strange that they should not have attended to his *Basilicon Doron*, printed three years before, though not for general circulation, wherein there is a passage quite decisive of his disposition towards the presbyterians and their scheme of polity. The *Millenary Petition* indeed did not go so far as to request any thing of that kind.

† *Strype's Whitgift*, p. 571. *Collier*, p. 673. *Neal*, p. 411. *Fuller*, part ii. p. 7. *State Trials*, vol. ii. p. 69. *Win-*

wood, ii. 13. All these, except the last, are taken from an account of the conference published by *Barlow*, and probably more favourable to the king and bishops than they deserved. See what *Harrington*, an eye-witness, says in *Nugæ Antiquæ*, i. 181., which I would quote as the best evidence of James's behaviour, were the passage quite decent.

‡ *Reynolds*, the principal disputant on the puritan side, was nearly, if not altogether, the most learned man in England. He was censured by his faction for making a weak defence; but the king's partiality and intemperance plead his apology. He is said to have complained of an unfair representation in *Barlow's* account. *Hist. and Ant. of Oxford*, ii. 293. James wrote a conceited letter to one *Blake*, boasting of his own superior logic and learning. *Strype's Whitgift*, *Append.* 239.

§ *Rymer*, xvi. 565.

lic service; for "he would neither let any presume that his own judgment, having determined in a matter of this weight, should be swayed to alteration by the frivolous suggestions of any light spirit, nor was he ignorant of the inconvenience of admitting innovation in things once settled by mature deliberation."* And he had already strictly enjoined the bishops to proceed against all their clergy who did not observe the prescribed order†; a command which Bancroft, who about this time followed Whitgift in the primacy, did not wait to have repeated. But the most enormous outrage on the civil rights of these men was the commitment to prison of ten among those who had presented the Millenary Petition; the judges having declared in the star-chamber, that it was an offence fineable at discretion, and very near to treason and felony, as it tended to sedition and rebellion.‡ By such beginnings did the house of Stuart indicate the course it would steer.

An entire year elapsed, chiefly on account of the unhealthiness of the season in London, before James summoned his first parliament. It might perhaps have been more politic to have chosen some other city; for the length of this interval gave time to form a disadvantageous estimate of his administration, and to alienate beyond recovery the puritanical party. Libels were already in circulation, reflecting with a sharpness never before known on the king's personal behaviour, which presented an extraordinary contrast to that of Elizabeth.§ The nation, it is easy to perceive, cheated itself

* Strype's Whitgift, 587. How desirous men not at all connected in faction with the puritans were of amendments in the church, appears by a tract of Bacon, written, as it seems, about the end of 1603, vol. i. p. 387. — He excepts to several matters of ceremony; the cap and surplice, the ring in marriage, the use of organs, the form of absolution, lay-baptism, &c. And inveighs against the abuse of excommunication, against non-residence and pluralities, the oath ex-officio, the sole exercise of ordination and jurisdiction by the bishop, conceiving that the dean and chapter should always assent, &c. And, in his predominant spirit of improvement, asks, "Why the civil state should be purged and restored

by good and wholesome laws made every three or four years in parliament assembled, devising remedies as fast as time breedeth mischief; and contrariwise the ecclesiastical state should still continue upon the dregs of time, and receive no alteration now for these forty-five years or more?"

† Strype's Whitgift, 587.

‡ Neal, 432. Winwood, ii. 96.

§ See one of the Somers Tracts, vol. ii. p. 144., entitled "Advertisements of a Loyal Subject, drawn from the Observation of the People's Speeches." This appears to have been written before the meeting of parliament. The French ambassadors, Sully and La Boderie, thought most contemptibly of the king.

into a persuasion, that it had borne that princess more affection than it had really felt, especially in her latter years; the sorrow of subjects for deceased monarchs being often rather inspired by a sense of evil than a recollection of good. James, however, little heeded the popular voice, satisfied with the fulsome and preposterous adulation of his court, and intent on promulgating certain maxims concerning the dignity and power of princes, which he had already announced in his discourse on the True Law of Free Monarchies, printed some years before in Scotland. In this treatise, after laying it down that monarchy is the true pattern of divinity, and proving the duty of passive obedience, rather singularly, from that passage in the book of Samuel where the prophet so forcibly paints the miseries of absolute power, he denies that the kings of Scotland owe their crown to any primary contract, Fergus, their progenitor, having conquered the country with his Irish; and advances more alarming tenets, as that the king makes daily statutes and ordinances enjoining such pains thereto as he thinks meet, without any advice of parliament or estates; that general laws made publicly in parliament may by the king's authority be mitigated or suspended upon causes only known to him; and that, "although a good king will frame all his actions to be according to the law, yet he is not bound thereto, but of his own will and for example-giving to his subjects."* These doctrines, if not absolutely novel, seemed peculiarly indecent, as well as dangerous, from the mouth of a sovereign. Yet they proceeded far more from James's self-conceit and pique against the republican spirit of presbyterianism than from his love of power, which (in its exercise I mean, as distinguished from its possession) he did not feel in so eminent a degree as either his predecessor or his son.

In the proclamation for calling together his first parliament, the king, after dilating, as was his favourite practice, on a series of rather common truths in very good language, charges all persons interested in the choice of knights for the shire to select them out of the principal knights or gentlemen

Lingard, vol. ix. p. 107. His own courtiers, as their private letters show, disliked and derided him.

* King James's Works, p. 207.

Parliament
convoked
by an ir-
regular pro-
clamation.

within the county; and for the burgesses, that choice be made of men of sufficiency and discretion, without desire to please parents and friends, that often speak for their children or kindred; avoiding persons noted in religion for their superstitious blindness one way, or for their turbulent humour otherways. We do command, he says, that no bankrupts or outlaws be chosen, but men of known good behaviour and sufficient livelihood. The sheriffs are charged not to direct a writ to any ancient town being so ruined that there are not residents sufficient to make such choice, and of whom such lawful election may be made. All returns are to be filed in chancery, and if any be found contrary to this proclamation, the same to be rejected as unlawful and insufficient, and the place to be fined for making it; and any one elected contrary to the purport, effect, and true meaning of this proclamation, to be fined and imprisoned.*

Such an assumption of control over parliamentary elections was a glaring infringement of those privileges which the house of commons had been steadily and successfully asserting in the late reign. An opportunity very soon occurred of contesting this important point. At the election for the county of Buckingham, sir Francis Goodwin had been chosen in preference to sir John Fortescue, a privy councillor, and the writ returned into chancery. Goodwin having been some years before outlawed, the return was sent back to the sheriff, as contrary to the late proclamation; and, on a second election, sir John Fortescue was chosen. This matter being brought under the consideration of the house of commons, a very few days after the opening of the session, gave rise to their first struggle with the new king. It was resolved, after hearing the whole case, and arguments by members on both sides, that Goodwin was lawfully elected and returned, and ought to be received. The first notice taken of this was by the lords, who requested that this might be discussed in a conference between the two houses, before any other matter should be proceeded in. The commons returned for answer

Question of
Fortescue
and Good-
win's elec-
tion.

* Parl. Hist. i. 967.

that they conceived it not according to the honour of the house to give account of any of their proceedings. The lords replied, that having acquainted his majesty with the matter, he desired there might be a conference thereon between the two houses. Upon this message, the commons came to a resolution that the speaker with a numerous deputation of members should attend his majesty, and report the reasons of their proceedings in Goodwin's case. In this conference with the king, as related by the speaker, it appears that he had shown some degree of chagrin, and insisted that the house ought not to meddle with returns, which could only be corrected by the court of chancery; and that since they derived all matters of privilege from him and his grant, he expected they should not be turned against him. He ended by directing the house to confer with the judges. After a debate, which seems, from the minutes in the journals, to have been rather warm, it was unanimously agreed not to have a conference with the judges; but the reasons of the house's proceeding were laid before the king in a written statement or memorial, answering the several objections that his majesty had alleged. This they sent to the lords, requesting them to deliver it to the king, and to be mediators in behalf of the house for his majesty's satisfaction; a message in rather a lower tone than they had previously taken. The king, sending for the speaker privately, told him that he was now distracted in judgment as to the merits of the case; and for his further satisfaction, desired and commanded, as an absolute king, that there should be a conference between the house and the judges. Upon this unexpected message, says the journal, there grew some amazement and silence. But at last one stood up and said: "The prince's command is like a thunderbolt; his command upon our allegiance like the roaring of a lion. To his command there is no contradiction; but how or in what manner we should now proceed to perform obedience, that will be the question."* It was resolved to confer with the judges in presence of the king and council. In this second conference, the king, after some favourable expressions towards the house, and conceding that it was a court of record, and judge of returns, though not

* Commons' Journals, i. 166.

exclusively of the chancery, suggested that both Goodwin and Fortescue should be set aside, by issuing a new writ. This compromise was joyfully accepted by the greater part of the commons, after the dispute had lasted nearly three weeks.* They have been considered as victorious, upon the whole, in this contest, though they apparently fell short in the result of what they had obtained some years before. But no attempt was ever afterwards made to dispute their exclusive jurisdiction.†

The commons were engaged during this session in the defence of another privilege, to which they annexed perhaps a disproportionate importance. Sir Thomas Shirley, a member, having been taken in execution on a private debt before their meeting, and the warden of the Fleet prison refusing to deliver him up, they were at a loss how to obtain his release. Several methods were projected; among which, that of sending a party of members with the serjeant and his mace, to force open the prison, was carried on a division; but the speaker hinting that such a vigorous measure would expose them individually to prosecution as trespassers, it was prudently abandoned. The warden, though committed by the house to a dungeon in the Tower, continued obstinate, conceiving that by releasing his prisoner he should become answerable for the debt. They were evidently reluctant to solicit the king's interference; but aware at length that their own authority was insufficient, "the vice-chamberlain, according to a memorandum in the journals, was privately instructed to go to the king, and humbly desire that he would be pleased to command the warden, on his allegiance, to deliver up sir Thomas; not as petitioned for by the house, but as if himself thought it fit, out of his own gracious judgment." By this stratagem, if we may so term it, they saved

* It appears that some of the more eager patriots were dissatisfied at the concession made by vacating Goodwin's seat, and said they had drawn on themselves the reproach of inconstancy and levity. "But the acclamation of the house was, that it was a testimony of our duty, and no levity." It was thought expedient, however, to save their honour, that Goodwin should send a letter to the

speaker expressing his acquiescence. *Id.* 168.

† Commons' Journals, 147, &c.; *Parl. Hist.* 997.; *Carte*, iii. 730. who gives, on this occasion, a review of the earlier cases where the house had entered on matters of election. See also a rather curious letter of Cecil in Winwood's Memorials, ii. 18., where he artfully endeavours to treat the matter as of little importance.

the point of honour, and recovered their member.* The warden's apprehensions, however, of exposing himself to an action for the escape gave rise to a statute, which empowers the creditor to sue out a new execution against any one who shall be delivered by virtue of his privilege of parliament, after that shall have expired, and discharges from liability those out of whose custody such persons shall be delivered. This is the first legislative recognition of privilege.† The most important part of the whole is a proviso subjoined to the act, "That nothing therein contained shall extend to the diminishing of any punishment to be hereafter, by censure in parliament, inflicted upon any person who hereafter shall make or procure to be made any such arrest as is aforesaid." The right of commitment, in such cases at least, by a vote of the house of commons, is here unequivocally maintained.

It is not necessary to repeat the complaints of ecclesiastical abuses preferred by this house of commons, as by those that had gone before them. James, by siding Complaints of grievances. openly with the bishops, had given alarm to the reforming party. It was anticipated that he would go farther than his predecessor, whose uncertain humour, as well as the inclinations of some of her advisers, had materially counterbalanced the dislike she entertained of the innovators. A code of new canons had recently been established in convocation with the king's assent, obligatory perhaps upon the clergy, but tending to set up an unwarranted authority over the whole nation; imposing oaths and exacting securities in certain cases from the laity, and aiming at the exclusion of non-conformists from all civil rights.‡ Against these canons, as well as various other grievances, the commons remonstrated in a conference with the upper house, but with little immediate effect.§ They

* Commons' Journals, page 155, &c.; Parl. Hist. 1028.; Carte, 734.

† 1 Jac. i. c. 13.

‡ By one of these canons, all persons affirming any of the thirty-nine articles to be erroneous are excommunicated *ipso facto*; consequently become incapable of being witnesses, of suing for their debts, &c. Neal, 428. But the courts of law disregarded these *ipso facto* excommunications.

§ Somers Tracts, ii. 14.; Journals, 199. 235. 238.; Parl. Hist. 1067. It is

here said, that a bill restraining excommunications passed into a law, which does not appear to be true, though James himself had objected to their frequency. I cannot trace such a bill in the journals beyond the committee, nor is it in the statute-book. The fact is, that the king desired the house to confer on the subject with the convocation, which they justly deemed unprecedented, and derogatory to their privileges; but offered to confer with the bishops, as lords of parliament. Journals, 173.

made a more remarkable effort in attacking some public mischiefs of a temporal nature, which, though long the theme of general murmurs, were closely interwoven with the ancient and undisputed prerogatives of the crown. Complaints were uttered, and innovations projected by the commons of 1604, which Elizabeth would have met with an angry message, and perhaps visited with punishment on the proposers. James however was not entirely averse to some of the projected alterations, from which he hoped to derive a pecuniary advantage. The two principal grievances were, purveyance, and the incidents of military tenure. The former had been restrained by not less than thirty-six statutes, as the commons assert in a petition to the king; in spite of which the impressing of carts and carriages, and the exaction of victuals for the king's use, at prices far below the true value, and in quantity beyond what was necessary, continued to prevail under authority of commissions from the board of green cloth, and was enforced, in case of demur or resistance, by imprisonment under their warrant. The purveyors, indeed, are described as living at free quarters upon the country, felling woods without the owners' consent, and commanding labour with little or no recompence.* Purveyance was a very ancient topic of remonstrance; but both the inadequate revenues of the crown, and a supposed dignity attached to this royal right of spoil, had prevented its abolition from being attempted. But the commons seemed still more to trench on the pride of our feudal monarchy, when they proposed to take away guardianship in chivalry; that lucrative tyranny, bequeathed by Norman conquerors, the custody of every military tenant's estate until he should arrive at twenty-one, without accounting for the profits. This, among other grievances, was referred to a committee, in which Bacon took an active share. They obtained a conference on this subject with the lords, who refused to agree to a bill for taking guardianship in chivalry away, but offered to join in a petition for that purpose to the king, since it could not be called a wrong, having been patiently endured by their ancestors as well as themselves, and being warranted by the law of the land. In the end the

* Bacon's Works, i. 624.; Journals, 190. 215.

lords advised to drop the matter for the present, as somewhat unseasonable in the king's first parliament.*

In the midst of these testimonies of dissatisfaction with the civil and ecclesiastical administration, the house of commons had not felt much willingness to greet the new sovereign with a subsidy. No demand had been made upon them, far less any proof given of the king's exigencies; and they doubtless knew by experience, that an obstinate determination not to yield to any of their wishes would hardly be shaken by a liberal grant of money. They had even passed the usual bill granting tonnage and poundage for life, with certain reservations that gave the court offence, and which apparently they afterwards omitted. But there was so little disposition to do any thing farther, that the king sent a message to express his desire that the commons would not enter upon the business of a subsidy, and assuring them that he would not take unkindly their omission. By this artifice, which was rather transparent, he avoided the not improbable mortification of seeing the proposal rejected.†

The king's discontent at the proceedings of this session, which he seems to have rather strongly expressed in some speech to the commons that has not been recorded‡, gave rise to a very remarkable vindication, prepared by a committee at the house's command, and entitled "A Form of Apology and Satisfaction to be delivered to his Majesty," though such may not be deemed the most appropriate title. It contains a full and pertinent justification of all those proceedings at which James had taken umbrage, and asserts, with respectful boldness and in explicit language, the constitutional rights and liberties of parliament. If the English monarchy had been reckoned as absolute under the Plantagenets and Tudors, as Hume has endeavoured to make it appear, the commons of 1604 must have made a surprising advance in their notions of freedom since the king's accession. Adverting to what they call the misinformation openly delivered to his majesty in three things; namely, that their privileges were not of right, but of grace only, renewed every parliament on petition; that they are no court of record,

Commons' vindication of themselves.

* Commons' Journals, 150, &c.

† Journals, 246.

‡ Journals, 230.

nor yet a court that can command view of records ; that the examination of the returns of writs for knights and burgesses is without their compass, and belonging to the chancery : assertions, they say, “ tending directly and apparently to the utter overthrow of the very fundamental privileges of our house, and therein of the rights and liberties of the whole commons of your realm of England, which they and their ancestors, from time immemorial, have undoubtedly enjoyed under your majesty’s most noble progenitors ;” and against which they expressly protest, as derogatory in the highest degree to the true dignity and authority of parliament, desiring “ that such their protestations might be recorded to all posterity ;” they maintain, on the contrary, “ 1. That their privileges and liberties are their right and inheritance, no less than their very lands and goods ; 2. That they cannot be withheld from them, denied or impaired, but with apparent wrong to the whole state of the realm ; 3. That their making request, at the beginning of a parliament, to enjoy their privilege, is only an act of manners, and does not weaken their right ; 4. That their house is a court of record, and has been ever so esteemed ; 5. That there is not the highest standing court in this land that ought to enter into competition, either for dignity or authority, with this high court of parliament, which, with his majesty’s royal assent, gives law to other courts, but from other courts receives neither laws nor orders ; 6. That the house of commons is the sole proper judge of return of all such writs, and the election of all such members as belong to it, without which the freedom of election were not entire.” They aver that in this session the privileges of the house have been more universally and dangerously impugned than ever, as they suppose, since the beginnings of parliaments. That “ in regard to the late queen’s sex and age, and much more upon care to avoid all trouble, which by wicked practice might have been drawn to impeach the quiet of his majesty’s right in the succession, those actions were then passed over which they hoped in succeeding times to redress and rectify ; whereas, on the contrary, in this parliament, not privileges, but the whole freedom of the parliament and realm, had been hewed from them.” “ What cause,” they proceed, “ we, your poor

commons, have to watch over our privileges, is manifest in itself to all men. The prerogatives of princes may easily and do daily grow. The privileges of the subject are for the most part at an everlasting stand. They may be by good providence and care preserved; but being once lost, are not recovered but with much disquiet." They then enter in detail on the various matters that had arisen during the session, — the business of Goodwin's election, of Shirley's arrest, and some smaller matters of privilege to which my limits have not permitted me to allude. "We thought not," speaking of the first, "that the judges' opinion, which yet in due place we greatly reverence, being delivered what the common law was, which extends only to inferior and standing courts, ought to bring any prejudice to this high court of parliament, whose power being above the law is not founded on the common law, but have their rights and privileges peculiar to themselves." They vindicate their endeavours to obtain redress of religious and public grievances: "Your majesty would be misinformed," they tell him, "if any man should deliver that the kings of England have any absolute power in themselves, either to alter religion, which God defend should be in the power of any mortal man whatsoever, or to make any laws concerning the same, otherwise than as in temporal causes, by consent of parliament. We have and shall at all times by our oaths acknowledge, that your majesty is sovereign lord and supreme governor in both."* Such was the voice of the English commons in 1604, at the commencement of that great conflict for their liberties, which is measured by the line of the house of Stuart. But it is not certain that this apology was ever delivered to the king, though he seems to allude to it in a letter written to one of his ministers about the same time.†

* Parl. Hist. 1030., from Petyt's *Jus Parliamentarium*, the earliest book, as far as I know, where this important document is preserved. The entry on the *Journals*, p. 243., contains only the first paragraph. Hume and Carte have been ignorant of it. It is just alluded to by Rapin.

It was remarked that the attendance of members in this session was more

frequent than had ever been known, so that fresh seats were required. *Journals*, 141.

† "My faithful 3, such is now my misfortune, as I must be for this time secretary to the devil in answering your letters directed unto him. That the entering now into the matter of the subsidy should be deferred until the council's next meeting with me, I think no ways convenient,

The next session, which is remarkable on account of the conspiracy of some desperate men to blow up both houses of parliament with gunpowder on the day of their meeting, did not produce much worthy of our notice. A bill to regulate, or probably to suppress, purveyance was thrown out by the lords. The commons sent up another bill to the same effect, which the upper house rejected without discussion, by a rule then perhaps first established, that the same bill could not be proposed twice in one session.* They voted a liberal subsidy, which the king, who had reigned three years without one, had just cause to require. For though he had concluded a peace with Spain soon after his accession, yet the late queen had left a debt of 400,000*l.*, and other charges had fallen on the crown. But the bill for this subsidy lay a good while in the house of commons, who came to a vote that it should not pass till their list of grievances was ready to be presented. No notice was taken of

especially for three reasons. First, ye see it has bin already longest delayd of any thing, and yet yee see the lower house are ever the longer the further from it; and (as in every thing that concerns mee) delay of time does never turn them towards mee, but, by the contrary, every hour breedeth a new trick of contradiction amongst them, and every day produces new matter of sedition, so fertile are their brains in ever buttering forth venom. Next, the Parl. is now so very near an end, as this matter can suffer no longer delay. And thirdly, if this be not granted unto before they receive my answer unto their petition, it needs never to be moved, for the will of man or angel cannot devise a pleasing answer to their proposition, except I should pull the crown not only from my own head, but also from the head of all those that shall succeed unto mee, and lay it down at their feet. And that freedom of uttering my thoughts, which no extremity, strait nor peril of my life could ever bereave mee of in time past, shall now remain with mee, as long as the soul shall with the body. And as for the Reservations of the Bill of Tonnage and Poundage, yee of the Upper House must out of your Love and Discretion help it again, or otherwise they will in this, as in all things else that concern mee,

wrack both me and all my Posterity. Yee may impart this to little 10 and bigg Suffolk. And so Farewell from my Wildernesse, w^{ch} I had rather live in (as God shall judge mee) like an Hermite in this Forrest, then be a King over such a People as the pack of Puritans are that over-rules the lower-house.
J. R.

MS. penes autorem.

I cannot tell who is addressed in this letter by the numeral 3; perhaps the earl of Dunbar. By 10 we must doubtless understand Salisbury.

* Parl. Hist. Journals, 274. 278., &c. In a conference with the lords on this bill, Mr. Hare, a member, spoke so warmly, as to give their lordships offence, and to incur some reprehension. "You would have thought," says sir Thomas Hoby, "that Hare and Hyde represented two tribunes of the people." Sloane MSS. 4161. But the commons resented this infringement on their privileges, and after voting that Mr. Hare did not err in his employment in the committee with the lords, sent a message to inform the other house of their vote, and to request that they would "forbear hereafter any taxations and reprehensions in their conferences." Journals, 20th and 22d Feb.

these till the next session beginning in November, 1606, when the king returned an answer to each of the sixteen articles in which matters of grievance were alleged. Of these the greater part refer to certain grants made to particular persons in the nature of monopolies; the king either defending these in his answer, or remitting the parties to the courts of law to try their legality. The principal business of this third session, as it had been of the last, was James's favourite scheme of a perfect union between England and Scotland. It may be collected, though this was never explicitly brought forward, that his views extended to a legislative incorporation.* But in all the speeches on this subject, and especially his own, there is a want of distinctness as to the object proposed. He dwells continually upon the advantage of unity of laws, yet extols those of England as the best, which the Scots, as was evident, had no inclination to adopt. Wherefore then was delay to be imputed to our English parliament, if it waited for that of the sister kingdom? And what steps were recommended towards this measure, that the commons can be said to have declined, except only the naturalization of the ante-nati, or Scots born before the king's accession to our throne, which could only have a temporary effect?† Yet

Union with
Scotland
debated.

* Journals, 316.

An acute historical critic doubts whether James aimed at an union of legislatures, though suggested by Bacon. Laing's Hist. of Scotland, iii. 17. It is certain that his own speeches on the subject do not mention this; nor do I know that it was ever distinctly brought forward by the government; yet it is hard to see how the incorporation could have been complete without it. Bacon not only contemplates the formation of a single parliament, but the alterations necessary to give it effect, vol. i. p. 638.; suggesting that the previous commission of lords of articles might be adopted for some, though not for all purposes. This of itself was a sufficient justification for the dilatoriness of the English parliament. Nor were the common lawyers who sat in the house much better pleased with Bacon's schemes for remodelling all our laws. See his speech, vol. i. p. 654., for

naturalizing the ante-nati. In this, he asserts the kingdom not to be fully peopled; "the territories of France, Italy, Flanders, and some parts of Germany, do in equal space of ground bear and contain a far greater quantity of people, if they were mustered by the poll;" and even goes on to assert the population to have been more considerable under the heptarchy.

† It was held by twelve judges out of fourteen, in Calvin's case, that the post-nati, or Scots born after the king's accession, were natural subjects of the king of England. This is laid down, and irresistibly demonstrated, by Coke, then chief justice, with his abundant legal learning. State Trials, vol. ii. 559.

It may be observed, that the high-flying creed of prerogative mingled itself intimately with this question of naturalization; which was much argued on the monarchical principle of personal alle-

Hume, ever prone to eulogize this monarch at the expense of his people, while he bestows merited praise on his speech in favour of the union, which is upon the whole a well-written and judicious performance, charges the parliament with prejudice, reluctance, and obstinacy. The code, as it may be called, of international hostility, those numerous statutes treating the northern inhabitants of this island as foreigners and enemies, were entirely abrogated. And if the commons, while both the theory of our own constitution was so unsettled and its practice so full of abuse, did not precipitately give into schemes that might create still further difficulty in all questions between the crown and themselves, schemes, too, which there was no imperious motive for carrying into effect at that juncture, we may justly consider it as an additional proof of their wisdom and public spirit. Their slow progress however in this favourite measure, which, though they could not refuse to entertain it, they endeavoured to defeat by interposing delays and impediments, gave much offence to the king, which he expressed in a speech to the two houses, with the haughtiness, but not the dignity of Elizabeth. He threatened them to live alternately in the two kingdoms, or to keep his court at York; and alluded, with peculiar acrimony, to certain speeches made in the house, wherein probably his own fame had not been spared.* “I looked,” he says, “for no such fruits at your hands, such personal discourses and speeches, which of all other, I looked you should avoid, as not beseeing the gravity of your assembly. I am your king; I am placed to govern you, and shall answer for your errors; I am a man of flesh and

giance to the sovereign, as opposed to the half-republican theory that lurked in the contrary proposition. “Allegiance,” says lord Bacon, “is of a greater extent and dimension than laws or kingdoms, and cannot consist by the laws merely, because it began before laws; it continueth after laws, and it is in vigour when laws are suspended and have not had their force.” *Id.* 596. So lord Coke: “Whatsoever is due by the law or constitution of man may be altered; but natural legiance or obedience of the subject to the sovereign cannot be altered; ergo, natural legiance or obedience to the

sovereign is not due by the law or constitution of man.” 652.

There are many doubtful positions scattered through the judgment in this famous case. Its surest basis is the long series of precedents, evincing that the natives of Jersey, Guernsey, Calais, and even Normandy and Guienne, while these countries appertained to the kings of England, though not in right of its crown, were never reputed aliens.

* The house had lately expelled sir Christopher Pigott for reflecting on the Scots nation in a speech. *Journals*, 13th Feb. 1607.

blood, and have my passions and affections as other men ; I pray you do not too far move me to do that which my power may tempt me unto." *

It is most probable, as experience had shown, that such a demonstration of displeasure from Elizabeth would have ensured the repentant submission of the commons. But within a few years of the most unbroken tranquillity, there had been one of those changes of popular feeling, which a government is seldom observant enough to watch. Two springs had kept in play the machine of her administration, affection and fear ; attachment arising from the sense of dangers endured, and glory achieved for her people, tempered, though not subdued, by the dread of her stern courage and vindictive rigour. For James not a particle of loyal affection lived in the hearts of the nation, while his easy and pusillanimous, though choleric disposition, had gradually diminished those sentiments of apprehension which royal frowns used to excite. The commons, after some angry speeches, resolved to make known to the king through the speaker their desire, that he would listen to no private reports, but take his information of the house's meaning from themselves ; that he would give leave to such persons as he had blamed for their speeches to clear themselves in his hearing ; and that he would by some gracious message make known his intention that they should deliver their opinions with full liberty, and without fear. The speaker next day communicated a slight but civil answer he had received from the king, importing his wish to preserve their privileges, especially that of liberty of speech.† This, however, did not prevent his sending a message a few days afterwards, commenting on their debates, and on some

Continual bickerings between the crown and commons

* Commons' Journals, 366.

The journals are full of notes of these long discussions about the union in 1604, 1606, 1607, and even 1610. It is easy to perceive a jealousy that the prerogative by some means or other would be the gainer. The very change of name to Great Britain was objected to. One said, we cannot legislate for Great Britain, p. 186. Another, with more astonishing sagacity, feared that the king

might succeed, by what the lawyers call *remitter*, to the prerogatives of the British kings before Julius Cæsar, which would supersede Magna Charta, p. 185.

James took the title of King of Great Britain in the second year of his reign. Lord Bacon drew a well-written proclamation on that occasion. Bacon, i. 621. Rymer, xvi. 603. But it was, not long afterwards, abandoned.

† Commons' Journals, p. 370.

clauses they had introduced into the bill for the abolition of all hostile laws.* And a petition having been prepared by a committee under the house's direction for better execution of the laws against recusants, the speaker, on its being moved that the petition be read, said that his majesty had taken notice of the petition as a thing belonging to himself, concerning which it was needless to press him. This interference provoked some members to resent it, as an infringement of their liberties. The speaker replied that there were many precedents in the late queen's time, where she had restrained the house from meddling in politics of divers kinds. This, as a matter of fact, was too notorious to be denied. A motion was made for a committee "to search for precedents of ancient as well as later times that do concern any messages from the sovereign magistrate, king or queen of this realm, touching petitions offered to the house of commons." The king now interposed by a second message, that, though the petition were such as the like had not been read in the house, and contained matter whereof the house could not properly take knowledge, yet if they thought good to have it read, he was not against the reading. And the commons were so well satisfied with this concession, that no further proceedings were had; and the petition, says the journal, was at length, with general liking, agreed to sleep. In contained some strong remonstrances against ecclesiastical abuses, and in favour of the deprived and silenced puritans, but such as the house had often before in various modes brought forward.†

The ministry betrayed, in a still more pointed manner, their jealousy of any interference on the part of the commons with the conduct of public affairs in a business of a different nature. The pacification concluded with Spain in 1604, very much against the general wish †, had neither removed all

* P. 377.

† Commons' Journals, p. 384.

‡ James entertained the strange notion that the war with Spain ceased by his accession to the throne. By a proclamation dated 23d June, 1603, he permits his subjects to keep such ships as had been captured by them before the 24th April, but orders all taken since to be

restored to the owners. Rymer, xvi. 516. He had been used to call the Dutch rebels, and was probably kept with difficulty by Cecil from displaying his partiality still more outrageously. Carte, iii. 714. All the council, except this minister, are said to have been favourable to peace. Id. 938.

grounds of dispute between the governments, nor allayed the dislike of the nations. Spain advanced in that age the most posterous claims to an exclusive navigation beyond the tropic, and to the sole possession of the American continent; while the English merchants, mindful of the lucrative adventures of the queen's reign, could not be restrained from trespassing on the rich harvest of the Indies by contraband and sometimes piratical voyages. These conflicting interests led of course to mutual complaints of maritime tyranny and fraud; neither likely to be ill founded, where the one party was as much distinguished for the despotic exercise of vast power, as the other by boldness and cupidity. It was the prevailing bias of the king's temper to keep on friendly terms with Spain, or rather to court her with undisguised and impolitic partiality.* But this so much thwarted the prejudices of his subjects that no part perhaps of his administration had such a disadvantageous effect on his popularity. The merchants presented to the commons, in this session of 1607, a petition upon the grievances they sustained from Spain, entering into such a detail of alleged cruelties as was likely to exasperate that assembly. Nothing, however, was done for a considerable time, when, after receiving the report of a committee on the subject, the house prayed a conference with the lords. They, who acted in this and the preceding session as the mere agents of government, intimated in their reply, that they thought it an unusual matter for the commons to enter upon, and took time to consider about a conference. After some delay this was granted, and sir Francis Bacon reported its result to the lower house. The earl of Salisbury managed the conference on the part of the lords. The tenor of his speech, as reported by Bacon, is very remarkable. After discussing the merits of the petition, and considerably extenuating the wrongs imputed to Spain, he adverted to the circumstance of its being presented to the commons. The crown of England was invested,

* Winwood, vol. ii. 100. 152., &c. Birch's Negotiations of Edmond. If we may believe sir Charles Cornwallis, our ambassador at Madrid, "England never lost such an opportunity of win-

ning honour and wealth, as by relinquishing the war." The Spaniards were astonished how peace could have been obtained on such advantageous conditions. Winwood, p. 75.

he said, with an absolute power of peace and war ; and inferred, from a series of precedents which he vouched, that petitions made in parliament, intermeddling with such matters, had gained little success ; that great inconveniences must follow from the public debate of a king's designs, which, if they take wind, must be frustrated ; and that if parliaments have ever been made acquainted with matter of peace or war in a general way, it was either when the king and council conceived that it was material to have some declaration of the zeal and affection of the people, or else when they needed money for the charge of a war, in which case they should be sure enough to hear of it ; that the lords would make a good construction of the commons' desire, that it sprang from a forwardness to assist his majesty's future resolutions, rather than a determination to do that wrong to his supreme power which haply might appear to those who were prone to draw evil inferences from their proceedings. The earl of Northampton, who also bore a part in this conference, gave as one reason among others, why the lords could not concur in forwarding the petition to the crown, that the composition of the house of commons was in its first foundation intended merely to be of those that have their residence and vocation in the places for which they serve, and therefore to have a private and local wisdom according to that compass, and so not fit to examine or determine secrets of state which depend upon such variety of circumstances ; and although he acknowledged that there were divers gentlemen in the house of good capacity and insight into matters of state, yet that was the accident of the person, and not the intention of the place ; and things were to be taken in the institution, and not in the practice. The commons seem to have acquiesced in this rather contemptuous treatment. Several precedents indeed might have been opposed to those of the earl of Salisbury, wherein the commons, especially under Richard II. and Henry VI., had assumed a right of advising on matters of peace and war. But the more recent usage of the constitution did not warrant such an interference. It was, however, rather a bold assertion, that they were not the proper channel through which public grievances, or those

of so large a portion of the community as the merchants, ought to be represented to the throne.*

During the interval of two years and a half that elapsed before the commencement of the next session, a decision had occurred in the court of exchequer, which threatened the entire overthrow of our constitution. It had always been deemed the indispensable characteristic of a limited monarchy, however irregular and inconsistent might be the exercise of some prerogatives, that no money could be raised from the subject without the consent of the estates. This essential principle was settled in England, after much contention, by the statute entitled *Confirmatio Chartarum*, in the 25th year of Edward I. More comprehensive and specific in its expression than the Great Charter of John, it abolishes all "aids, tasks, and prises, unless by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed;" the king explicitly renouncing the custom he had lately set on wool. Thus the letter of the statute and the history of the times conspire to prove, that impositions on merchandise at the ports, to which alone the word prises was applicable, could no more be levied by the royal prerogative after its enactment, than internal taxes upon landed or moveable property, known in that age by the appellations of aids and tallages. But as the former could be assessed with great ease, and with no risk of immediate resistance, and especially as certain ancient customs were preserved by the statute†, so that a train of fiscal officers, and a scheme of

Impositions
on merchan-
dize without
consent of
parliament.

* Bacon, i. 663. ; Journals, p. 341. Carte says, on the authority of the French ambassador's despatches, that the ministry secretly put forward this petition of the commons in order to frighten the Spanish court into making compensation to the merchants, wherein they succeeded, iii. 766. This is rendered very improbable by Salisbury's behaviour. It was Carte's mistake to rely too much on the despatches he was permitted to read in the *Dépôt des Affaires Etrangères*; as if an ambassador were not liable to be deceived by rumours in a country of which he has in general too little knowledge to correct them.

† There was a duty on wool, wools, and leather, called magna, or sometimes antiqua custuma, which is said in Dyer to have been by prescription, and by the barons in Bates's case to have been imposed by the king's prerogative. As this existed before the 25th Edward I., it is not very material whether it were so imposed, or granted by parliament. During the discussion, however, which took place in 1610, a record was discovered of 3 Edw. I., proving it to have been granted par tous les grauntz del realme, par la prière des comunes des marchants de tout Engleterre. Hale, 146. The prisage of wines, or duty of two

regulations and restraints upon the export and import of goods, became necessary, it was long before the sovereigns of this kingdom could be induced constantly to respect this part of the law. Hence several remonstrances from the commons under Edward III. against the maletolts or unjust exactions upon wool, by which, if they did not obtain more than a promise of effectual redress, they kept up their claim, and perpetuated the recognition of its justice, for the sake of posterity. They became powerful enough to enforce it under Richard II., in whose time there is little clear evidence of illegal impositions; and from the accession of the house of Lancaster, it is undeniable that they ceased altogether. The grant of tonnage and poundage for the king's life, which from the time of Henry V. was made in the first parliament of every reign, might perhaps be considered as a tacit compensation to the crown for its abandonment of these irregular extortions.

Henry VII., the most rapacious, and Henry VIII., the most despotic, of English monarchs, did not presume to violate this acknowledged right. The first who had again recourse to this means of enhancing the revenue was Mary, who, in the year 1557, set a duty upon cloths exported beyond seas, and afterwards another on the importation of French wines. The former of those was probably defended by arguing, that there was already a duty on wool; and if cloth, which was wool manufactured, could pass free, there would be a fraud on the revenue. The merchants however did not acquiesce in this arbitrary imposition, and as soon as Elizabeth's accession gave hopes of a restoration of English government, they petitioned to be released from this burthen. The question appears, by a memorandum in Dyer's Reports, to have been extra-judicially referred to the judges, unless it were rather as assistants to the privy council that their opinion was demanded. This entry concludes abruptly, without any determination of the judges.* But we may presume, that if any

tons from every vessel, is considerably more ancient; but how the crown came by this right does not appear.

* Dyer, fol. 165. An argument of the great lawyer Plowden in this case of the

queen's increasing the duty on cloths is in the British Museum, Hargrave MSS. 32., and seems, as far as the difficult handwriting permitted me to judge, adverse to the prerogative.

such had been given in favour of the crown, it would have been made public. And that the majority of the bench would not have favoured this claim of the crown, we may strongly presume from their doctrine in a case of the same description, wherein they held the assessment of treble custom on aliens for violation of letters patent to be absolutely against the law.* The administration however would not release this duty, which continued to be paid under Elizabeth. She also imposed one upon sweet wines. We read of no complaint in parliament against this novel taxation; but it is alluded to by Bacon in one of his tracts during the queen's reign, as a grievance alleged by her enemies. He defends it, as laid only on a foreign merchandize, and a delicacy which might be forborne.† But considering Elizabeth's unwillingness to require subsidies from the commons, and the rapid increase of foreign traffic during her reign, it might be asked why she did not extend these duties to other commodities, and secure to herself no trifling annual revenue. What answer can be given, except that, aware how little any unparliamentary levying of money could be supported by law or usage, her ministers shunned to excite attention to these innovations which wanted hitherto the stamp of time to give them prescriptive validity? ‡

* This case I have had the good fortune to discover in one of Mr. Hargrave's MSS. in the Museum, 132. fol. 66. It is in the handwriting of chief justice Hyde (temp. Car. I.), who has written in the margin: "This is the report of a case in my lord Dyer's written original, but is not in the printed books." The reader will judge for himself why it was omitted, and why the entry of the former case breaks off so abruptly. "Philip and Mary granted to the town of Southampton that all malmsy wines should be landed at that port under penalty of paying treble custom. Some merchants of Venice having landed wines elsewhere, an information was brought against them in the exchequer, 1 Eliz., and argued several times in the presence of all the judges. Eight were of opinion against the letters patent, among whom Dyer and Catlin, chief justices, as well for the principal matter of restraint in the landing of

malmsies at the will and pleasure of the merchants, for that it was against the laws, statutes, and customs of the realm, Magna Charta, c. 30.; 9 E. 3.; 14 E. 3.; 25 E. 3. c. 2.; 27 E. 3.; 28 E. 3.; 2 R. 2. c. 1. and others, as also in the assessment of treble custom, *which is merely against the law*; also the prohibition above said was held to be private, and not public. But baron Lake e contra, and Browne J. censuit, deliberandum. And after, at an after meeting the same Easter term at Serjeants' Inn, it was resolved as above. And after by parliament, 5 Eliz., the patent was confirmed and affirmed against aliens."

† Bacon, i. 521.

‡ Hale's Treatise on the Customs, part 3.; in Hargrave's Collection of Law Tracts. See also the preface by Hargrave to Bates's case, in the State Trials, where this most important question is learnedly argued.

James had imposed a duty of five shillings per hundred-weight on currants, over and above that of two shillings and sixpence, which was granted by the statute of tonnage and poundage.* Bates, a Turkey merchant, having refused payment, an information was exhibited against him in the exchequer. Judgment was soon given for the crown. The courts of justice, it is hardly necessary to say, did not consist of men conscientiously impartial between the king and the subject; some corrupt with hope of promotion, many more fearful of removal, or awe-struck by the frowns of power. The speeches of chief baron Fleming, and of baron Clark, the only two that are preserved in Lane's Reports, contain propositions still worse than their decision, and wholly subversive of all liberty. "The king's power," it was said, "is double—ordinary and absolute; and these have several laws and ends. That of the ordinary is for the profit of particular subjects, exercised in ordinary courts, and called common law, which cannot be changed in substance without parliament. The king's absolute power is applied to no particular person's benefit, but to the general safety; and this is not directed by the rules of common law, but more properly termed policy and government, varying according to his wisdom for the common good; and all things done within those rules are lawful. The matter in question is matter of state, to be ruled according to policy by the king's extraordinary power. All customs (duties so-called) are the effects of foreign commerce; but all affairs of commerce and all treaties with foreign nations belong to the king's absolute power; he therefore who has power over the cause, must have it also over the effect. The sea-ports are the king's gates, which he may open and shut to whom he pleases." The ancient customs on wine and wool are asserted to have originated in the king's absolute power, and not in a grant of parliament; a point, whether true or not, of no great importance, if it were acknowledged, that many statutes had subsequently controlled this prerogative. But these judges impugned the

* He had previously published letters patent, setting a duty of six shillings and eight-pence a pound, in addition to two-pence already payable, on tobacco;

intended no doubt to operate as a prohibition of a drug he so much hated. Rymer, xvi. 602.

authority of statutes derogatory to their idol. That of 45 E. 3. c. 4., that no new imposition should be laid on wool or leather, one of them maintains, did not bind the king's successors; for the right to impose such duties was a principal part of the crown of England, which the king could not diminish. They extolled the king's grace in permitting the matter to be argued, commenting at the same time on the insolence shown in disputing so undeniable a claim. Nor could any judges be more peremptory in resisting an attempt to overthrow the most established precedents, than were these barons of king James's exchequer, in giving away those fundamental liberties which were the inheritance of every Englishman.*

The immediate consequence of this decision was a book of rates, published in July 1608, under the authority of the great seal, imposing heavy duties upon almost all merchandise.† But the judgment of the court of exchequer did not satisfy men jealous of the crown's encroachments. The imposition on currants had been already noticed as a grievance by the house of commons in 1606. But the king answered that the question was in a course for legal determination; and the commons themselves, which is worthy of remark, do not appear to have entertained any clear persuasion that the impost was contrary to law.‡ In the session, however, which began in February 1610, they had acquired new light by sifting the legal authorities, and instead of submitting their opinions to the courts of law, which were in truth little worthy of such deference, were the more provoked to remonstrate against the novel usurpation those servile men had endeavoured to prop up. Lawyers, as learned probably as most of the judges, were not wanting in their ranks. The illegality of impositions was shown in two elaborate speeches by Hakewill and Yelverton.§ And the country gentlemen, who, though less

Remonstrances against impositions in session of 1610.

* State Trials, ii. 371.

† Hale's Treatise on the Customs. These were perpetual, "to be for ever hereafter paid to the king and his successors, on pain of his displeasure." State Trials, 481.

‡ Journals, 295. 297.

§ Mr. Hakewill's speech, though long, will repay the diligent reader's trouble, as being a very luminous and masterly statement of this great argument. State Trials, ii. 407. The extreme inferiority of Bacon, who sustained the cause of prerogative, must be apparent to every

deeply versed in precedents, had too good sense not to discern that the next step would be to levy taxes on their lands, were delighted to find that there had been an old English constitution not yet abrogated, which would bear them out in their opposition. When the king therefore had intimated by a message, and afterwards in a speech, his command not to enter on the subject, couched in that arrogant tone of despotism which this absurd prince affected*, they presented a strong remonstrance against this inhibition; claiming "as an ancient, general, and undoubted right of parliament to debate freely all matters which do properly concern the subject; which freedom of debate being once foreclosed, the essence of the liberty of parliament is withal dissolved. For the judgment given by the exchequer, they take not on them to review it, but desire to know the reasons whereon it was grounded; especially as it was generally apprehended that the reasons of that judgment extended much farther, even to the utter ruin of the ancient liberty of this kingdom, and of the subjects' right of property in their lands and goods."† "The policy and constitution of this your kingdom (they say) appropriates unto the kings of this realm, with the assent of the parliament, as well the sovereign power of making laws, as that of taxing, or imposing upon the subjects' goods or merchandizes, as may not, without their consents, be altered or changed. This is the cause that the people of this kingdom, as they ever showed themselves faithful and

one. *Id.* 345. Sir John Davis makes somewhat a better defence; his argument is, that the king may lay an embargo on trade, so as to prevent it entirely, and consequently may annex conditions to it. *Id.* 399. But to this it was answered, that the king can only lay a temporary embargo, for the sake of some public good, not prohibit foreign trade altogether.

As to the king's prerogative of restraining foreign trade, see extracts from Hale's MS. *Treatise de Jure Coronæ*, in Hargrave's Preface to Collection of Law Tracts, p. xxx. &c. It seems to have been chiefly as to exportation of corn.

* Aikin's *Memoirs of James I.*, i. 350. This speech justly gave offence. "The

21st of this present (May, 1610)," says a correspondent of sir Ralph Winwood, "he made another speech to both the houses, but so little to their satisfaction, that I hear it bred generally much discomfort to see our monarchical power and royal prerogative strained so high, and made so transcendent every way, that if the practice should follow the positions, we are not likely to leave to our successors that freedom we received from our forefathers; nor make account of any thing we have longer than they list that govern." Winwood, iii. 175. The traces of this discontent appear in short notes of the debate. *Journals*, p. 430.

† *Journals*, 431.

loving to their kings, and ready to aid them, in all their just occasions, with voluntary contributions ; so have they been ever careful to preserve their own liberties and rights, when any thing hath been done to prejudice or impeach the same. And therefore when their princes, occasioned either by their wars, or their over-great bounty, or by any other necessity, have without consent of parliament set impositions, either within the land, or upon commodities either exported or imported by the merchants, they have, in open parliament, complained of it, in that it was done without their consents ; and thereupon never failed to obtain a speedy and full redress, without any claim made by the kings, of any power or prerogative in that point. And though the law of property be original, and carefully preserved by the common laws of this realm, which are as ancient as the kingdom itself ; yet these famous kings, for the better contentment and assurance of their loving subjects, agreed, that this old fundamental right should be further declared and established by act of parliament. Wherein it is provided, that no such charges should ever be laid upon the people, without their common consent, as may appear by sundry records of former times. We, therefore, your majesty's most humble commons assembled in parliament, following the example of this worthy case of our ancestors, and out of a duty of those for whom we serve, finding that your majesty, without advice or consent of parliament, hath lately, in time of peace, set both greater impositions, and far more in number, than any your noble ancestors did ever in time of war, have, with all humility, presumed to present this most just and necessary petition unto your majesty, that all impositions set without the assent of parliament may be quite abolished and taken away ; and that your majesty, in imitation likewise of your noble progenitors, will be pleased, that a law be made during this session of parliament, to declare that all impositions set, or to be set upon your people, their goods or merchandizes, save only by common consent in parliament, are and shall be void."* They proceeded accordingly, after a pretty long time occupied in searching for precedents, to pass a bill taking away impositions ; which,

* Somers Tracts, vol. ii. 159. ; in the Journals much shorter.

as might be anticipated, did not obtain the concurrence of the upper house.

The commons had reason for their apprehensions. This doctrine of the king's absolute power beyond the law had become current with all who sought his favour, and especially with the high church party. The convocation had in 1606 drawn up a set of canons, denouncing as erroneous a number of tenets hostile in their opinion to royal government. These canons, though never authentically published till a later age, could not have been secret. They consist of a series of propositions or paragraphs, to each of which an anathema of the opposite error is attached; deducing the origin of government from the patriarchal regimen of families, to the exclusion of any popular choice. In those golden days the functions both of king and priest were, as they term it, "the prerogatives of birth-right;" till the wickedness of mankind brought in usurpation, and so confused the pure stream of the fountain with its muddy runnels, that we must now look to prescription for that right which we cannot assign to primogeniture. Passive obedience in all cases without exception to the established monarch is inculcated.*

It is not impossible that a man might adopt this theory of the original of government, unsatisfactory as it appears on reflection, without deeming it incompatible with our mixed and limited monarchy. But its tendency was evidently in a contrary direction. The king's power was of God, that of the parliament only of man, obtained perhaps by rebellion; but out of rebellion what right could spring? Or were it even by voluntary concession, could a king alienate a divine

* These canons were published in 1690, from a copy belonging to bishop Overall, with Sancroft's imprimatur. The titlepage runs in an odd expression:—"Bishop Overall's Convocation-Book concerning the Government of God's Catholic Church and the Kingdoms of the whole World." The second canon is as follows:—"If any man shall affirm that men at the first ran up and down in woods and fields, &c. until they were taught by experience the necessity of government; and that therefore they

chose some among themselves to order and rule the rest, giving them power and authority so to do; and that consequently all civil power, jurisdiction, and authority, was first derived from the people and disordered multitude, or either is originally still in them, or else is deduced by their consent naturally from them, and is not God's ordinance, originally descending from him and depending upon him, he doth greatly err." P. 3.

gift, and infringe the order of Providence? Could his grants, if not in themselves null, avail against his posterity, heirs like himself under the great feoffment of creation? These consequences were at least plausible; and some would be found to draw them. And indeed if they were never explicitly laid down, the mere difference of respect with which mankind could not but contemplate a divine and human, a primitive or paramount, and a derivative authority, would operate as a prodigious advantage in favour of the crown.

The real aim of the clergy in thus enormously enhancing the pretensions of the crown was to gain its sanction and support for their own. Schemes of ecclesiastical jurisdiction, hardly less extensive than had warmed the imagination of Becket, now floated before the eyes of his successor Bancroft. He had fallen indeed upon evil days, and perfect independence on the temporal magistrate could no longer be attempted; but he acted upon the refined policy of making the royal supremacy over the church, which he was obliged to acknowledge, and professed to exaggerate, the very instrument of its independence upon the law. The favourite object of the bishops in this age was to render their ecclesiastical jurisdiction, no part of which had been curtailed in our hasty reformation, as unrestrained as possible by the courts of law. These had been wont, down from the reign of Henry II., to grant writs of prohibition, whenever the spiritual courts transgressed their proper limits; to the great benefit of the subject, who would otherwise have lost his birthright of the common law, and been exposed to the defective, not to say iniquitous and corrupt, procedure of the ecclesiastical tribunals. But the civilians, supported by the prelates, loudly complained of these prohibitions, which seem to have been much more frequent in the latter years of Elizabeth and the reign of James, than in any other period. Bancroft accordingly presented to the star-chamber, in 1605, a series of petitions in the name of the clergy, which lord Coke has denominated *Articuli Cleri*, by analogy to some similar representations of that order under Edward II.*

*Articuli
Cleri.* 324

* Coke's 2d Institute, 601. Collier, 1611, (Strype's Life of Whitgift, Appendix, 227.) wherein he inveighs against the common lawyers and the parliament.

In these it was complained that the courts of law interfered by continual prohibitions with a jurisdiction as established and as much derived from the king as their own, either in cases which were clearly within that jurisdiction's limits, or on the slightest suggestion of some matter belonging to the temporal court. It was hinted that the whole course of granting prohibitions was an encroachment of the king's bench and common pleas, and that they could regularly issue only out of chancery. To each of these articles of complaint, extending to twenty-five, the judges made separate answers, in a rough, and, some might say, a rude style, but pointed and much to the purpose; vindicating in every instance their right to take cognisance of every collateral matter springing out of an ecclesiastical suit, and repelling the attack upon their power to issue prohibitions, as a strange presumption. Nothing was done, nor, thanks to the firmness of the judges, could be done, by the council in this respect. For the clergy had begun by advancing that the king's authority was sufficient to reform what was amiss in any of his own courts, all jurisdiction spiritual and temporal being annexed to his crown. But it was positively and repeatedly denied in reply, that any thing less than an act of parliament could alter the course of justice established by law. This effectually silenced the archbishop, who knew how little he had to hope from the commons. By the pretensions made for the church in this affair, he exasperated the judges, who had been quite sufficiently disposed to second all rigorous measures against the puritan ministers, and aggravated that jealousy of the ecclesiastical courts which the common lawyers had long entertained.

An opportunity was soon given to those who disliked the civilians, that is, not only to the common lawyers, but to all the patriots and puritans in England, by an imprudent publication of a doctor Cowell. This man, in a law dictionary dedicated to Bancroft, had thought fit to insert passages of a tenor conformable to the new creed of the king's absolute or arbitrary power. Under the title King, it is said: — "He is above the law by his absolute power; and though for the better and equal course in making laws he do admit the three estates unto council, yet this in divers learned men's opinion is not of constraint, but of his

Cowell's Interpreter.

own benignity, or by reason of the promise made upon oath at the time of his coronation. And though at his coronation he take an oath not to alter the laws of the land, yet this oath notwithstanding, he may alter or suspend any particular law that seemeth hurtful to the public estate. Thus much in short, because I have heard some to be of opinion that the laws are above the king." And in treating of the Parliament, Cowell observes: "Of these two one must be true, either that the king is above the parliament, that is, the positive laws of his kingdom, or else that he is not an absolute king. And therefore though it be a merciful policy and also a politic mercy, not alterable without great peril, to make laws by the consent of the whole realm, because so no part shall have cause to complain of a partiality, yet simply to bind the prince to or by these laws were repugnant to the nature and constitution of an absolute monarchy." It is said again, under the title Prerogative, that "the king, by the custom of this kingdom, maketh no laws without the consent of the three estates, though he may quash any law concluded of by them;" and that he "holds it incontrollable, that the king of England is an absolute king."*

Such monstrous positions from the mouth of a man of learning and conspicuous in his profession, who was surmised to have been instigated as well as patronised by the archbishop, and of whose book the king was reported to have spoken in terms of eulogy, gave very just scandal to the house of commons. They solicited and obtained a conference with the lords, which the attorney-general, sir Francis Bacon, managed on the part of the lower house; a remarkable proof of his adroitness and pliancy. James now discovered that it was necessary to sacrifice this too unguarded advocate of prerogative: Cowell's book was suppressed by proclamation, for which the commons returned thanks, with great joy at their victory.†

* Cowell's Interpreter, or Law Dictionary; edit. 1607. These passages are expunged in the later editions of this useful book. What the author says of the writ of prohibition, and the statutes of præmunire, under these words, was very invidious towards the common lawyers, treating such restraints upon the

ecclesiastical jurisdiction as necessary in former ages, but now become useless since the annexation of the supremacy to the crown.

† Commons' Journals, 339., and afterwards to 415. The authors of the Parliamentary History say there is no further mention of the business after the

It is the evident policy of every administration, in dealing with the house of commons, to humour them in every thing that touches their pride and tenaciousness of privilege, never attempting to protect any one who incurs their displeasure by want of respect. This seems to have been understood by the earl of Salisbury, the first English minister who, having long sat in the lower house, had become skilful in those arts of management which his successors have always reckoned so essential a part of their mystery. He wanted a considerable sum of money to defray the king's debts, which, on his coming into the office of lord treasurer after lord Buckhurst's death, he had found to amount to 1,300,000*l.*, about one third of which was still undischarged. The ordinary expense also surpassed the revenue by 81,000*l.* It was impossible that this could continue, without involving the crown in such embarrassments as would leave it wholly at the mercy of parliament. Cecil therefore devised the scheme of obtaining a perpetual yearly revenue of 200,000*l.*, to be granted once for all by parliament; and the better to incline the house to this high and extraordinary demand, he promised in the king's name to give all the redress and satisfaction in his power for any grievances they might bring forward.*

This offer on the part of government seemed to make an opening for a prosperous adjustment of the differences which had subsisted ever since the king's accession. The commons accordingly, postponing the business of a subsidy, to which the courtiers wished to give priority, brought forward a host of their accustomed grievances in ecclesiastical and temporal concerns. The most essential was undoubtedly that of impositions, which they sent up a bill to the lords, as above mentioned, to take away. They next complained of the ecclesiastical high commission court, which took upon itself to fine and imprison, powers not belonging to their jurisdiction, and passed sen-

conference, overlooking the most important circumstance, the king's proclamation suppressing the book, which yet is mentioned by Rapin and Carte, though the latter makes a false and disingenuous excuse for Cowell. Vol. iii. p. 798. Se-

veral passages concerning this affair occur in Winwood's Memorials, to which I refer the curious reader. Vol. iii. p. 125. 129. 131. 136. 137. 145. }

* Winwood, iii. 123.

Renewed
complaints of
the com-
mons.

tences without appeal, interfering frequently with civil rights, and in all its procedure neglecting the rules and precautions of the common law. They dwelt on the late abuse of proclamations assuming the character of laws. "Amongst many other points of happiness and freedom," it is said, "which your majesty's subjects of this kingdom have enjoyed under your royal progenitors, kings and queens of this realm, there is none which they have accounted more dear and precious than this, to be guided and governed by the certain rule of the law, which giveth both to the head and members that which of right belongeth to them, and not by any uncertain or arbitrary form of government, which, as it hath proceeded from the original good constitution and temperature of this estate, so hath it been the principal means of upholding the same, in such sort as that their kings have been just, beloved, happy, and glorious, and the kingdom itself peaceable, flourishing, and durable so many ages. And the effect, as well of the contentment that the subjects of this kingdom have taken in this form of government, as also of the love, respect, and duty which they have by reason of the same rendered unto their princes, may appear in this, that they have, as occasion hath required, yielded more extraordinary and voluntary contribution to assist their kings, than the subjects of any other known kingdom whatsoever. Out of this root hath grown the indubitable right of the people of this kingdom, not to be made subject to any punishment that shall extend to their lives, lands, bodies, or goods, other than such as are ordained by the common laws of this land, or the statutes made by their common consent in parliament. Nevertheless, it is apparent, both that proclamations have been of late years much more frequent than heretofore, and that they are extended, not only to the liberty, but also to the goods, inheritances, and livelihood of men; some of them tending to alter some points of the law, and make a new; other some made, shortly after a session of parliament for matter directly rejected in the same session; other appointing punishments to be inflicted before lawful trial and conviction; some containing penalties in form of penal statutes; some referring the punishment of offenders to courts of arbitrary discretion, which have laid

heavy and grievous censures upon the delinquents; some, as the proclamation for starch, accompanied with letters commanding enquiry to be made against the transgressors at the quarter-sessions; and some vouching former proclamations to countenance and warrant the later, as by a catalogue here underwritten more particularly appeareth. By reason whereof there is a general fear conceived and spread amongst your majesty's people, that proclamations will, by degrees, grow up, and increase to the strength and nature of laws; whereby not only that ancient happiness, freedom, will be much blemished (if not quite taken away), which their ancestors have so long enjoyed; but the same may also (in process of time) bring a new form of arbitrary government upon the realm: and this their fear is the more increased by occasion of certain books lately published, which ascribe a greater power to proclamations than heretofore had been conceived to belong unto them; as also of the care taken to reduce all the proclamations made since your majesty's reign into one volume, and to print them in such form as acts of parliament formerly have been, and still are used to be, which seemeth to imply a purpose to give them more reputation and more establishment than heretofore they have had."*

They proceed, after a list of these illegal proclamations, to enumerate other grievances, such as the delay of courts of law in granting writs of prohibition and habeas corpus, the jurisdiction of the council of Wales over the four bordering shires of Gloucester, Worcester, Hereford, and Salop †,

* Somers Tracts, ii. 162. State Trials, ii. 519.

† The court of the council of Wales was erected by statute 34 H. 8. c. 26. for that principality and its marches, with authority to determine such causes and matters as should be assigned to them by the king, "as heretofore hath been accustomed and used;" which implies a previous existence of some such jurisdiction. It was pretended, that the four counties of Hereford, Worcester, Gloucester, and Salop, were included within their authority, as marches of Wales. This was controverted in the reign of James by the inhabitants of these counties, and on reference to the twelve judges, according to lord Coke, it was

resolved that they were ancient English shires, and not within the jurisdiction of the council of Wales; "and yet," he subjoins, "the commission was not after reformed in all points as it ought to have been." Fourth Inst. 242. An elaborate argument in defence of the jurisdiction may be found in Bacon, ii. 122. And there are many papers on this subject in Cotton MSS. Vitellius, C. i. The complaints of this enactment had begun in the time of Elizabeth. It was alleged that the four counties had been reduced from a very disorderly state to tranquillity by means of the council's jurisdiction. But if this were true, it did not furnish a reason for continuing to exclude them from the general privileges

some patents of monopolies, and a tax under the name of a licence recently set upon victuallers. The king answered these remonstrances with civility, making, as usual, no concession with respect to the ecclesiastical commission, and evading some of their other requests; but promising that his proclamations should go no farther than was warranted by law, and that the royal licences to victuallers should be revoked.

It appears that the commons, deeming these enumerated abuses contrary to law, were unwilling to chaffer with the crown for the restitution of their actual rights. There were, however, parts of the prerogative which they could not dispute, though galled by the burthen; the incidents of feudal tenure and purveyance. A negotiation was accordingly commenced and carried on for some time with the court, for abolishing both these, or at least the former. The king, though he refused to part with tenure by knight's service, which he thought connected with the honour of the monarchy, was induced, with some real or pretended reluctance, to give up its lucrative incidents, relief, primer seisin, and wardship, as well as the right of purveyance. But material difficulties recurred in the prosecution of this treaty. Some were apprehensive, that the validity of a statute cutting off such ancient branches of prerogative might hereafter be called in question; especially if the root from which they sprung, tenure in capite, should still remain. The king's demands, too, seemed exorbitant. He asked 200,000*l.* as a yearly revenue over and above 100,000*l.*, at which his wardships were valued, and which the commons were content to give. After some days' pause upon this proposition, they represented to the lords, with whom, through committees of conference, the whole matter had been discussed, that if such a sum were to be levied on those only who had lands subject to wardship, it would be a burthen they could not endure; and that if it were imposed equally on the kingdom, it would cause more offence and commotion in the people than they could risk. After a good deal of haggling, Salisbury delivered the king's final determination to accept of 200,000*l.*

Negotiation
for giving up
the feudal
revenue.

of the common law, after the necessity determined not to concede this point had ceased. The king, however, was Carte, iii. 794.

per annum, which the commons voted to grant as a full composition for abolishing the right of wardship, and dissolving the court that managed it, and for taking away all purveyance; with some further concessions, and particularly, that the king's claim to lands should be bound by sixty years' prescription. Two points yet remained, of no small moment; namely, by what assurance they could secure themselves against the king's prerogative, so often held up by court lawyers as something uncontrollable by statute, and by what means so great an imposition should be levied; but the consideration of these was reserved for the ensuing session, which was to take place in October.* They were prorogued in July till that month, having previously granted a subsidy for the king's immediate exigencies. On their meeting again, the lords began the business by requesting a conference with the other house about the proposed contract. But it appeared that the commons had lost their disposition to comply. Time had been given them to calculate the disproportion of the terms, and the perpetual burthen that lands held by knight's service must endure. They had reflected too on the king's prodigal humour, the rapacity of the Scots in his service, and the probability that this additional revenue would be wasted without sustaining the national honour, or preventing future applications for money. They saw that after all the specious promises by which they had been led on, no redress was to be expected as to those grievances they had most at heart; that the ecclesiastical courts would not be suffered to lose a jot of their jurisdiction, that illegal customs were still to be levied at the out-ports, that proclamations were still to be enforced like acts of parliament. Great coldness accordingly was displayed in their proceedings; and in a short time, this distinguished parliament, after sitting nearly seven years, was dissolved by proclamation.†

Dissolution
of parlia-
ment.

* Commons' Journals for 1610, passim. Lords' Journals, 7th May, et post. Parl. Hist. 1124. et post. Bacon, i. 676. Winwood, iii. 119. et post.

† It appears by a letter of the king, in Murden's State Papers, p. 813., that some indecent allusions to himself in the house of commons had irritated him. "Wherein we have misbehaved ourselves,

we know not, nor we can never yet learn; but sure we are, we may say with Bellarmin in his book, that in all the lower houses these seven years past, especially these two last sessions, *Ego punctor, ego carpor*. Our fame and actions have been tossed like tennis-balls among them, and all that spite and malice durst do to disgrace and inflame us hath been

It was now perhaps too late for the king, by any reform or concession, to regain that public esteem which he had forfeited. Deceived by an overweening opinion of his own learning, which was not inconsiderable, of his general abilities, which were far from contemptible, and of his capacity for government, which was very small, and confirmed in this delusion by the disgraceful flattery of his courtiers and bishops, he had wholly overlooked the real difficulties of his position; as a foreigner, rather distantly connected with the royal stock, and as a native of a hostile and hateful kingdom, come to succeed the most renowned of sovereigns, and to grasp a sceptre which deep policy and long experience had taught her admirably to wield.* The people were proud of martial glory, he spoke only of the blessing of the peacemakers; they abhorred the court of Spain, he sought its friendship; they asked indulgence for scrupulous consciences, he would bear no deviation from conformity; they writhed under the yoke of the bishops, whose power he thought necessary to his own; they were animated by a persecuting temper towards the catholics, he was averse to extreme rigour; they had been used to the utmost frugality in dispensing the public treasure, he squandered it on unworthy favourites; they had seen at least exterior decency of morals prevail in the queen's court, they now heard only of its dissoluteness and extravagance†; they had imbibed an exclusive fondness for the common law as the source of their liberties and privileges; his churchmen and courtiers, but none more than

Character of James.

used. To be short, this lower house by their behaviour have perilled and annoyed our health, wounded our reputation, emboldened all ill-natured people, encroached upon many of our privileges, and plagued our people with their delays. It only resteth now, that you labour all you can to do that you think best to the repairing of our estate."

* "Your queen," says lord Thomas Howard, in a letter, "did talk of her subjects' love and good affection, and in good truth she aimed well; our king talketh of his subjects' fear and subjection, and herein I think he doth well too, as long as it holdeth good." *Nugæ Antiquæ*, i. 395.

† The court of James I. was incomparably the most disgraceful scene of profligacy which this country has ever witnessed; equal to that of Charles II. in the laxity of female virtue, and without any sort of parallel in some other respects. Gross drunkenness is imputed even to some of the ladies who acted in the court pageants, *Nugæ Antiquæ*, i. 348., which Mr. Gifford, who seems absolutely enraptured with this age and its manners, might as well have remembered. *Life of Ben Jonson*, p. 231, &c. The king's prodigality is notorious.

himself, talked of absolute power and the imprescriptible rights of monarchy.*

James lost in 1611 his son prince Henry, and in 1612 the lord treasurer Salisbury. He showed little regret for the former, whose high spirit and great popularity afforded a mortifying contrast; especially as the young prince had not taken sufficient pains to disguise his contempt for his father.† Salisbury was a very able man, to whom perhaps his contemporaries did some injustice. The ministers of weak and wilful monarchs are made answerable for the mischiefs they are compelled to suffer, and gain no credit for those which they prevent. Cecil had made personal enemies of those who had loved Essex or admired Raleigh, as well as those who looked invidiously on his elevation. It was believed that the desire shown by the house of commons to abolish the feudal wardships, proceeded in a great measure from the circumstance that this obnoxious minister was master of the court of wards; an office both lucrative and productive of much influence. But he came into the scheme of abolishing it with a readiness that did him credit. His chief praise, however, was his management of continental relations. The only minister of James's cabinet who had been trained in the councils of Elizabeth, he retained some of her jealousy of Spain, and of her regard for the protestant interests. The court of Madrid, aware both of the king's pusillanimity and of his favourable dispositions, affected a tone in the conferences held in 1604 about a treaty of peace, which Elizabeth would have resented in a very different manner.‡ On this occasion, he not only deserted the United

Death of lord
Salisbury.

Foreign poli-
tics of the
government.

* "It is atheism and blasphemy," he says, in a speech made in the star-chamber, 1616, "to dispute what God can do; good Christians content themselves with his will revealed in his word: so it is presumption and high contempt in a subject to dispute what a king can do, or say that a king cannot do this or that." King James's Works, p. 557.

It is probable that his familiar conversation was full of this rodomontade, disgusting and contemptible from so wretched a pedant, as well as offensive to the indignant ears of those who knew

and valued their liberties. The story of bishops Neile and Andrews is far too trite for repetition.

† Carte, iii. 747. Birch's Life of P. Henry, 405. Rochester, three days after, directed sir Thomas Edmondes at Paris to commence a negotiation for a marriage between prince Charles and the second daughter of the late king of France. But the ambassador had more sense of decency, and declined to enter on such an affair at that moment.

‡ Winwood, vol. ii. Carte, iii. 749. Watson's Hist. of Philip III., Appendix.

Provinces, but gave hopes to Spain that he might, if they persevered in their obstinacy, take part against them. Nor have I any doubt that his blind attachment to that power would have precipitated him into a ruinous connexion, if Cecil's wisdom had not influenced his councils. During this minister's life, our foreign politics seem to have been conducted with as much firmness and prudence as his master's temper would allow; the mediation of England was of considerable service in bringing about the great truce of twelve years between Spain and Holland in 1609; and in the dispute which sprang up soon afterwards concerning the succession to the duchies of Cleves and Juliers, a dispute which threatened to mingle in arms the catholic and protestant parties throughout Europe*, our councils were full of a vigour and promptitude unusual in this reign; nor did any thing but the assassination of Henry IV. prevent the appearance of an English army in the Netherlands. It must at least be confessed that the king's affairs, both at home and abroad, were

In some passages of this negotiation Cecil may appear not wholly to have deserved the character I have given him for adhering to Elizabeth's principles of policy. But he was placed in a difficult position, not feeling himself secure of the king's favour, which, notwithstanding his great previous services, that capricious prince, for the first year after his accession, rather sparingly afforded; as appears from the *Memoirs of Sully*, l. 14., and *Nugæ Antiquæ*, i. 345. It may be said that Cecil was as little Spanish, just as Walpole was as little Hanoverian, as the partialities of their respective sovereigns would permit, though too much so in appearance for their own reputation. It is hardly necessary to observe, that James and the kingdom were chiefly indebted to Cecil for the tranquillity that attended the accession of the former to the throne. I will take this opportunity of noticing that the learned and worthy compiler of the catalogue of the Lansdowne manuscripts in the Museum has thought fit not only to charge sir Michael Hicks with venality, but to add: — "It is certain that articles among these papers contribute to justify very strong suspicions, that neither of the secretary's masters [lord Burleigh and lord Salisbury] was altogether innocent on the score of

corruption." *Lansd. Cat.* vol. xci. p. 45. This is much too strong an accusation to be brought forward without more proof than appears. It is absurd to mention presents of fat bucks to men in power as bribes; and rather more so to charge a man with being corrupted because an attempt is made to corrupt him, as the catalogue-maker has done in this place. I would not offend this respectable gentleman; but by referring to many of the Lansdowne manuscripts I am enabled to say that he has travelled frequently out of his province, and substituted his conjectures for an analysis or abstract of the document before him.

* A great part of Winwood's third volume relates to this business, which, as is well known, attracted a prodigious degree of attention throughout Europe. The question, as Winwood wrote to Salisbury, was "not of the succession of Cleves and Juliers, but whether the house of Austria and the Church of Rome, both now on the wane, shall recover their lustre and greatness in these parts of Europe." P. 378. James wished to have the right referred to his arbitration, and would have decided in favour of the elector of Brandenburg, the chief protestant competitor.

far worse conducted after the death of the earl of Salisbury than before.*

The administration found an important disadvantage, about this time, in a sort of defection of sir Edward Coke (more usually called lord Coke), chief-justice of the king's bench, from the side of prerogative. He was a man of strong, though narrow, intellect; confessedly the greatest master of English law that had ever appeared; but proud and overbearing, a flatterer and tool of the court till he had obtained his ends, and odious to the nation for the brutal manner in which, as attorney-general, he had behaved towards sir Walter Raleigh on his trial. In raising him to the post of chief-justice, the council had of course relied on finding his unfathomable stores of precedent subservient to their purposes. But soon after his promotion, Coke, from various causes, began to steer a more independent course. He was little formed to endure a competitor in his own profession, and lived on ill terms both with the lord chancellor Egerton, and with the attorney-general, sir Francis Bacon. The latter had long been his rival and enemy. Discouraged by Elizabeth, who, against the importunity of Essex, had raised Coke over his head, that great and aspiring genius was now high in the king's favour. The chief-justice affected to look down on one as inferior to him in knowledge of our municipal law, as he was superior in all other learning and in all the philosophy of jurisprudence. And the mutual enmity of these illustrious men never ceased till each in his turn satiated his revenge by the other's fall. Coke was also much offended by the attempts of the bishops to emancipate their ecclesiastical courts from the civil jurisdiction. I have already mentioned the peremptory tone in which he repelled Bancroft's *Articuli Cleri*. But as the king and some of the council rather favoured these episcopal pretensions, they were troubled by what they deemed his obstinacy, and discovered

* Winwood, vols. ii. and iii. *passim*. Birch, that accurate master of this part of English history, has done justice to Salisbury's character. *Negotiations of Edmondson*, p. 347. Miss Aikin, looking to his want of constitutional principle, is

more unfavourable, and in that respect justly; but what statesman of that age was ready to admit the new creed of parliamentary control over the executive government? *Memoirs of James*, i. 395.

more and more that they had to deal with a most impracticable spirit.

It would be invidious to exclude from the motives that altered lord Coke's behaviour in matters of prerogative his real affection for the laws of the land, which novel systems, broached by the churchmen and civilians, threatened to subvert.* In Bates's case, which seems to have come in some shape extra-judicially before him, he had delivered an opinion in favour of the king's right to impose at the out-ports; but so cautiously guarded, and bottomed on such different grounds from those taken by the barons of the exchequer, that it could not be cited in favour of any fresh encroachments.† He now performed a great service to his country. The practice of issuing proclamations, by way of temporary regulation indeed, but interfering with the subject's ^{illegal pro-}liberty, in cases unprovided for by parliament, had grown ^{clamations.} still more usual than under Elizabeth. Coke was sent for to attend some of the council, who might perhaps have reason to conjecture his sentiments; and it was demanded whether the king, by his proclamation, might prohibit new buildings about London, and whether he might prohibit the making of starch from wheat. This was during the session of parliament in 1610, and with a view to what answer the king should make to the commons' remonstrance against these proclamations. Coke replied, that it was a matter of great

* "On Sunday, before the king's going to Newmarket (which was Sunday last was a se'nnight), my lord Coke and all the judges of the common law were before his majesty to answer some complaints made by the civil lawyers for the general granting of prohibitions. I heard that the lord Coke, amongst other offensive speech, should say to his majesty that his highness was defended by his laws. At which saying, with other speech then used by the lord Coke, his majesty was very much offended, and told him he spoke foolishly, and said that he was not defended by his laws, but by God; and so gave the lord Coke, in other words, a very sharp reprehension, both for that and other things; and withal told him that sir Thomas Crompton [judge of the admiralty] was as good a man as Coke; my lord Coke having then, by way of exception, used some

speech against sir Thomas Crompton. Had not my lord treasurer, most humbly on his knee, used many good words to pacify his majesty and to excuse that which had been spoken, it was thought his highness would have been much more offended. In the conclusion, his majesty, by means of my lord treasurer, was well pacified, and gave a gracious countenance to all the other judges, and said he would maintain the common law." Lodge, iii. 364. This letter is dated 25th November, 1608, which shows how early Coke had begun to give offence by his zeal for the law.

† 12 Reports. In his second Institute, p. 57., written a good deal later, he speaks in a very different manner of Bates's case, and declares the judgment of the court of exchequer to be contrary to law.

importance, on which he would confer with his brethren. "The chancellor said, that every precedent had first a commencement, and he would advise the judges to maintain the power and prerogative of the king; and in cases wherein there is no authority and precedent, to leave it to the king to order in it according to his wisdom and for the good of his subjects, or otherwise the king would be no more than the duke of Venice; and that the king was so much restrained in his prerogative, that it was to be feared the bonds would be broken. And the lord privy-seal (Northampton) said, that the physician was not always bound to a precedent, but to apply his medicine according to the quality of the disease; and all concluded that it should be necessary at that time to confirm the king's prerogative with our opinions, although that there were not any former precedent or authority in law; for every precedent ought to have a commencement. To which I answered, that true it is that every precedent ought to have a commencement; but when authority and precedent is wanting, there is need of great consideration before that any thing of novelty shall be established, and to provide that this be not against the law of the land; for I said that the king cannot change any part of the common law, nor create any offence by his proclamation which was not an offence before, without parliament. But at this time I only desired to have a time of consultation and conference with my brothers." This was agreed to by the council, and three judges, besides Coke, appointed to consider it. They resolved that the king, by his proclamation, cannot create any offence which was not one before; for then he might alter the law of the land in a high point; for if he may create an offence where none is, upon that ensues fine and imprisonment. It was also resolved that the king hath no prerogative but what the law of the land allows him. But the king, for the prevention of offences, may by proclamation admonish all his subjects that they keep the laws and do not offend them, upon punishment to be inflicted by the law; and the neglect of such proclamation, Coke says, aggravates the offence. Lastly, they resolved that if an offence be not punishable in the star-chamber, the prohibition of it by proclamation cannot make it so. After this resolution, the report goes on to remark,

no proclamation imposing fine and imprisonment was made.*

By the abrupt dissolution of parliament James was left nearly in the same necessity as before; their subsidy being by no means sufficient to defray his expenses, far less to discharge his debts. He had frequently betaken himself to the usual resource of applying to private subjects, especially rich merchants, for loans of money. These loans, which bore no interest, and for the repayment of which there was no security, disturbed the prudent citizens; especially as the council used to solicit them with a degree of importunity at least bordering on compulsion. The house of commons had in the last session requested that no one should be bound to lend money to the king against his will. The king had answered that he allowed not of any precedents from the time of usurping or decaying princes, or people too bold and wanton; that he desired not to govern in that commonwealth where the people should be assured of every thing and hope for nothing, nor would he leave to posterity such a mark of weakness on his reign; yet, in the matter of loans, he would refuse no reasonable excuse. † Forced loans or benevolences were directly prohibited by an act of Richard III., whose laws, however the court might

Means resorted to in order to avoid the meeting of parliament.

* 12 Reports. There were, however, several proclamations afterwards to forbid building within two miles of London, except on old foundations, and in that case only with brick or stone, under penalty of being proceeded against by the attorney-general in the star-chamber. Rymer, xvii. 107. (1618), 144. (1619), 607. (1624). London nevertheless increased rapidly, which was by means of licenses to build; the prohibition being in this, as in many other cases, enacted chiefly for the sake of the dispensations.

James made use of proclamations to infringe personal liberty in another respect. He disliked to see any country-gentleman come up to London, where, it must be confessed, if we trust to what those proclamations assert and the memoirs of the age confirm, neither their own behaviour, nor that of their wives and daughters, who took the worst means of repairing the ruin their extravagance had caused, redounded to their honour.

The king's comparison of them to ships in a river and in the sea is well known. Still, in a constitutional point of view, we may be startled at proclamations commanding them to return to their country-houses and maintain hospitality, on pain of condign punishment. Rymer, xvi. 517. (1604); xvii. 417. (1622), 632. (1624).

I neglected, in the first chapter, the reference I had made to an important dictum of the judges in the reign of Mary, which is decisive as to the legal character of proclamations even in the midst of the Tudor period. "The king, it is said, may make a proclamation, quoad terrorem populi, to put them in fear of his displeasure, but not to impose any fine, forfeiture, or imprisonment; for no proclamation can make a new law, but only confirm and ratify an ancient one." Dalison's Reports, 20.

† Winwood, iii. 193.

sometimes throw a slur upon his usurpation, had always been in the statute-book. After the dissolution of 1610, James attempted as usual to obtain loans; but the merchants, grown bolder with the spirit of the times, refused him the accommodation.* He had recourse to another method of raising money, unprecedented, I believe, before his reign, though long practised in France, the sale of honours. He sold several peerages for considerable sums, and created a new order of hereditary knights, called baronets, who paid 1000*l.* each for their patents.†

Such resources, however, being evidently insufficient and temporary, it was almost indispensable to try once more the temper of a parliament. This was strongly urged by Bacon, whose fertility of invention rendered him constitutionally sanguine of success. He submitted to the king that there were expedients for more judiciously managing a house of commons, than Cecil, upon whom he was too willing to throw blame, had done with the last; that some of those who had been most forward in opposing were now won over, such as Neville, Yelverton, Hyde, Crew, Dudley Digges; that much might be done by forethought towards filling the house with well-affected persons, winning or blinding the lawyers, whom he calls "the-literæ vocales of the house," and drawing the chief constituent bodies of the assembly, the country gentlemen, the merchants, the courtiers, to act for the king's advantage; that it would be expedient to tender voluntarily certain graces and modifications of the king's prerogative, such as might with smallest injury be conceded, lest they should be first demanded, and in order to save more important points.‡ This advice was seconded by sir Henry Neville, an ambitious man, who had narrowly escaped in the queen's time for having tampered in Essex's conspiracy, and

* Carte, iii. 805.

† The number of these was intended to be two hundred, but only ninety-three patents were sold in the first six years. Lingard, ix. 203., from Somers Tracts. In the first part of his reign he had availed himself of an old feudal resource, calling on all who held 40*l.* a year in chivalry (whether of the crown or not, as it seems) to receive knighthood, or to

pay a composition. Rymer, xvi. 530. The object of this was of course to raise money from those who thought the honour troublesome and expensive, but such as chose to appear could not be refused; and this accounts for his having made many hundred knights in the first year of his reign. Harris's Life of James, 69.

‡ MS. penes autorem.

had much promoted the opposition in the late parliament, but was now seeking the post of secretary of state. He advised the king, in a very sensible memorial, to consider what had been demanded, and what had been promised in the last session, granting the more reasonable of the commons' requests, and performing all his own promises; to avoid any speech likely to excite irritation; and to seem confident of the parliament's good affections, not waiting to be pressed for what he meant to do.* Neville and others, who, like him, professed to understand the temper of the commons, and to facilitate the king's dealings with them, were called *undertakers*.† This circumstance, like several Under-takers. others in the present reign, is curious, as it shows the rise of a systematic parliamentary influence, which was one day to become the mainspring of government.

Neville, however, and his associates, had deceived the courtiers with promises they could not realise. It was resolved to announce certain intended graces in the speech from the throne; that is, to declare the king's readiness to pass bills that might remedy some grievances and retrench a part of his prerogative. These proffered amendments of the law, though eleven in number, failed altogether of giving the content that had been fully expected. Except the repeal of a strange act of Henry VIII., allowing the king to make such laws as he should think fit for the principality of Wales without consent of parliament‡, none of them could perhaps be reckoned of any constitutional importance. In all domanial and fiscal causes, and wherever the private interests of the crown stood in competition with those of a subject, the former enjoyed enormous and superior advantages, whereof what is strictly called its prerogative was principally composed. The terms of prescription that bound other men's right, the rules of pleading and procedure established for the sake of truth and justice, did not, in general, oblige the king. It was not by doing away a very few of these invidious and oppressive distinctions, that the crown could be allowed to

* Carte, iv. 17.

† Wilson, in Kennet, ii. 696.

‡ This act (34 H. 8. c. 26.) was re-

pealed a few years afterwards, 21 J. 1. c. 10.

keep on foot still more momentous abuses. The commons of 1614 accordingly went at once to the characteristic grievance of this reign, the customs at the out-ports. They had grown so confident in their cause by ransacking ancient records, that an unanimous vote passed against the king's right of imposition; not that there were no courtiers in the house, but the cry was too obstreperous to be withstood.* They demanded a conference on the subject with the lords, who preserved a kind of mediating neutrality throughout this reign.† In the course of their debate, Neyle, bishop of Lichfield, threw out some aspersion on the commons. They were immediately in a flame, and demanded reparation. This Neyle was a man of indifferent character, and very unpopular from the share he had taken in the earl of Essex's divorce, and from his severity towards the puritans; nor did the house fail to comment upon all his faults in their debate. He had, however, the prudence to excuse himself, ("with many tears," as the Lords' Journals inform us,) denying the most offensive words imputed to him; and the affair went no farther.‡ This ill-humour of the commons disconcerted those who had relied on the undertakers. But as the secret of these men had not been kept, their project considerably aggravated the prevailing discontent.§ The king had positively denied in his first speech that there were any such undertakers; and Bacon, then attorney-general, laughed at the chimerical notion, that private men should undertake for all the commons of England.|| That some persons, however, had obtained that name at court, and held out such promises, is at present out of doubt; and indeed

* Commons' Journals, 466. 472. 481. 486. Sir Henry Wotton at length muttered something in favour of the prerogative of laying impositions, as belonging to hereditary, though not to elective princes. Id. 493. This silly argument is only worth notice, as a proof what erroneous notions of government were sometimes imbibed from an intercourse with foreign nations. Dudley Digges and Sandys answered him very properly.

† The judges having been called upon by the house of lords to deliver their opinions on the subject of impositions, previous to the intended conference, re-

quested, by the mouth of chief justice Coke, to be excused. This was probably a disappointment to lord chancellor Eger-ton, who moved to consult them, and proceeded from Coke's dislike to him and to the court. It induced the house to decline the conference. Lords' Journals, 23d May.

‡ Lords' Journals. May 31. Commons' Journals, 496. 498.

§ Carte, iv. 23. Neville's memorial, above mentioned, was read in the house, May 14.

|| Carte, iv. 19, 20. Bacon, i. 695. C. J. 462.

the king, forgetful of his former denial, expressly confessed it on opening the session of 1621.

Amidst these heats little progress was made; and no one took up the essential business of supply. The king at length sent a message, requesting that a supply might be granted, with a threat of dissolving parliament unless it were done. But the days of intimidation were gone by. The house voted that they would first proceed with the business of impositions, and postpone supply till their grievances should be redressed.* Aware of the impos-

Dissolved
without
passing a
single act.

sibility of conquering their resolution, the king carried his measure into effect by a dissolution.† They had sat about two months, and, what is perhaps unprecedented in our history, had not passed a single bill. James followed up this strong step by one still more vigorous. Several members, who had distinguished themselves by warm language against the government, were arrested after the dissolution, and kept for a short time in custody; a manifest violation of that freedom of speech, without which no assembly can be independent, and which is the stipulated privilege of the house of commons.‡

It was now evident that James could never expect to be on terms of harmony with a parliament, unless by surrendering pretensions, which not only were in his eyes indispensable to the lustre of his monarchy, but from which he derived an income that he had no means of replacing. He went on accordingly for six years, supplying his exigencies by such precarious resources as circumstances might furnish. He restored the towns mortgaged by the Dutch to Elizabeth on payment of 2,700,000 florins, about one third of the original debt. The enormous fines imposed by the star-chamber, though seldom, I believe, enforced to their utmost extent, must have considerably enriched the exchequer. It is said by Carte that some Dutch merchants

Benevo-
lences.

* C. J. 506. Carte, 23. This writer absurdly defends the prerogative of laying impositions on merchandise as part of the *law of nations*.

† It is said that, previously to taking this step, the king sent for the commons, and tore all their bills before their faces

in the banqueting-house at Whitehall. D'Israeli's *Character of James*, p. 158., on the authority of an unpublished letter.

‡ Carte. Wilson. *Camden's Annals of James I.* (in Kennet, ii. 643.)

paid fines to the amount of 133,000*l.* for exporting gold coin.* But still greater profit was hoped from the requisition of that more than half involuntary contribution, mis-called a benevolence. It began by a subscription of the nobility and principal persons about the court. Letters were sent written to the sheriffs and magistrates, directing them to call on people of ability. It had always been supposed doubtful whether the statute of Richard III. abrogating "exactions, called benevolences," should extend to voluntary gifts at the solicitation of the crown. The language used in that act certainly implies that the pretended benevolences of Edward's reign had been extorted against the subjects' will; yet if positive violence were not employed, it seems difficult to find a legal criterion by which to distinguish the effects of willing loyalty from those of fear or shame. Lord Coke is said to have at first declared that the king could not solicit a benevolence from his subjects, but to have afterwards retracted his opinion and pronounced in favour of its legality. To this second opinion he adheres in his Reports.† While this business was pending, Mr. Oliver St. John wrote a letter to the mayor of Marlborough, explaining his reasons for declining to contribute, founded on the several statutes which he deemed applicable, and on the impropriety of particular men opposing their judgment to the commons in parliament, who had refused to grant any subsidy. This argument, in itself exasperating, he followed up by somewhat blunt observations on the king. His letter came under the consideration of the star-chamber, where the offence having been severely descanted upon by the attorney-general, Mr. St. John was sentenced to a fine of 5,000*l.*, and to imprisonment during pleasure. ‡

Coke, though still much at the council-board, was regarded with increasing dislike on account of his uncompromising humour. This he had occasion to display in perhaps the worst and most tyrannical act of king James's reign, the prosecution of one Peacham, a minister in Somersetshire, for high treason. A sermon had been found in this man's study (it does not appear what led to

Prosecution
of Peacham.

* Carte, iv. 56.

† 12 Reports, 119.

‡ State Trials, ii. 889.

the search), never preached, nor, if judge Coke is right, intended to be preached, containing such sharp censures upon the king, and invectives against the government, as, had they been published, would have amounted to a seditious libel. But common sense revolted at construing it into treason, under the statute of Edward III., as a compassing of the king's death. James, however, took it up with indecent eagerness. Peacham was put to the rack, and examined upon various interrogatories, as it is expressed by secretary Winwood, "before torture, in torture, between torture, and after torture." Nothing could be drawn from him as to any accomplices, nor any explanation of his design in writing the sermon; which was probably but an intemperate effusion, so common among the puritan clergy. It was necessary therefore to rely on this, as the overt act of treason. Aware of the difficulties that attended this course, the king directed Bacon previously to confer with the judges of the king's bench, one by one, in order to secure their determination for the crown. Coke objected that "such particular, and, as he called it, auricular taking of opinions was not according to the custom of this realm."* The other three judges having been tampered with, agreed to answer such questions concerning the case as the king might direct to be put to them; yielding to the sophism that every judge was bound by his oath to give counsel to his majesty. The chief-justice continued to maintain his objection to this separate closeting of judges; yet, finding himself abandoned by his colleagues, consented to give answers in writing, which seem to have been merely evasive. Peacham was brought to trial, and found guilty, but not executed, dying in prison a few months after.†

* There had, however, been instances of it, as in sir Walter Raleigh's case. Lodge, iii. 172, 173.; and I have found proofs of it in the queen's reign; though I cannot at present quote my authority. In a former age, the judges had refused to give an extra-judicial answer to the king. Lingard, v. 382. from the year-book, Pasch. 1 H. 7. 15. Trin. 1.

† State Trials, ii. 869. Bacon, ii. 483, &c. Dalrymple's Memorials of James I., vol. i. p. 56. Some other very unjusti-

fiable constructions of the law of treason took place in this reign. Thomas Owen was indicted and found guilty, under the statute of Edward III., for saying, that "the king, being excommunicated (*i. e.* if he should be excommunicated) by the pope, might be lawfully deposed and killed by any one, which killing would not be murder, being the execution of the supreme sentence of the pope;" a position very atrocious, but not amounting to treason. State Trials, ii. 879.

It was not long before the intrepid chief-justice incurred again the council's displeasure. This will require, for the sake of part of my readers, some little previous explanation. The equitable jurisdiction, as it is called, of the court of chancery appears to have been derived from that extensive judicial power which, in early times, the king's ordinary council had exercised. The chancellor, as one of the highest officers of state, took a great share in the council's business; and when it was not sitting, he had a court of his own, with jurisdiction in many important matters, out of which process to compel appearance of parties might at any time emanate. It is not unlikely therefore that redress, in matters beyond the legal province of the chancellor, was occasionally given through the paramount authority of this court. We find the council and the chancery named together in many remonstrances of the commons against this interference with private rights, from the time of Richard II. to that of Henry VI. It was probably in the former reign that the chancellor began to establish systematically his peculiar restraining jurisdiction. This originated in the practice of feoffments to uses, by which the feoffee, who had legal seisin of the land, stood bound by private engagement to suffer another, called the cestui que use, to enjoy its use and possession. Such fiduciary estates were well known to the Roman jurists, but inconsistent with the feudal genius of our law. The courts of justice gave no redress, if the feoffee to uses violated his trust by detaining the land. To remedy this, an ecclesiastical chancellor devised the writ of subpœna, compelling him to answer upon oath as to his trust. It was evidently necessary also to restrain him from proceeding, as he might do, to obtain possession; and this gave rise to injunctions, that is, prohibitions to sue at law, the violation of which was punishable by imprisonment as a contempt of court. Other instances of breach of trust occurred in personal contracts, and cases also wherein, without any trust, there was a wrong committed beyond the competence of the courts of law to redress; to all which the

Dispute about the jurisdiction of the court of chancery.

And Williams, another papist, was convicted of treason by a still more violent stretch of law, for writing a book pre-

dicting the king's death in the year 1621. Id. 1085.

process of subpœna was made applicable. This extension of a novel jurisdiction was partly owing to a fundamental principle of our common law, that a defendant cannot be examined; so that, if no witness or written instrument could be produced to prove a demand, the plaintiff was wholly debarred of justice; but in a still greater degree, to a strange narrowness and scrupulosity of the judges, who, fearful of quitting the letter of their precedents, even with the clearest analogies to guide them, repelled so many just suits, and set up rules of so much hardship, that men were thankful to embrace the relief held out by a tribunal acting in a more rational spirit. This error the common lawyers began to discover, in time to resume a great part of their jurisdiction in matters of contract, which would otherwise have escaped from them. They made too an apparently successful effort to recover their exclusive authority over real property, by obtaining a statute for turning uses into possession; that is, for annihilating the fictitious estate of the feoffee to uses, and vesting the legal as well as equitable possession in the cestui que use. But this victory, if I may use such an expression, (since it would have freed them, in a most important point, from the chancellor's control,) they threw away by one of those timid and narrow constructions which had already turned so much to their prejudice; and they permitted trust-estates, by the introduction of a few more words into a conveyance, to maintain their ground, contradistinguished from the legal seisin, under the protection and guarantee, as before, of the courts of equity.

The particular limits of this equitable jurisdiction were as yet exceedingly indefinite. The chancellors were generally prone to extend them; and being at the same time ministers of state in a government of very arbitrary temper, regarded too little that course of precedent by which the other judges held themselves too strictly bound. The cases reckoned cognizable in chancery grew silently more and more numerous; but with little overt opposition from the courts of law till the time of sir Edward Coke. That great master of the common law was inspired not only with the jealousy of this irregular and encroaching jurisdiction which most lawyers seem to have felt, but with a tenaciousness of his own dignity, and a personal enmity towards Egerton, who held the great seal.

It happened that an action was tried before him, the precise circumstances of which do not appear, wherein the plaintiff lost the verdict, in consequence of one of his witnesses being artfully kept away. He had recourse to the court of chancery, filing a bill against the defendant to make him answer upon oath, which he refused to do, and was committed for contempt. Indictments were upon this preferred, at Coke's instigation, against the parties who had filed the bill in chancery, their council and solicitors, for suing in another court after judgment obtained at law; which was alleged to be contrary to the statute of præmunire. But the grand jury, though pressed, as is said, by one of the judges, threw out these indictments. The king, already incensed with Coke, and stimulated by Bacon, thought this too great an insult upon his chancellor to be passed over. He first directed Bacon and others to search for precedents of cases where relief had been given in chancery after judgment at law. They reported that there was a series of such precedents from the time of Henry VIII.; and some where the chancellor had entertained suits even after execution. The attorney-general was directed to prosecute in the star-chamber those who had preferred the indictments; and as Coke had not been ostensibly implicated in the business, the king contented himself with making an order in the council-book, declaring the chancellor not to have exceeded his jurisdiction.*

The chief-justice almost at the same time gave another provocation, which exposed him more directly to the court's resentment. A cause happened to be argued in the court of king's bench, wherein the validity of a particular grant of a benefice to a bishop to be held in commendam, that is, along with his bishopric, came into question; and the counsel at the bar, besides the special points of the case, had disputed the king's general prerogative of making such a grant. The king, on receiving information of this, signified to the chief-justice through the attorney-general, that he would not have the court proceed to judgment till he had spoken with them. Coke requested that similar letters might be written to the judges of all the courts. This having

Case of commendams.

* Bacon, ii. 500. 518. 522. Cro. Jac. 335. 343.

been done, they assembled, and by a letter subscribed with all their hands, certified his majesty, that they were bound by their oaths not to regard any letters that might come to them contrary to law, but to do the law notwithstanding; that they held with one consent the attorney-general's letter to be contrary to law, and such as they could not yield to, and that they had proceeded according to their oath to argue the cause.

The king, who was then at Newmarket, returned answer that he would not suffer his prerogative to be wounded, under pretext of the interest of private persons; that it had already been more boldly dealt with in Westminster Hall than in the reigns of preceding princes, which popular and unlawful liberty he would no longer endure; that their oath not to delay justice was not meant to prejudice the king's prerogative; concluding that out of his absolute power and authority royal he commanded them to forbear meddling any farther in the cause till they should hear his pleasure from his own mouth. Upon his return to London, the twelve judges appeared as culprits in the council-chamber. The king set forth their misdemeanors, both in substance and in the tone of their letter. He observed that the judges ought to check those advocates who presume to argue against his prerogative; that the popular lawyers had been the men, ever since his accession, who had trodden in all parliaments upon it, though the law could never be respected if the king were not revered; that he had a double prerogative—whereof the one was ordinary, and had relation to his private interest, which might be and was every day disputed in Westminster Hall; the other was of a higher nature, referring to his supreme and imperial power and sovereignty, which ought not to be disputed or handled in vulgar argument; but that of late the courts of common law are grown so vast and transcendent, as they did both meddle with the king's prerogative, and had encroached upon all other courts of justice. He commented on the form of the letter, as highly indecent; certifying him merely what they had done, instead of submitting to his princely judgment what they should do.

After this harangue the judges fell upon their knees, and acknowledged their error as to the form of the letter. But

Coke entered on a defence of the substance, maintaining the delay required to be against the law and their oaths. The king required the chancellor and attorney-general to deliver their opinions: which, as may be supposed, were diametrically opposite to those of the chief-justice. These being heard, the following question was put to the judges: Whether, if at any time, in a case depending before the judges, his majesty conceived it to concern him either in power or profit, and thereupon required to consult with them, and that they should stay proceedings in the mean time, they ought not to stay accordingly? They all, except the chief-justice, declared that they would do so, and acknowledged it to be their duty; Hobart, chief-justice of the common-pleas, adding that he would ever trust the justice of his majesty's commandment. But Coke only answered, that when the case should arise, he would do what should be fit for a judge to do. The king dismissed them all with a command to keep the limits of their several courts, and not to suffer his prerogative to be wounded; for he well knew the true and ancient common law to be the most favourable to kings of any law in the world, to which law he advised them to apply their studies.*

The behaviour of the judges in this inglorious contention was such as to deprive them of every shadow of that confidence which ought to be reposed in their integrity. Hobart, Doddridge, and several more, were men of much consideration for learning; and their authority in ordinary matters of law is still held high. But, having been induced by a sense of duty, or through the ascendancy that Coke had acquired over them, to make a show of withstanding the court, they behaved likely cowardly rebels who surrender at the first discharge of cannon; and prostituted their integrity and their fame, through dread of losing their offices, or rather perhaps of incurring the unmerciful and ruinous penalties of the star-chamber.

The government had nothing to fear from such recreants; but Coke was suspended from his office, and not long after-

* Bacon, ii. 517, &c. Carte, iv. 35. Biograph. Brit. art. Coke. The king told the judges, he thought his prerogative as much wounded if it be publicly disputed upon, as if any sentence were given against it.

wards dismissed.* Having however, fortunately in this respect, married his daughter to a brother of the duke of Buckingham, he was restored in about three years to the privy-council, where his great experience in business rendered him useful; and had the satisfaction of voting for an enormous fine on his enemy the earl of Suffolk, late high-treasurer, convicted in the star-chamber of embezzlement.† In the parliament of 1621, and still more conspicuously in that of 1628, he became, not without some honourable inconsistency of doctrine as well as practice, the strenuous assertor of liberty on the principles of those ancient laws which no one was admitted to know so well as himself; redeeming, in an intrepid and patriotic old age, the faults which we cannot avoid perceiving in his earlier life.

The unconstitutional and usurped authority of the star-chamber over-rode every personal right, though an assembled parliament might assert its general privileges. Several remarkable instances in history illustrate its tyranny and contempt of all known laws and liberties. Two puritans having been committed by the high-commission court, for refusing the oath *ex-officio*, employed Mr. Fuller, a bencher of Gray's Inn, to move for their habeas corpus; which he did on the ground that the high commissioners were not empowered to commit any of his majesty's subjects to prison. This being reckoned a heinous offence, he was himself committed, at Bancroft's instigation, (whether by the king's personal warrant, or that of the council-board, does not appear,) and lay in gaol to the day of his death; the archbishop constantly opposing his discharge for which he petitioned.‡ Whitelock, a barrister and afterwards a judge, was brought before the star-chamber on the charge of having given a private opinion to his client, that a certain commission issued by the crown was illegal. This was said to be a high contempt and slander of the king's prerogative. But, after a speech from Bacon in aggravation of this offence, the delinquent was discharged on a humble submission.§ Such, too, was the fate

Arbitrary proceedings of the star-chamber.

* See D'Israeli, Character of James I. p. 125. He was too much affected by his dismissal from office.

† Camden's Annals of James I. in Kennet, vol. ii. Wilson, *ibid.* 704, 705. Bacon's Works, ii. 574. The fine im-

posed was 30,000*l.*; Coke voted for 100,000*l.*

‡ Fuller's Church Hist. 56. Neal, i. 435. Lodge, iii. 344.

§ State Trials, ii. 765.

of a more distinguished person on a still more preposterous accusation. Selden, in his History of Tithes, had indirectly weakened the claim of divine right, which the high-church faction pretended, and had attacked the argument from prescription, deriving their legal institution from the age of Charlemagne, or even a later era. Not content with letting loose on him some staunch polemical writers, the bishops prevailed on James to summon the author before the council. This proceeding is as much the disgrace of England, as that against Galileo nearly at the same time is of Italy. Selden, like the great Florentine astronomer, bent to the rod of power, and made rather too submissive an apology for entering on this purely historical discussion.*

Every generous mind must reckon the treatment of Arabella Stuart among the hard measures of despotism, even if it were not also grossly in violation of English law. Exposed by her high descent and ambiguous pretensions to become the victim of ambitious designs wherein she did not participate, that lady may be added to the sad list of royal sufferers who have envied the lot of humble birth. There is not, as I believe, the least particle of evidence that she was engaged in the intrigues of the catholic party to place her on the throne. It was, however, thought a necessary precaution to put her in confinement a short time before the queen's death.† At the trial of Raleigh she was present; and Cecil openly acquitted her of any share in the conspiracy.‡ She enjoyed afterwards a pension from the king, and might have died in peace and obscurity, had she not conceived an unhappy attachment for Mr. Seymour, grandson of that earl of Hertford, himself so memorable an example of the perils of ambitious love. They were privately married; but on the fact transpiring, the council, who saw with jealous eyes the possible union of two dormant pretensions to the crown, committed them to the Tower.§ They both made their escape; but Arabella was arrested and brought back. Long and hopeless calamity broke down her mind; imploring in vain the just privileges of an English-

* Collier, 712. 717. Selden's Life in Biographia Brit.

† Carte, iii. 698.

‡ State Trials, ii. 23. Lodge's Illustrations, iii. 217.

§ Winwood, iii. 201. 279.

woman, and nearly in want of necessaries, she died in prison, and in a state of lunacy, some years afterwards.* And this through the oppression of a kinsman, whose advocates are always vaunting his good-nature! Her husband became the famous marquis of Hertford, the faithful counsellor of Charles the First, and partaker of his adversity. Lady Shrewsbury, aunt to Arabella, was examined on suspicion of being privy to her escape; and for refusing to answer the questions put to her, or, in other words, to accuse herself, was sentenced to a fine of 20,000*l.*, and discretionary imprisonment.†

Several events, so well known that it is hardly necessary to dwell on them, aggravated the king's unpopularity during this parliamentary interval. The murder of Over-
Somerset
and Over-
bury.
 bury burst into light, and revealed to an indignant nation the king's unworthy favourite, the earl of Somerset, and the hoary pander of that favourite's vices, the earl of Northampton, accomplices in that deep-laid and deliberate atrocity. Nor was it only that men so flagitious should have swayed the councils of this country, and rioted in the king's favour. Strange things were whispered, as if the

* Winwood, iii. 178. In this collection are one or two letters from Arabella, which show her to have been a lively and accomplished woman. It is said in a manuscript account of circumstances about the king's accession, which seems entitled to some credit, that on its being proposed that she should walk at the queen's funeral, she answered with spirit that, as she had been debarred her majesty's presence while living, she would not be brought on the stage as a public spectacle after her death. Sloane MSS. 827.

Much occurs on the subject of this lady's imprisonment in one of the valuable volumes in Dr. Birch's hand-writing, among the same MSS. 4161. Those have already assisted Mr. D'Israeli in his interesting memoir on Arabella Stuart, in the *Curiosities of Literature*, New Series, vol. i. They cannot be read (as I should conceive) without indignation at James and his ministers. One of her letters is addressed to the two chief-justices, begging to be brought before them by habeas corpus, being informed that it is designed to remove her far from those courts of justice where she ought

to be tried and condemned, or cleared, to remote parts, whose courts she holds unfitted for her offence. "And if your lordships may not or will not grant unto me the ordinary relief of a distressed subject, then I beseech you become humble intercessors to his majesty that I may receive such benefit of justice, as both his majesty by his oath hath promised, and the laws of this realm afford to all others, those of his blood not excepted. And though, unfortunate woman! I can obtain neither, yet I beseech your lordships retain me in your good opinion, and judge charitably, till I be proved to have committed any offence either against God or his majesty deserving so long restraint or separation from my lawful husband."

Arabella did not profess the Roman catholic religion, but that party seem to have relied upon her; and so late as 1610, she incurred some "suspicion of being collapsed." Winwood, ii. 117.

This had been also conjectured in the queen's life-time. *Secret Correspondence of Cecil with James I.*, p. 118.

† *State Trials*, ii. 769.

death of Overbury was connected with something that did not yet transpire, and which every effort was employed to conceal. The people, who had already attributed prince Henry's death to poison, now laid it at the door of Somerset; but for that conjecture, however highly countenanced at the time, there could be no foundation. The symptoms of the prince's illness, and the appearances on dissection, are not such as could result from any poison, and manifestly indicate a malignant fever, aggravated perhaps by injudicious treatment.* Yet it is certain that a mystery hangs over this scandalous tale of Overbury's murder. The insolence and menaces of Somerset in the Tower, the shrinking apprehensions of him which the king could not conceal, the pains taken by Bacon to prevent his becoming desperate, and, as I suspect, to mislead the hearers by throwing them on a wrong scent, are very remarkable circumstances to which, after a good deal of attention, I can discover no probable clue. But it is evident that he was master of some secret, which it would have highly prejudiced the king's honour to divulge.†

* Sir Charles Cornwallis's Memoir of Prince Henry, reprinted in the Somers Tracts, vol. ii., and of which sufficient extracts may be found in Birch's life, contains a remarkably minute detail of all the symptoms attending the prince's illness, which was an epidemic typhus fever. The report of his physicians after dissection, may also be read in many books. Nature might possibly have overcome the disorder, if an empirical doctor had not insisted on continually bleeding him. He had no other murderer. We need not even have recourse to Hume's acute and decisive remark that, if Somerset had been so experienced in this trade, he would not have spent five months in bungling about Overbury's death.

Carte says, vol. iv. 33., that the queen charged Somerset with designing to poison her, prince Charles, and the elector palatine, in order to marry the electress to Lord Suffolk's son. But this is too extravagant, whatever Anne might have thrown out in passion against a favourite she hated. On Henry's death the first suspicion fell of course on the papists. Winwood, iii. 410. Burnet

doubts whether his aversion to popery did not hasten his death. And there is a remarkable letter from sir Robert Naunton to Winwood, in the note of the last reference, which shows that suspicions of some such agency were entertained very early. But the positive evidence we have of his disease outweighs all conjecture.

† The circumstances to which I allude are well known to the curious in English history, and might furnish materials for a separate dissertation, had I leisure to stray in these by-paths. Hume has treated them as quite unimportant; and Carte, with his usual honesty, has never alluded to them. Those who read carefully the new edition of the State Trials, and various passages in Lord Bacon's Letters, may form for themselves the best judgment they can. A few conclusions may, perhaps, be laid down as established. 1. That Overbury's death was occasioned, not merely by lady Somerset's revenge, but by his possession of important secrets, which in his passion he had threatened Somerset to divulge. 2. That Somerset conceived himself to have a hold over the king by the posses-

Sir Walter Raleigh's execution was another stain upon the reputation of James the First. It is needless to mention that he fell under a sentence passed fifteen years before, on a charge of high treason, in plotting to raise Arabella Stuart to the throne. It is very probable that this charge was, partly at least, founded in truth* ; but his con-

Sir Walter
Raleigh.

sion of the same or some other secrets, and used indirect threats of revealing them. 3. That the king was in the utmost terror at hearing of these measures ; as is proved by a passage in Weldon's *Memoirs*, p. 115., which, after being long ascribed to his libellous spirit, has lately received the most entire confirmation by some letters from More, lieutenant of the Tower, published in the *Archæologia*, vol. xviii. 4. That Bacon was in the king's confidence, and employed by him so to manage Somerset's trial, as to prevent him from making any imprudent disclosure, or the judges from getting any insight into that which it was not meant to reveal. See particularly a passage in his letter to Coke, vol. ii. 514., beginning, "This crime was second to none but the powder-plot."

Upon the whole, I cannot satisfy myself in any manner as to this mystery. Prince Henry's death, as I have observed, is out of the question ; nor does a different solution, hinted by Harris and others, and which may have suggested itself to the reader, appear probable to my judgment on weighing the whole case. Overbury was an ambitious, unprincipled man ; and it seems more likely than any thing else, that James had listened too much to some criminal suggestion from him and Somerset ; but of what nature I cannot pretend even to conjecture ; and that through apprehension of this being disclosed, he had pusillanimously acquiesced in the scheme of Overbury's murder.

It is a remarkable fact, mentioned by Burnet, and perhaps little believed, but which, like the former, has lately been confirmed by documents printed in the *Archæologia*, that James in the last year of his reign, while dissatisfied with Buckingham, privately renewed his correspondence with Somerset, on whom he bestowed at the same time a full pardon, and seems to have given him hopes of being restored to his former favour. A

memorial drawn up by Somerset, evidently at the king's command, and most probably after the clandestine interview reported by Burnet, contains strong charges against Buckingham. *Archæologia*, vol. xvii. 280. But no consequences resulted from this ; James was either reconciled to his favourite before his death, or felt himself too old for a struggle. Somerset seems to have tampered a little with the popular party in the beginning of the next reign. A speech of sir Robert Cotton's in 1625, *Parl. Hist.* ii. 145., praises him, comparatively at least with his successor in royal favour ; and he was one of those against whom informations were brought in the star-chamber for dispersing sir Robert Dudley's famous proposal for bridling the impertinencies of parliament. Kennet, iii. 62. The patriots, however, of that age had too much sense to encumber themselves with an ally equally unserviceable and infamous. There cannot be the slightest doubt of Somerset's guilt as to the murder, though some have thought the evidence insufficient (*Carte*, iv. 34.) ; he does not deny it in his remarkable letter to James, requesting, or rather demanding, mercy, printed in the *Cabala*, and in *Bacon's Works*.

* Raleigh made an attempt to destroy himself on being committed to the Tower ; which of course affords a presumption of his consciousness that something could be proved against him. *Cayley's Life of Raleigh*, vol. ii. p. 10. Hume says, it appears from Sully's *Memoirs* that he had offered his services to the French ambassador. I cannot find this in Sully ; whom Raleigh, however, and his party seem to have aimed at deceiving by false information. Nor could there be any treason in making an interest with the minister of a friendly power. *Carte* quotes the despatches of Beaumont, the French ambassador, to prove the connexion of the conspirators with the Spanish plenipotentiary. But it may be

viction was obtained on the single deposition of lord Cobham, an accomplice, a prisoner, not examined in court, and known to have already retracted his accusation. Such a verdict was thought contrary to law, even in that age of ready convictions. It was a severe measure to detain for twelve years in prison so splendid an ornament of his country, and to confiscate his whole estate.* For Raleigh's conduct in the expedition to Guiana, there is not much excuse to make. Rashness and want of foresight were always among his failings; else he would not have undertaken a service of so much hazard without obtaining a regular pardon for his former offence. But it might surely be urged that either his commission was absolutely null, or that it operated as a pardon; since a man attainted of treason is incapable of exercising that authority which is conferred upon him.† Be this as it may, no technical reasoning could overcome the moral sense that revolted at carrying the original sentence into execution. Raleigh might be amenable to punishment for the deception, by which he had obtained a commission that ought never to have issued; but the nation could not help seeing in his death

questioned whether he knew any more than the government gave out. If Raleigh had ever shown a discretion bearing the least proportion to his genius, we might reject the whole story as improbable. But it is to be remembered that there had long been a catholic faction, who fixed their hopes on Arabella; so that the conspiracy, though extremely injudicious, was not so perfectly unintelligible as it appears to a reader of Hume, who has overlooked the previous circumstances. It is also to be considered, that the king had shown so marked a prejudice against Raleigh on his coming to England, and the hostility of Cecil was so insidious and implacable, as might drive a man of his rash and impetuous courage to desperate courses. See Cayley's *Life of Raleigh*, vol. ii.; a work containing much interesting matter, but unfortunately written too much in the spirit of an advocate, which, with so faulty a client, must tend to an erroneous representation of facts.

* This estate was Sherborn castle, which Raleigh had not very fairly ob-

tained from the see of Salisbury. He settled this before his conviction upon his son; but an accidental flaw in the deed enabled the king to wrest it from him, and bestow it on the earl of Somerset. Lady Raleigh, it is said, solicited his majesty on her knees to spare it; but he only answered, "I mun have the land, I mun have it for Carr." He gave him, however, 12,000*l.* instead. But the estate was worth 5000*l.* per annum. This ruin of the prospects of a man far too intent on aggrandisement impelled him once more into the labyrinth of fatal and dishonest speculations. Cayley, 89, &c. *Somers Tracts*, ii. 22, &c. *Curiosities of Literature*, New Series, vol. ii. It has been said that Raleigh's unjust conviction made him in one day the most popular, from having been the most odious, man in England. He was certainly such under Elizabeth. This is a striking, but by no means solitary, instance of the impolicy of political persecution.

† Rymer, xvi. 789. He was empowered to name officers, to use martial law, &c.

the sacrifice of the bravest and most renowned of Englishmen to the vengeance of Spain.*

This unfortunate predilection for the court of Madrid had always exposed James to his subjects' jealousy. They connected it with an inclination at least to tolerate popery, and with a dereliction of their commercial interests. But from the time that he fixed his hopes on the union of his son with the infanta†, the popular dislike to Spain increased in proportion to his blind preference. If the king had not systematically disregarded the public wishes, he could never have set his heart on this impolitic match; contrary to the wiser maxim he had laid down in his own Basilicon Doron, never to seek a wife for his son except in a protestant family. But his absurd pride made him despise the uncrowned princes of Germany. This Spanish policy grew much more odious after the memorable events of 1619, the election of the king's son-in-law to the throne of Bohemia, his rapid downfall, and the conquest of the Upper Palatinate by Austria. If James had listened to some sanguine advisers, he would in the first instance have supported the pretensions of Frederic. But neither his own views of public law nor true policy dictated such an interference. The case was changed after the loss of his hereditary dominions, and the king was sincerely desirous to restore him to the Palatinate; but he unreasonably expected that he could effect this through the friendly mediation of Spain, while the nation, not perhaps less unreasonably, were clamorous for his attempting it by

* James made it a merit with the court of Madrid that he had put to death a man so capable of serving him merely to give them satisfaction. Somers Tracts, ii. 437. There is even reason to suspect that he betrayed the secret of Raleigh's voyage to Gondomar, before he sailed. Hardwicke, State Papers, i. 398. It is said in Mr. Cayley's Life of Raleigh that his fatal mistake in not securing a pardon under the great seal was on account of the expense. But the king would have made some difficulty at least about granting it.

† This project began as early as 1605. Winwood, vol. ii. The king had hopes that the United Provinces would acknowledge the sovereignty of Prince Henry

and the infanta on their marriage; and Cornwallis was directed to propose this formally to the court of Madrid. Id. p. 201. But Spain would not cede the point of sovereignty; nor was this scheme likely to please either the states-general or the court of France.

In the later negotiation about the marriage of prince Charles, those of the council who were known or suspected catholics, Arundel, Worcester, Digby, Weston, Calvert, as well as Buckingham, whose connexions were such, were in the Spanish party. Those reputed to be jealous protestants were all against it. Wilson, in Kennet, ii. 725. Many of the former were bribed by Gondomar. Id. and Rushworth, i. 19.

force of arms. In this agitation of the public mind, he summoned the parliament that met in February 1621.*

The king's speech on opening the session was, like all he had made on former occasions, full of hopes and promises, taking cheerfully his share of the blame as to past disagreements, and treating them as little likely to recur, though all their causes were still in operation.† He displayed, however, more judgment than usual in the commencement of this parliament. Among the methods devised to compensate the want of subsidies, none had been more injurious to the subject than patents of monopoly, including licences for exclusively carrying on certain trades. Though the government was principally responsible for the exactions they connived at, and from which they reaped a large benefit, the popular odium fell of course on the monopolists. Of these the most obnoxious was sir Giles Mompesson, who, having obtained a patent for gold and silver thread, sold it of baser metal. This fraud seems neither very extraordinary nor very important; but he had another patent for licensing inns and alehouses, wherein he is said to have used extreme violence and oppression. The house of commons proceeded to investigate Mompesson's delinquency. Conscious that the crown had withdrawn its protection, he fled beyond sea. One Michell, a justice of peace, who had been the instrument of his tyranny, fell into the hands of the commons, who voted him incapable of being in the commission of the peace, and sent him to the Tower.‡ Entertaining however, upon second thoughts, as we must presume, some doubts about their competence to inflict this punishment,

* The proclamation for this parliament contains many of the unconstitutional directions to the electors, contained, as has been seen, in that of 1604, though shorter. Rymers, xvii. 270.

† "Deal with me as I shall desire at your hands," &c. "He knew not," he told them, "the laws and customs of the land when he first came, and was misled by the old counsellors whom the old queen had left;"—he owns that at the last parliament there was "a strange kind of beast called undertaker," &c. Parl. Hist. i. 1180. Yet this coaxing language

was oddly mingled with sallies of his pride and prerogative notions. It is evidently his own composition, not Bacon's. The latter, in granting the speaker's petitions, took the high tone so usual in this reign, and directed the house of commons like a schoolmaster. Bacon's Works, i. 701.

‡ Debates of Commons in 1621, vol. i. p. 84. I quote the two volumes published at Oxford in 1766: they are abridged in the new Parliamentary History.

especially the former part of it, they took the more prudent course with respect to Mompesson, of appointing Noy and Hakewill to search for precedents in order to show how far and for what offences their power extended to punish delinquents against the state as well as those who offended against that house. The result appears some days after, in a vote that "they must join with the lords for punishing sir Giles Mompesson; it being no offence against our particular house, nor any member of it, but a general grievance." *

The earliest instance of parliamentary impeachment, or of a solemn accusation of any individual by the commons at the bar of the lords, was that of lord Latimer in the year 1376. The latest hitherto was that of the duke of Suffolk in 1449; for a proceeding against the bishop of London in 1534, which has sometimes been reckoned an instance of parliamentary impeachment, does not by any means support that privilege of the commons.† It had fallen into disuse, partly from the loss of that control which the commons had obtained under Richard II. and the Lancastrian kings; and partly from the preference the Tudor princes had given to bills of attainder or of pains and penalties, when they wished to turn the arm of parliament against an obnoxious subject. The revival of this ancient mode of proceeding in the case of Mompesson, though a remarkable event in our constitutional annals, does not appear to have been noticed as an anomaly. It was not indeed conducted according to all the forms of an impeachment. The commons, requesting a conference with the other house, informed them generally of that person's offence, but did not exhibit any distinct articles at their bar. The lords took up themselves the inquiry; and having become satisfied of his guilt, sent a message to the commons, that they were ready to pronounce sentence. The speaker accordingly, attended by all the house, demanded judgment at the bar: when the

* Id. 103. 109.

† The commons in this session complained to the lords, that the bishop of London (Stokesley) had imprisoned one Philips on suspicion of heresy. Some time afterwards, they called upon him to answer their complaint. The bishop laid the matter before the lords, who all declared that it was unbecoming for any

lord of parliament to make answer to any one in that place; "quod non consentaneum fuit aliquem procerum prædictorum alicui in eo loco responsurum." *Lords' Journals*, i. 71. The lords, however, in 1701, (*State Trials*, xiv. 275.) seem to have recognised this as a case of impeachment.

lords passed as heavy a sentence as could be awarded for any misdemeanour ; to which the king, by a stretch of prerogative, which no one was then inclined to call in question, was pleased to add perpetual banishment.*

The impeachment of Mompesson was followed up by others against Michell, the associate in his iniquities ; against sir John Bennet, judge of the prerogative court, for corruption in his office ; and against Field, bishop of Llandaff, for being concerned in a matter of bribery.† The first of these was punished ; but the prosecution of Bennet seems to have dropped in consequence of the adjournment, and that of the bishop ended in a slight censure. But the wrath of the commons was justly roused against that shameless corruption, which characterizes the reign of James beyond every other in our history. It is too well known, how deeply the greatest man of that age was tarnished by the prevailing iniquity.

Proceedings
against lord
Bacon.

Complaints poured in against the chancellor Bacon for receiving bribes from suitors in his court. Some have vainly endeavoured to discover an excuse which he did not pretend to set up, and even ascribed the prosecution to the malevolence of sir Edward Coke.‡ But Coke took no prominent share in this business ; and though some of the charges against Bacon may not appear very heinous, especially for those times, I know not whether the unanimous conviction of such a man, and the conscious pusillanimity of his defence, do not afford a more irresistible presumption of his misconduct than any thing specially alleged. He was abandoned by the court, and had previously lost, as I rather suspect, Buckingham's favour ; but the king, who had a sense of his transcendent genius, remitted the fine of 40,000*l.* imposed by the lords, which he was wholly unable to pay.§

* Debates in 1621, p. 114. 228, 229.

† Debates in 1621, *passim*.

‡ Carte.

§ Clarendon speaks of this impeachment as an unhappy precedent, made to gratify a private displeasure. This expression seems rather to point to Buckingham than to Coke ; and some letters of Bacon to the favourite at the time of his fall display a consciousness of having offended him. Yet Buckingham had much more reason to thank Bacon as his

wisest counsellor, than to assist in crushing him. In his works, vol. i. p. 712., is a tract, entitled " Advice to the Duke of Buckingham, containing instructions for his governance as minister." These are marked by the deep sagacity and extensive observation of the writer. One passage should be quoted in justice to Bacon. " As far as it may lie in you, let no arbitrary power be intruded ; the people of this kingdom love the laws thereof, and nothing will oblige them

There was much to commend in the severity practised by the house towards public delinquents; such examples being far more likely to prevent the malversation of men in power than any law they could enact. But in the midst of these laudable proceedings, they were hurried by the passions of the moment into an act of most unwarrantable violence. It came to the knowledge of the house that one Floyd, a gentleman confined in the Fleet prison, had used some slighting words about the elector Palatine and his wife. It appeared in aggravation, that he was a Roman catholic. Nothing could exceed the fury into which the commons were thrown by this very insignificant story. A flippant expression, below the cognizance of an ordinary court, grew at once into a portentous offence, which they ransacked their invention to chastise. After sundry novel and monstrous propositions, they fixed upon the most degrading punishment they could

more than a confidence of the free enjoying of them; what the nobles upon an occasion once said in parliament, '*Nolumus leges Angliæ mutari,*' is imprinted in the hearts of all the people." I may add, that with all Bacon's pliancy, there are fewer overstrained expressions about the prerogative in his political writings than we should expect. His practice was servile, but his principles were not unconstitutional. We have seen how strongly he urged the calling of parliament in 1614: and he did the same, unhappily for himself, in 1621. Vol. ii. p. 580. He refused also to set the great seal to an office intended to be erected for enrolling prentices, a speculation apparently of some monopolists; writing a very proper letter to Buckingham, that there was no ground of law for it. P. 555.

I am very loth to call Bacon, for the sake of Pope's antithesis, "the meanest of mankind." Who would not wish to believe the feeling language of his letter to the king, after the attack on him had already begun? "I hope I shall not be found to have the troubled fountain of a corrupt heart, in a depraved habit of taking rewards to pervert justice; howsoever I may be frail, and partake of the abuses of the times." P. 589. Yet the general disesteem of his contemporaries speaks forcibly against him. Sir Simon d'Ewes and Weldon, both indeed bitter men, give him the worst of characters.

"Surely," says the latter, "never so many parts and so base and abject a spirit tenanted together in any one earthen cottage as in this man." It is a striking proof of the splendour of Bacon's genius, that it was unanimously acknowledged in his own age amidst so much that should excite contempt. He had indeed ingratiated himself with every preceding parliament through his incomparable ductility; having taken an active part in their complaints of grievances in 1604, before he became attorney-general, and even on many occasions afterwards while he held that office, having been intrusted with the management of conferences on the most delicate subjects. In 1614, the commons, after voting that the attorney-general ought not to be elected to parliament, made an exception in favour of Bacon. Journals, p. 460. "I have been always gracious in the lower house," he writes to James in 1616, begging for the post of chancellor: "I have interest in the gentlemen of England, and shall be able to do some good effect in rectifying that body of parliament-men, which is *cardo rerum.*" Vol. ii. p. 496.

I shall conclude this note by observing, that, if all lord Bacon's philosophy had never existed, there would be enough in his political writings to place him among the greatest men this country has produced.

devise. Next day, however, the chancellor of the exchequer delivered a message, that the king, thanking them for their zeal, but desiring that it should not transport them to inconveniences, would have them consider whether they could sentence one who did not belong to them, nor had offended against the house or any member of it; and whether they could sentence a denying party, without the oath of witnesses; referring them to an entry on the rolls of parliament in the first year of Henry IV., that the judicial power of parliament does not belong to the commons. He would have them consider whether it would not be better to leave Floyd to him, who would punish him according to his fault.

This message put them into some embarrassment. They had come to a vote in Mompesson's case, in the very words employed in the king's message, confessing themselves to have no jurisdiction, except over offences against themselves. The warm speakers now controverted this proposition with such arguments as they could muster; Coke, though from the reported debates he seems not to have gone the whole length, contending that the house was a court of record, and that it consequently had power to administer an oath.* They returned a message by the speaker, excepting to the record in 1 H. 4., because it was not an act of parliament to bind them, and persisting, though with humility, in their first votes.† The king replied mildly; urging them to show precedents, which they were manifestly incapable of doing. The lords requested a conference, which they managed with more temper, and notwithstanding the solicitude displayed by the commons to maintain their pretended right, succeeded in withdrawing the matter to their own jurisdiction.‡ This

* Debates in 1621, vol. ii. p. 7.

† Debates, p. 14.

‡ In a former parliament of this reign, the commons having sent up a message, wherein they entitled themselves the knights, citizens, burgesses, and barons of the commons' court of parliament, the lords sent them word that they would never acknowledge any man that sitteth in the lower house to have the right or title of a baron of parliament; nor could admit the term of the commons' court of parliament; "because all your house together, without theirs, doth make no

court of parliament." 4th March, 1606. Lords' Journals. Nevertheless the lords did not scruple, almost immediately afterwards, to denominate their own house a court, as appears by memoranda of 27th and 28th May; they even issued a habeas corpus as from a court, to bring a servant of the earl of Bedford before them. So also in 1609, 16th and 17th of February. And on April 14th and 18th, 1614; and probably later, if search were made.

I need hardly mention, that the barons mentioned above, as part of the commons,

conflict of privileges was by no means of service to the unfortunate culprit; the lords perceived that they could not mitigate the sentence of the lower house without reviving their dispute, and vindicated themselves from all suspicion of indifference towards the cause of the Palatinate by augmented severity. Floyd was adjudged to be degraded from his gentility, and to be held an infamous person; his testimony not to be received; to ride from the Fleet to Cheapside on horseback without a saddle, with his face to the horse's tail, and the tail in his hand, and there to stand two hours in the pillory, and to be branded in the forehead with the letter K; to ride four days afterwards in the same manner to Westminster, and there to stand two hours more in the pillory, with words in a paper in his hat showing his offence; to be whipped at the cart's tail from the Fleet to Westminster Hall; to pay a fine of 5000*l.*, and to be a prisoner in Newgate during his life. The whipping was a few days after remitted on prince Charles's motion; but he seems to have undergone the rest of the sentence. There is surely no instance in the annals of our own, and hardly of any civilised country, where a trifling offence, if it were one, has been visited with such outrageous cruelty. The cold-blooded deliberate policy of the lords is still more disgusting than the wild fury of the lower house.*

This case of Floyd is an unhappy proof of the disregard that popular assemblies, when inflamed by passion, are ever apt to show for those principles of equity and moderation by which, however the sophistry of contemporary factions may set them aside, a calm judging posterity will never fail to measure their proceedings. It has contributed at least, along with several others of the same kind, to inspire me with a jealous distrust of that indefinable, uncontrollable privilege of parliament, which has sometimes been asserted, and perhaps with rather too much encouragement from those whose function it is to restrain all exorbitant power. I speak only of the extent to which theoretical principles have been carried,

were the members for the cinque ports, whose denomination is recognised in several statutes.

* Debates in 1621, vol. i. p. 355, &c.

vol. ii. p. 5, &c. Mede writes to his correspondent on May 11. that the execution had not taken place; "but I hope it will." The king was plainly averse to it.

without insinuating that the privileges of the house of commons have been practically stretched in late times beyond their constitutional bounds. Time and the course of opinion have softened down those high pretensions, which the dangers of liberty under James the First, as well as the natural character of a popular assembly, then taught the commons to assume; and the greater humanity of modern ages has made us revolt from such disproportionate punishments as were inflicted on Floyd.*

Every thing had hitherto proceeded with harmony between the king and parliament. His ready concurrence in their animadversion on Mompesson and Michell, delinquents who had acted at least with the connivance of government, and in the abolition of monopolies, seemed to remove all discontent. The commons granted two subsidies early in the session without alloying their bounty with a single complaint of grievances. One might suppose that the subject of impositions had been entirely forgotten, not an allusion to them occurring in any debate.† It was voted indeed, in the first

* The following observation on Floyd's case, written by Mr. Harley, in a manuscript account of the proceedings (Harl. MSS. 6274.), is well worthy to be inserted. I copy from the appendix to the above-mentioned debates of 1621. "The following collection," he has written at the top, "is an instance how far a zeal against popery and for one branch of the royal family, which was supposed to be neglected by king James, and consequently in opposition to him, will carry people against common justice and humanity." And again at the bottom: "For the honour of Englishmen, and indeed of human nature, it were to be hoped these debates were not truly taken, there being so many motions contrary to the laws of the land, the laws of parliament, and common justice. Robert Harley, July 14. 1702." It is remarkable that this date is very near the time when the writer of these just observations, and the party which he led, had been straining in more than one instance the privileges of the house of commons, not certainly with such violence as in the case of Floyd, but much beyond what can be deemed their legitimate extent.

† In a much later period of the session,

when the commons had lost their good humour, some heat was very justly excited by a petition from some brewers, complaining of an imposition of fourpence on the quarter of malt. The courtiers defended this as a composition in lieu of purveyance. But it was answered that it was compulsory, for several of the principal brewers had been committed and lay long in prison for not yielding to it. One said that impositions of this nature overthrew the liberty of all the subjects of this kingdom; and if the king may impose such taxes, then are we but villains, and lose all our liberties. It produced an order that the matter be examined before the house, the petitioners to be heard by council, and all the lawyers of the house to be present. *Debates of 1621, vol. ii. 252. Journals, p. 652.* But nothing farther seems to have taken place, whether on account of the magnitude of the business which occupied them during the short remainder of the session, or because a bill which passed their house to prevent illegal imprisonment, or restraint on the lawful occupation of the subject, was supposed to meet this case. It is a remarkable instance of arbitrary taxation, and preparatory to an excise.

days of the session, to petition the king about the breach of their privilege of free speech, by the imprisonment of sir Edwin Sandys, in 1614, for words spoken in the last parliament; but the house did not prosecute this matter, contenting itself with some explanation by the secretary of state.* They were going on with some bills for reformation of abuses, to which the king was willing to accede, when they received an intimation that he expected them to adjourn over the summer. It produced a good deal of dissatisfaction to see their labour so hastily interrupted; especially as they ascribed it to a want of sufficient sympathy on the court's part with their enthusiastic zeal for the elector Palatine.† They were adjourned by the king's commission, after an unanimous declaration ("sounded forth," says one present, "with the voices of them all, withal lifting up their hats in their hands so high as they could hold them, as a visible testimony of their unanimous consent, in such sort, that the like had scarce ever been seen in parliament") of their resolution to spend their lives and fortunes for the defence of their own religion and of the Palatinate. This solemn protestation and pledge was entered on record in the journals.‡

They met again after five months, without any change in their views of policy. At a conference of the two houses, lord Digby, by the king's command, explained all that had occurred in his embassy to Germany for the restitution of the Palatinate; which, though absolutely ineffective, was as much as James could reasonably expect without a war.§ He had in fact, though, according to the laxity of those times, without declaring war on any one, sent a body of troops under sir Horace Vere, who still defended the Lower Palatinate. It was necessary to vote more money, lest these should mutiny for want of pay. And it was stated to the commons in this conference, that to maintain a sufficient army in that country for one year would require 900,000*l.*; which was left to their consideration.|| But now it was seen

* Debates of 1621, p. 14. Hatsell's Precedents, i. 133.

† Debates, p. 114, et alibi, passim.

‡ Vol. ii. 170. 172.

§ Id. p. 186.

|| P. 189. Lord Cranfield told the

commons there were three reasons why they should give liberally. 1. That lands were now a third better than when the king came to the crown. 2. That wools, which were then 20*s.* were now 30*s.* 3. That corn had risen from 26*s.*

that men's promises to spend their fortunes in a cause not essentially their own are written in the sand. The commons had no reason perhaps to suspect that the charge of keeping 30,000 men in the heart of Germany would fall much short of the estimate. Yet after long haggling they voted only one subsidy, amounting to 70,000*l.*; a sum manifestly insufficient for the first equipment of such a force.* This parsimony could hardly be excused by their suspicion of the king's unwillingness to undertake the war, for which it afforded the best justification.

James was probably not much displeased at finding so good a pretext for evading a compliance with their martial humour; nor had there been much appearance of dissatisfaction on either side (if we except some murmurs at the commitment of one of their most active members, sir Edwin Sandys, to the Tower, which were tolerably appeased by the secretary Calvert's declaration that he had not been committed for any parliamentary matter†,) till the commons drew up a petition and remonstrance against the growth of popery; suggesting, among other remedies for this grievance, that the prince should marry one of our own religion, and that the king would direct his efforts against that power (meaning Spain) which first maintained the war in the Palatinate. This petition was proposed by sir Edward Coke. The courtiers opposed it as without precedent; the chancellor of the duchy observing that it was of so high and transcendent a nature, he had never known the like within those walls. Even the mover defended it rather weakly, according to our notions, as intended only to remind the king, but requiring no answer.

Disagree-
ment be-
tween the
king and
commons.

to 36*s.* the quarter. *Ibid.* There had certainly been a very great increase of wealth under James, especially to the country gentlemen; of which their style of building is an evident proof. Yet in this very session complaints had been made of the want of money, and fall in the price of lands: vol. i. p. 16.; and an act was proposed against the importation of corn; vol. ii. p. 87. In fact, rents had been enormously enhanced in this reign, which the country gentlemen of course endeavoured to keep up. But corn, probably through good seasons, was

rather lower in 1621 than it had been, — about 30*s.* a quarter.

* P. 242, &c.

† *Id.* 174. 200. Compare also p. 151. Sir Thomas Wentworth appears to have discountenanced the resenting this as a breach of privilege. Doubtless the house showed great and even excessive moderation in it; for we can hardly doubt that Sandys was really committed for no other cause than his behaviour in parliament. It was taken up again afterwards, p.

259.

The scruples affected by the courtiers, and the real novelty of the proposition, had so great an effect, that some words were inserted, declaring that the house "did not mean to press on the king's most undoubted and royal prerogative."* The petition, however, had not been presented, when the king, having obtained a copy of it, sent a peremptory letter to the speaker, that he had heard how some fiery and popular spirits had been emboldened to debate and argue on matters far beyond their reach or capacity, and directing him to acquaint the house with his pleasure that none therein should presume to meddle with any thing concerning his government or mysteries of state; namely, not to speak of his son's match with the princess of Spain, nor to touch the honour of that king, or any other of his friends and confederates. Sandys' commitment, he bade them be informed, was not for any misdemeanour in parliament. But to put them out of doubt of any question of that nature that may arise among them hereafter, he let them know that he thought himself very free and able to punish any man's misdemeanours in parliament, as well during their sitting as after, which he meant not to spare upon occasion of any man's insolent behaviour in that place. He assured them that he would not deign to hear their petition, if it touched on any of those points which he had forbidden.†

The house received this message with unanimous firmness, but without any undue warmth. A committee was appointed to draw up a petition, which, in the most decorous language, and with strong professions of regret at his majesty's displeasure, contained a defence of their former proceedings, and hinted very gently, that they could not conceive his honour and safety, or the state of the kingdom, to be matters at any time unfit for their deepest consideration in time of parliament. They adverted more pointedly to that part of the king's message which threatened them for liberty of speech, calling it their ancient and undoubted right, and an inheritance received from their ancestors, which they again prayed him to confirm.‡ His answer, though considerably milder than what he had designed, gave indications of a resentment

* P. 261, &c.

† P. 284.

‡ P. 289.

not yet subdued. He dwelt at length on their unfitness for entering on matters of government, and commented with some asperity even on their present apologetical petition. In the conclusion he observed that "although he could not allow of the style, calling their privileges an undoubted right and inheritance, but could rather have wished that they had said that their privileges were derived from the grace and permission of his ancestors and himself (for most of them had grown from precedent, which rather shows a toleration than inheritance); yet he gave them his royal assurance, that as long as they contained themselves within the limits of their duty, he would be as careful to maintain their lawful liberties and privileges as he would his own prerogative; so that their house did not touch on that prerogative which would enforce him or any just king to retrench their privileges.*

This explicit assertion that the privileges of the commons existed only by sufferance, and conditionally upon good behaviour, exasperated the house far more than the denial of their right to enter on matters of state. In the one, they were conscious of having somewhat transgressed the boundaries of ordinary precedents; in the other, their individual security, and their very existence as a deliberative assembly, were at stake. Calvert, the secretary, and the other ministers, admitted the king's expressions to be incapable of defence, and called them a slip of the pen at the close of a long answer.† The commons were not to be diverted by any such excuses from their necessary duty of placing on record a solemn claim of right. Nor had a letter from the king, addressed to Calvert, much influence; wherein, while he reiterated his assurances of respecting their privileges, and tacitly withdrew the menace that rendered them precarious, he said that he could not with patience endure his subjects to use such anti-monarchical words to him concerning their liberties, as "ancient and undoubted right and inheritance," without subjoining that they were granted by the grace and favour of his predecessors.‡ After a long and warm debate, they entered on record in the Journals their famous protestation of December 18th, 1621, in the following words:—

* P. 317.

† P. 330.

‡ P. 339.

“The commons now assembled in parliament, being justly occasioned thereunto, concerning sundry liberties, franchises, privileges, and jurisdictions of parliament, amongst others not herein mentioned, do make this protestation following:— That the liberties, franchises, privileges, and jurisdictions of parliament are the ancient and undoubted birthright and inheritance of the subjects of England; and that the arduous and urgent affairs concerning the king, state, and the defence of the realm, and of the church of England, and the making and maintenance of laws, and redress of mischiefs and grievances which daily happen within this realm, are proper subjects and matter of counsel and debate in parliament; and that in the handling and proceeding of those businesses, every member of the house hath, and of right ought to have, freedom of speech to propound, treat, reason, and bring to conclusion, the same: that the commons in parliament have like liberty and freedom to treat of those matters in such order as in their judgments shall seem fittest: and that every such member of the said house hath like freedom from all impeachment, imprisonment, and molestation (other than by the censure of the house itself) for or concerning any bill, speaking, reasoning, or declaring of any matter or matters touching the parliament or parliament business; and that, if any of the said members be complained of, and questioned for any thing said or done in parliament, the same is to be showed to the king by the advice and assent of all the commons assembled in parliament, before the king give credence to any private information.”*

This protestation was not likely to pacify the king's anger. He had already pressed the commons to make an end of the business before them, under pretence of wishing to adjourn them before Christmas, but probably looking to a dissolution. They were not in a temper to regard any business, least of all to grant a subsidy, till this attack on their privileges should be fully retracted. The king therefore adjourned, and in about a fortnight after dissolved them. But in the interval, having sent for the journal book, he erased their last protestation with

Dissolution
of the com-
mons, after
a strong re-
monstrance.

his own hand; and published a declaration of the causes which had provoked him to this unusual measure, alleging the unfitness of such a protest, after his ample assurance of maintaining their privileges, the irregular manner in which, according to him, it was voted, and its ambiguous and general wording, which might serve in future times to invade most of the prerogatives annexed to the imperial crown. In his proclamation for dissolving the parliament, James recapitulated all his grounds of offences; but finally required his subjects to take notice that it was his intention to govern them as his progenitors and predecessors had done, and to call a parliament again on the first convenient occasion.* He immediately followed up this dissolution of parliament by dealing his vengeance on its most conspicuous leaders: sir Edward Coke and sir Robert Philips were committed to the Tower; Mr. Pym, and one or two more, to other prisons; sir Dudley Digges, and several who were somewhat less obnoxious than the former, were sent on a commission to Ireland, as a sort of honourable banishment.† The earls of Oxford and Southampton underwent an examination before the council; and the former was committed to the Tower on pretence of having spoken words against the king. It is worthy of observation that, in this session, a portion of the upper house had united in opposing the court. Nothing of this kind is noticed in former parliaments, except perhaps a little on the establishment of the reformation. In this minority were considerable names; Essex, Southampton, Warwick, Oxford, Say, Spencer. Whether a sense of public wrongs, or their particular resentments, influenced these noblemen, their opposition must be reckoned an evident sign of the change that was at work in the spirit of the nation, and by which no rank could be wholly unaffected.‡

* Rymer, xvii. 344. Parl. Hist. Carte, 93. Wilson.

† Besides the historians, see Cabala, part ii. p. 155. (4to edit.); D'Israeli's Character of James I., p. 125.; and Mede's Letters, Harl. MSS. 389.

‡ Wilson's History of James I. in Kennet, ii. 247. 749. Thirty-three peers, Mr. Joseph Mede tells us in a letter of Feb. 24. 1621. (Harl. MSS. 389.),

“signed a petition to the king which they refused to deliver to the council, as he desired, nor even to the prince, unless he would say he did not receive it as a councillor; whereupon the king sent for lord Oxford, and asked him for it; he, according to previous agreement, said he had it not; then he sent for another, who made the same answer: at last they told him they had resolved not to deliver

James, with all his reputed pusillanimity, never showed any signs of fearing popular opinion. His obstinate adherence to the marriage treaty with Spain was the height of political rashness in so critical a state of the public mind. But what with elevated notions of his prerogative and of his skill in government on the one hand, what with a confidence in the submissive loyalty of the English on the other, he seems constantly to have fancied that all opposition proceeded from a small troublesome faction, whom if he could any way silence, the rest of his people would at once repose in a dutiful reliance on his wisdom. Hence he met every succeeding parliament with as sanguine hopes as if he had suffered no disappointment in the last. The nation was however wrought up at this time to an alarming pitch of discontent. Libels were in circulation about 1621, so bitterly malignant in their censures of his person and administration, that two hundred years might seem, as we read them, to have been mistaken in their date.*

it, unless they were admitted all together. Whereupon his majesty, wonderfully incensed, sent them all away, re infectâ, and said that he would come into parliament himself, and bring them all to the bar." This petition, I believe, did not relate to any general grievances, but to a question of their own privileges, as to their precedence of Scots peers. Wilson, ubi supra. But several of this large number were inspired by more generous sentiments; and the commencement of an aristocratic opposition deserves to be noticed. In another letter, written in March, Mede speaks of the good understanding between the king and parliament; he promised they should sit as long as they like, and hereafter he would have a parliament every three years. "Is not this good if it be true? But certain it is that the lords stick wonderful fast to the commons, and all take great pains."

The entertaining and sensible biographer of James has sketched the characters of these Whig peers. Aikin's James I., ii. 238.

* One of these may be found in the Somers Tracts, ii. 470., entitled Tom Tell-truth, a most malignant ebullition of disloyalty, which the author must have

risked his neck as well as ears in publishing. Some outrageous reflections on the personal character of the king could hardly be excelled by modern licentiousness. Proclamations about this time against excess of lavish speech in matters of state, Rymer, xvii. 275. 514., and against printing or uttering seditious and scandalous pamphlets, Id. 522. 616., show the tone and temper of the nation. [See also the extracts from the reports of Tillieres, the French ambassador, in Raumer's History of 16th & 17th centuries illustrated, vol. ii. p. 246., et alibi. Nothing can be more unfavourable to James in every respect than these reports; but his leaning towards Spanish connexions might inspire some prejudice into a French diplomatist. At a considerably earlier period, 1606, if we may trust the French ambassador, the players brought forward "their own king and all his favourites in a very strange fashion. They made him curse and swear because he had been robbed of a bird, and beat a gentleman because he had called off the hounds from the scent. They represent him as drunk at least once a day, &c. He has upon this made order that no play shall be henceforth acted in London; for the repeal of which order they have al-

Heedless however of this growing odium, James continued to solicit the affected coyness of the court of Madrid. The circumstances of that negotiation belong to general history.* It is only necessary to remind the reader that the king was induced, during the residence of prince Charles and the duke of Buckingham in Spain, to swear to certain private articles, some of which he had already promised before their departure, by which he bound himself to suspend all penal laws affecting the catholics, to permit the exercise of their religion in private houses, and to procure from parliament, if possible, a legal toleration. This toleration, as preliminary to the entire re-establishment of popery, had been the first great object of Spain in the treaty. But that court, having protracted the treaty for years, in order to extort more favourable terms, and interposed a thousand pretences, became the dupe of its own artifices; the resentment of a haughty minion overthrowing with ease the painful fabric of this tedious negotiation.

Buckingham obtained a transient and unmerited popularity by thus averting a great public mischief, which rendered the next parliament unexpectedly peaceable. The commons voted three subsidies and three fifteenths, in value about 300,000*l.*†; but with a condition,

ready offered 100,000 livres. Perhaps the permission will be again granted, but upon condition that they represent no recent history, nor speak of the present time." Raumer, ii. 219. If such an order was ever issued, it was speedily repealed; for there is no year to which new plays are not referred by those who have written the history of our drama. But the offence which provoked it is extraordinary, and hardly credible; though coming on the authority of a resident ambassador, we cannot set it aside. The satire was of course conveyed under the character of a fictitious king; for otherwise the players themselves would have been punished. The time seems to have been in March, 1606. The recent story of the duc de Biron had been also brought on the stage, which seems much less wonderful. 1845.]

* The letters on this subject, published by lord Hardwicke, State Papers, vol. i., are highly important; and being un-

known to Carte and Hume, render their narratives less satisfactory. Some pamphlets of the time, in the second volume of the Somers Tracts, may be read with interest; and Howell's Letters, being written from Madrid during the prince of Wales's residence, deserve notice. See also Wilson in Kennet, p. 750. et post. Dr. Lingard has illustrated the subject lately, ix. 271.

† Hume, and many other writers on the side of the crown, assert the value of a subsidy to have fallen from 70,000*l.*, at which it had been under the Tudors, to 55,000*l.*, or a less sum. But though I will not assert a negative too boldly, I have no recollection of having found any good authority for this; and it is surely too improbable to be lightly credited. For admit that no change was made in each man's rate according to the increase of wealth and diminution of the value of money, the amount must at least have been equal to what it had been; and to

proposed by the king himself, that, in order to ensure its application to naval and military armaments, it should be paid into the hands of treasurers appointed by themselves, who should issue money only on the warrant of the council of war. He seemed anxious to tread back the steps made in the former session, not only referring the highest matters of state to their consideration, but promising not to treat for peace without their advice. They, on the other hand, acknowledged themselves most bound to his majesty for having been pleased to require their humble advice in a case so important, not meaning, we may be sure, by these courteous and loyal expressions, to recede from what they had claimed in the last parliament as their undoubted right.*

The most remarkable affair in this session was the impeachment of the earl of Middlesex, actually lord treasurer of England, for bribery and other misdemeanors. It is well known that the prince of Wales and duke of Buckingham instituted this prosecution to gratify the latter's private pique, against the wishes of the king, who warned them they would live to have their fill of parliamentary impeachment. It was conducted by managers on the part of the commons in a very regular form, except that the depositions of witnesses were merely read by the clerk; that fundamental rule of English law which insists on the *vivâ voce* examination, being as yet unknown, or dispensed with in political trials. Nothing is more worthy of notice in the proceedings upon this impeachment than what dropped from sir Edwin Sandys, in speaking upon one of the charges. Middlesex had laid an imposition of *3l.* per ton on French wines, for taking off which he received a gratuity. Sandys, commenting on this offence, protested in the name of the commons, that they intended not to question the power of

Impeachment of Middlesex.

suppose the contributors to have prevailed on the assessors to underrate them, is rather contrary to common fiscal usage. In one of Mede's letters, which of course I do not quote as decisive, it is said that the value of a subsidy was *not above* 80,000*l.*; and that the assessors were directed (this was in 1621) not to follow former books, but value every man's estate according to their knowledge, and not his own confession.

* Parl. Hist. 1383. 1388. 1390. Carte, 119. The king seems to have acted pretty fairly in this parliament, bating a gross falsehood in denying the intended toleration of papists. He wished to get further pledges of support from parliament before he plunged into a war, and was very right in doing so. On the other hand, the prince and duke of Buckingham behaved in public towards him with great rudeness. Parl. Hist. 1396.

imposing claimed by the king's prerogative : this they touched not upon now ; they continued only their claim, and when they should have occasion to dispute it, would do so with all due regard to his majesty's state and revenue.* Such cautious and temperate language, far from indicating any disposition to recede from their pretensions, is rather a proof of such united steadiness and discretion as must ensure their success. Middlesex was unanimously convicted by the peers.† His impeachment was of the highest moment to the commons ; as it restored for ever that salutary constitutional right which the single precedent of lord Bacon might have been insufficient to establish against the ministers of the crown.

The two last parliaments had been dissolved without passing a single act, except the subsidy bill of 1621. An interval of legislation for thirteen years was too long for any civilized country. Several statutes were enacted in the present session, but none so material as that for abolishing monopolies for the sale of merchandize, or for using any trade.‡ This is of a declaratory nature, and recites that they are already contrary to the ancient and fundamental laws of the realm. Scarce any difference arose between the crown and the commons. This singular calm might probably have been interrupted, had not the king put an end to the session. They expressed some little dissatisfaction at this step §, and presented a list of grievances, one only of which is sufficiently considerable to deserve notice ; namely, the proclamations already mentioned in restraint of building about London, whereof they complain in very gentle terms, considering their obvious illegality and violation of private right. ||

* Parl. Hist. 1421.

† Clarendon blames the impeachment of Middlesex for the very reason which makes me deem it a fortunate event for the constitution, and seems to consider him as a sacrifice to Buckingham's resentment. Hacket also, the biographer of Williams, takes his part. Carte, however, thought him guilty, p. 116. ; and the unanimous vote of the peers is much against him, since that house was not wholly governed by Buckingham. See too the Life of Nicholas Farrar in

Wordsworth's Ecclesiastical Biography, vol. iv. ; where it appears that that pious and conscientious man was one of the treasurer's most forward accusers, having been deeply injured by him. It is difficult to determine the question from the printed trial.

‡ 21 Jac. 1. c. 3. See what lord Coke says on this act, and on the general subject of monopolies, 3 Inst. 181.

§ P. H. 1483.

|| Id. 1488.

The commons had now been engaged, for more than twenty years, in a struggle to restore and to fortify their own and their fellow subjects' liberties. They had obtained in this period but one legislative measure of importance, the late declaratory act against monopolies. But they had rescued from disuse their ancient right of impeachment. They had placed on record a protestation of their claim to debate all matters of public concern. They had remonstrated against the usurped prerogatives of binding the subject by proclamation, and of levying customs at the out-ports. They had secured beyond controversy their exclusive privilege of determining contested elections of their members. Of these advantages some were evidently incomplete; and it would require the most vigorous exertions of future parliaments to realize them. But such exertions the increased energy of the nation gave abundant cause to anticipate. A deep and lasting love of freedom had taken hold of every class, except perhaps the clergy; from which, when viewed together with the rash pride of the court, and the uncertainty of constitutional principles and precedents, collected through our long and various history, a calm bystander might presage that the ensuing reign would not pass without disturbance, nor perhaps end without confusion.

CHAPTER VII.

ON THE ENGLISH CONSTITUTION FROM THE ACCESSION OF CHARLES I. TO THE DISSOLUTION OF HIS THIRD PARLIAMENT.

Parliament of 1625 — Its dissolution — Another Parliament called — Prosecution of Buckingham — Arbitrary Proceedings towards the Earls of Arundel and Bristol — Loan demanded by the King — Several committed for Refusal to contribute — They sue for a Habeas Corpus — Arguments on this Question, which is decided against them — A Parliament called in 1628 — Petition of Right — King's Reluctance to grant it — Tonnage and Poundage disputed — King dissolves Parliament — Religious Differences — Prosecution of Puritans by Bancroft — Growth of High-Church Tenets — Differences as to the Observance of Sunday — Arminian Controversy — State of Catholics under James — Jealousy of the Court's Favour towards them — Unconstitutional Tenets promulgated by the High-Church Party — General Remarks.

CHARLES the First had much in his character very suitable to the times in which he lived, and to the spirit of the people he was to rule; a stern and serious deportment, a disinclination to all licentiousness, and a sense of religion that seemed more real than in his father.* These qualities we might suppose to have raised some expectation of him, and to have procured at his accession some of that popularity which is rarely withheld from untried princes. Yet it does not appear that he enjoyed even this first transient sunshine of his subjects' affection. Solely intent on retrenching the excesses of prerogative, and well aware that no sovereign would voluntarily recede from the possession of power, they seem to have dreaded to admit into their bosoms any sentiments of personal loyalty which might enervate their resolution. And Charles took speedy means to convince them that they had not erred in withholding their confidence.

* The general temperance and chastity of Charles, and the effect those virtues had in reforming the outward face of the court, are attested by many writers, and especially by Mrs. Hutchinson, whose good word he would not have undeservedly obtained. Mem. of Col. Hutchin-

son, p. 65. I am aware that he was not the perfect saint as well as martyr which his panegyrists represent him to have been; but it is an unworthy office, even for the purpose of throwing ridicule on exaggerated praise, to turn the microscope of history on private life.

Elizabeth in her systematic parsimony, James in his averseness to war, had been alike influenced by a consciousness that want of money alone could render a parliament formidable to their power. None of the irregular modes of supply were ever productive enough to compensate for the clamour they occasioned; after impositions and benevolences were exhausted, it had always been found necessary, in the most arbitrary times of the Tudors, to fall back on the representatives of the people. But Charles succeeded to a war, at least to the preparation of a war, rashly undertaken through his own weak compliance, the arrogance of his favourite, and the generous or fanatical zeal of the last parliament. He would have perceived it to be manifestly impossible, if he had been capable of understanding his own position, to continue this war without the constant assistance of the house of commons, or to obtain that assistance without very costly sacrifices of his royal power. It was not the least of this monarch's imprudences, or rather of his blind compliances with Buckingham, to have not only commenced hostilities against Spain which he might easily have avoided*, and persisted in them for four years, but entered on a fresh war with France, though he had abundant experience to demonstrate the impossibility of defraying its charges.

The first parliament of this reign has been severely censured on account of the penurious supply it doled out for the exigencies of a war, in which its predecessors had involved the king. I will not say that this reproach is wholly unfounded. A more liberal proceeding, if it did not obtain a reciprocal concession from the king, would have put him more in the wrong. But, according to the common practice and character of all such assemblies, it was preposterous to expect subsidies equal to the occasion, until a foundation of confidence should be laid between the crown and parliament. The commons had begun probably to repent of their hastiness in the preceding year, and to discover that Buckingham and his pupil, or master (which shall we say?),

Parliament
of 1625.

* War had not been declared at much more set upon it than his subjects, Charles's accession, nor at the dissolution Hume and all his school keep this out of of the first parliament. In fact, he was sight.

had conspired to deceive them.* They were not to forget that none of the chief grievances of the last reign were yet redressed, and that supplies must be voted slowly and conditionally if they would hope for reformation. Hence they made their grant of tonnage and poundage to last but for a year instead of the king's life, as had for two centuries been the practice; on which account the upper house rejected the bill.† Nor would they have refused a further supply, beyond the two subsidies (about 140,000*l.*) which they had granted, had some tender of redress been made by the crown; and were actually in debate upon the matter, when interrupted by a sudden dissolution.‡

Nothing could be more evident, by the experience of the late reign as well as by observing the state of public spirit, than that hasty and premature dissolutions or prorogations of parliament served but to aggravate the crown's embarrassments. Every successive house of commons inherited the feelings of its predecessor, without which it would have ill represented the prevalent humour of the nation. The same men, for the most part, came again to parliament more irritated and desperate of reconciliation with the sovereign than before. Even the politic measure, as it was fancied to be, of excluding some of the most active members from seats in the new assembly, by nominating them sheriffs for the year, failed altogether of the expected success; as it naturally must in an age when all ranks partook in a common enthusiasm.§

* Hume has disputed this, but with little success, even on his own showing. He observes, on an assertion of Wilson, that Buckingham lost his popularity after Bristol arrived, because he proved that the former, while in Spain, had professed himself a papist,—that it is false, and *was never said by Bristol*. It is singular that Hume should know so positively what Bristol did not say in 1624, when it is notorious that he said in parliament what nearly comes to the same thing in 1626. See a curious letter in Cabala, p. 224., showing what a combination had been formed against Buckingham, of all descriptions of malecontents.

† Parl. Hist. vol. ii. p. 6.

‡ Id. 33.

§ The language of lord-keeper Coven-

try in opening the session was very ill-calculated for the spirit of the commons: "If we consider aright, and think of that incomparable distance between the supreme height and majesty of a mighty monarch and the submissive awe and lowliness of loyal subjects, we cannot but receive exceeding comfort and contentment in the frame and constitution of this highest court, wherein not only the prelates, nobles, and grandees, but the commons of all degrees, have their part; and wherein that high majesty doth descend to admit, or rather to invite, the humblest of his subjects to conference and counsel with him," &c. He gave them a distinct hint afterwards that they must not expect to sit long. Parl. Hist. 39.

Hence the prosecution against Buckingham, to avert which Charles had dissolved his first parliament, was commenced with redoubled vigour in the second. It was too late, after the precedents of Bacon and Middlesex, to dispute the right of the commons to impeach a minister of state. The king, however, anticipating their resolutions, after some sharp speeches only had been uttered against his favourite, sent a message that he would not allow any of his servants to be questioned among them, much less such as were of eminent place and near unto him. He saw, he said, that some of them aimed at the duke of Buckingham, whom, in the last parliament of his father, all had combined to honour and respect, nor did he know what had happened since to alter their affections; but he assured them that the duke had done nothing without his own special direction and appointment.

This haughty message so provoked the commons that, having no express testimony against Buckingham, they came to a vote that common fame is a good ground of proceeding either by inquiry, or presenting the complaint to the king or lords; nor did a speech from the lord-keeper, severely rating their presumption, and requiring on the king's behalf that they should punish two of their members who had given him offence by insolent discourses in the house, lest he should be compelled to use his royal authority against them; nor one from the king himself, bidding them "remember that parliaments were altogether in his power for their calling, sitting, and dissolution; therefore, as he found the fruits of them good or evil, they were to continue to be or not to be,"* tend to pacify or to intimidate the assembly. They

Prosecution
of Bucking-
ham.

* Parl. Hist. 60. I know of nothing under the Tudors of greater arrogance than this language. Sir Dudley Carleton, accustomed more to foreign negotiations than to an English house of commons, gave very just offence by descanting on the misery of the people in other countries. "He cautioned them not to make the king out of love with parliaments by inroaching on his prerogative; for in his messages he had told them that he must then use new councils. In all Christian kingdoms there were parliaments anciently, till the monarchs, seeing their turbulent spirits, stood upon their prerogatives, and overthrew them all,

except with us. In foreign countries the people look not like ours, with store of flesh on their backs; but like ghosts, being nothing but skin and bones, with some thin cover to their nakedness, and wearing wooden shoes on their feet; a misery beyond expression, and that we are yet free from; and let us not lose the repute of a free-born nation by our turbulency in parliament." Rushworth.

This was a hint, in the usual arrogant style of courts, that the liberties of the people depended on favour, and not on their own determination to maintain them.

addressed the king in very decorous language, but asserting "the ancient, constant, and undoubted right and usage of parliaments to question and complain of all persons, of what degree soever, found grievous to the commonwealth, in abusing the power and trust committed to them by their sovereign." The duke was accordingly impeached at the bar of the house of peers on eight articles, many of them probably well-founded; yet as the commons heard no evidence in support of them, it was rather unreasonable in them to request that he might be committed to the Tower.

In the conduct of this impeachment, two of the managers, sir John Eliot and sir Dudley Digges, one the most illustrious confessor in the cause of liberty whom that time produced, the other a man of much ability and a useful supporter of the popular party, though not free from some oblique views towards promotion, gave such offence by words spoken, or alleged to be spoken, in derogation of his majesty's honour, that they were committed to the Tower. The commons of course resented this new outrage. They resolved to do no more business till they were righted in their privileges. They denied the words imputed to Digges; and, thirty-six peers asserting that he had not spoken them, the king admitted that he was mistaken, and released both their members.* He had already broken in upon the privileges of the house of lords, by committing the earl of Arundel to the Tower during the session; not upon any political charge, but, as was commonly surmised, on account of a marriage which his son had made with a lady of royal blood. Such private offences were sufficient in those arbitrary reigns to expose the subject to indefinite imprisonment, if not to an actual sentence in the star-chamber. The lords took up this detention of one of their

Arbitrary proceedings towards the earls of Arundel

* Parl. Hist. 119. Hatsell, i. 147. Lords' Journals. A few peers refused to join in this.

Dr. Lingard has observed that the opposition in the house of lords was headed by the earl of Pembroke, who had been rather conspicuous in the late reign, and whose character is drawn by Clarendon in the first book of his history. He held ten proxies in the king's first

parliament, as Buckingham did thirteen. Lingard, ix. 328. In the second Pembroke had only five, but the duke still came with thirteen. Lords' Journals, p. 491. This enormous accumulation of suffrages in one person led to an order of the house, which is now its established regulation, that no peer can hold more than two proxies. Lords' Journals, p. 507.

body, and after formal examination of precedents by a committee, came to a resolution, "that no lord of parliament, the parliament sitting, or within the usual times of privilege of parliament, is to be imprisoned or restrained without sentence or order of the house, unless it be for treason or felony, or for refusing to give surety for the peace." This assertion of privilege was manifestly warranted by the co-extensive liberties of the commons. After various messages between the king and lords, Arundel was ultimately set at liberty.*

This infringement of the rights of the peerage was accompanied by another not less injurious, the refusal of a writ of summons to the earl of Bristol. ^{and Bristol.} The lords were justly tenacious of this unquestionable privilege of their order, without which its constitutional dignity and independence could never be maintained. Whatever irregularities or uncertainty of legal principle might be found in earlier times as to persons summoned only by writ without patents of creation, concerning whose hereditary peerage there is much reason to doubt, it was beyond all controversy that an earl of Bristol holding his dignity by patent was entitled of right to attend parliament. The house necessarily insisted upon Bristol's receiving his summons, which was sent him with an injunction not to comply with it by taking his place. But the spirited earl knew that the king's constitutional will expressed in the writ ought to outweigh his private command, and laid the secretary's letter before the house of lords. The king prevented any further interference in his behalf by causing articles of charge to be exhibited against him by the attorney-general, whereon he was committed to the Tower. These assaults on the pride and consequence of an aristocratic assembly, from whom alone the king could expect effectual support, display his unfitness not only for the government of England, but of any other nation. Nor was his conduct towards Bristol less oppressive than impolitic. If we look at the harsh and indecent employment of his own authority and even testimony, to influence a criminal process against a man of approved and untainted worth †, and his sanction of charges which, if Bristol's de-

* Parl. Hist. 125. Hatsell, 141.

too severely on Bristol's conduct, vol. ii.

† Mr. Brodie has commented rather p. 109. That he was "actuated merely

fence be as true, as it is now generally admitted to be, he must have known to be unfounded, we shall hardly concur with those candid persons who believe that Charles would have been an excellent prince in a more absolute monarchy. Nothing in truth can be more preposterous than to maintain, like Clarendon and Hume, the integrity and innocence of lord Bristol, together with the sincerity and humanity of Charles the First. Such inconsistencies betray a determination in the historian to speak of men according to his preconceived affection or prejudice, without so much as attempting to reconcile these sentiments to the facts which he can neither deny nor excuse.*

Though the lords petitioned against a dissolution, the king was determined to protect his favourite, and rescue himself from the importunities of so refractory a house of commons.† Perhaps he had already taken the resolution of governing

by motives of self-aggrandizement," is surely not apparent; though he might be more partial to Spain than we may think right, or even though he might have some bias towards the religion of Rome. The last however is by no means proved; for the king's word is no proof in my eyes.

* See the proceedings on the mutual charges of Buckingham and Bristol in Rushworth, or the Parliamentary History. Charles's behaviour is worth noticing. He sent a message to the house, desiring that they would not comply with the earl's request of being allowed counsel; and yielded ungraciously, when the lords remonstrated against the prohibition. *Parl. Hist.* 97. 132. The attorney-general exhibited articles against Bristol as to facts depending in great measure on the king's sole testimony. Bristol petitioned the house "to take into consideration of what consequence such a precedent might be; and thereon most humbly to move his majesty for the declining, at least, of his majesty's accusation and testimony." *Id.* 98. The house ordered two questions on this to be put to the judges: 1. Whether, in case of treason or felony, the king's testimony was to be admitted or not? 2. Whether words spoken to the prince, who is after king, make any alteration in the case? They were ordered to deliver their opinions three days afterwards. But

when the time came, the chief justice informed the house that the attorney-general had communicated to the judges his majesty's pleasure that they should forbear to give an answer. *Id.* 103. 106.

Hume says, "Charles himself was certainly deceived by Buckingham, when he corroborated his favourite's narrative by his testimony." But no assertion can be more gratuitous; the supposition indeed is impossible.

† *Parl. Hist.* 193. If the following letter is accurate, the privy-council themselves were against this dissolution:—"Yesterday the lords sitting in council at Whitehall to argue whether the parliament should be dissolved or not, were all with one voice against the dissolution of it; and to-day, when the lord-keeper drew out the commission to have read it, they sent four of their own body to his majesty to let him know how dangerous this abruptness would be to the state, and beseech him the parliament might sit but two days—he answered; Not a minute." 15 June, 1626. *Mede's Letters*, ubi *suprà*. The author expresses great alarm at what might be the consequence of this step. *Mede* ascribes this to the council; but others, perhaps more probably, to the house of peers. The king's expression, "not a minute," is mentioned by several writers.

without the concurrence of parliaments, though he was induced to break it the ensuing year. For the commons having delayed to pass a bill for the five subsidies which they had voted in this session till they should obtain some satisfaction for their complaints, he was left without any regular supply. This was not wholly unacceptable to some of his counsellors, and probably to himself; as affording a pretext for those unauthorised demands which the advocates of arbitrary prerogative deemed more consonant to the monarch's honour. He had issued letters of privy seal, after the former parliament, to those in every county, whose names had been returned by the lord lieutenant as most capable, mentioning the sum they were required to lend, with a promise of repayment in eighteen months.* This specification of a particular sum was reckoned an unusual encroachment, and a manifest breach of the statute against arbitrary benevolences; especially as the names of those who refused compliance were to be returned to the council. But the government now ventured on a still more outrageous stretch of power. They first attempted to persuade the people that, as subsidies had been voted in the house of commons, they should not refuse to pay them, though no bill had been passed for that purpose. But a tumultuous cry was raised in Westminster-hall from those who had been convened, that they would pay no subsidy but by authority of parliament.† This course, therefore, was

Loan de-
manded by
the king.

* Rushworth, Kennet.

† Mede's Letters—"On Monday the judges sat in Westminster-hall to persuade the people to pay subsidies; but there arose a great tumultuous shout amongst them: 'A parliament! a parliament! else no subsidies!' The levying of the subsidies, verbally granted in parliament, being propounded to the subsidy men in Westminster, all of them, saving some thirty among five thousand (and they all the king's servants), cried, 'A parliament! a parliament!' &c. The same was done in Middlesex on Monday also, in five or six places, but far more are said to have refused the grant. At Hicks's-hall the men of Middlesex assembled there, when they had heard a speech for the purpose, made their

obeisance; and so went out without any answer affirmative or negative. In Kent the whole county denied, saying that subsidies were matters of too high a nature for them to meddle withal, and that they durst not deal therewith, lest, hereafter, they might be called in question." July 22. et post. In Harleian MSS. vol. xxxvii. fol. 192., we find a letter from the king to the deputy lieutenants and justices of every county, informing them that he had dissolved the last parliament because the disordered passion of some members of that house, contrary to the good inclination of the greater and wiser sort of them, had frustrated the grant of four subsidies, and three fifteenths, which they had promised; he therefore enjoins the deputy lieutenants

abandoned for one hardly less unconstitutional. A general loan was demanded from every subject, according to the rate at which he was assessed in the last subsidy. The commissioners appointed for the collection of this loan received private instructions to require not less than a certain proportion of each man's property in lands or goods, to treat separately with every one, to examine on oath such as should refuse, to certify the names of refractory persons to the privy council, and to admit of no excuse for abatement of the sum required.*

This arbitrary taxation (for the name of loan could not disguise the extreme improbability that the money would be repaid), so general and systematic as well as so weighty, could not be endured without establishing a precedent that must have shortly put an end to the existence of parliaments. For, if those assemblies were to meet only for the sake of pouring out stupid flatteries at the foot of the throne, of humbly tendering such supplies as the ministry should suggest, or even of hinting at a few subordinate grievances which touched not the king's prerogative and absolute control in matters of state—functions which the Tudors and Stuarts were well pleased that they should exercise—if every remonstrance was to be checked by a dissolution, and chastised by imprisonment of its promoters, every denial of subsidy to furnish a justification for extorted loans, our free-born high-minded gentry would not long have brooked to give their attendance in such an ignominious assembly, and an English parliament would have become as idle a mockery of national representation as the cortes of Castile. But this kingdom was not in a temper to put up with tyranny. The king's advisers were as little disposed to recede from their attempt. They prepared to enforce it by the arm of power.† The

to cause all the troops and bands of the county to be mustered, trained, and ready to march, as he is threatened with invasion; that the justices do divide the county into districts, and appoint in each able persons to collect and receive moneys, promising the parties to employ them in the common defence; to send a list of those who contribute and those who refuse, "that we may hereby be in-

formed who are well affected to our service, and who are otherwise." July 7. 1626. It is evident that the pretext of invasion, which was utterly improbable, was made use of in order to shelter the king's illegal proceedings.

* Rushworth's Abr. i. 270.

† The 321st volume of Hargrave MSS. p. 300., contains minutes of a debate at the council-table during the interval be-

common people who refused to contribute were impressed to serve in the navy. The gentry were bound by recognizance to appear at the council-table, where many of them were committed to prison.* Among these were five knights, Darnel, Corbet, Earl, Heveningham, and Hampden, who sued the court of king's bench for their writ of habeas corpus. The writ was granted; but the warden of the Fleet made return that they were detained by a warrant from the privy-council, informing him of no particular cause of imprisonment, but that they were committed by the special command of his majesty. This gave rise to a most important question, whether such a return was sufficient in law to justify the court in remitting the parties to custody. The fundamental immunity of English subjects from arbitrary detention had never before been so fully canvassed; and it is to the discussion which arose out of the case of these five gentlemen that we owe its continual assertion by parliament, and its ultimate establishment in full practical efficacy by the statute of Charles II. It was argued with great ability by Noy, Selden, and other eminent lawyers, on behalf of the claimants, and by the attorney-general Heath for the crown.

Several committed for refusal to contribute. They sue for a habeas corpus.

The counsel for the prisoners grounded their demand of liberty on the original basis of Magna Charta; the twenty-ninth section of which, as is well known,

Arguments on this question.

tween the second and third parliaments of Charles, taken by a councillor. It was proposed to lay an excise on beer; others suggested that it should be on malt, on account of what was brewed in private houses. It was then debated "how to overcome difficulties, whether by persuasion or force. Persuasion, it was thought, would not gain it; and for judicial courses, it would not hold against the subject that would stand upon the right of his own property, and against the fundamental constitutions of the kingdom. The last resort was to a proclamation; for in star-chamber it might be punishable, and thereupon it rested." There follows much more; it seemed to be agreed that there was such a necessity as might justify the imposition; yet a sort of reluctance is visible even among these timid councillors. The king pressed it forward much. In the same volume,

p. 393., we find other proceedings at the council-table, whereof the subject was the censuring or punishing of some one who had refused to contribute to the loan of 1626, on the ground of its illegality. The highest language is held by some of the conclave in this debate.

Mr. D'Israeli has collected from the same copious reservoir, the manuscripts of the British Museum, several more illustrations both of the arbitrary proceedings of the council, and of the bold spirit with which they were resisted. *Curiosities of Literature, New Series*, iii. 381. But this ingenious author is too much imbued with "the monstrous faith of many made for one," and sets the private feelings of Charles for an unworthy and dangerous minion above the liberties and interests of the nation.

* Rushworth, Kennet.

provides that "no free man shall be taken or imprisoned unless by lawful judgment of his peers, or the law of the land." This principle having been frequently transgressed by the king's privy council in earlier times, statutes had been repeatedly enacted, independently of the general confirmations of the charter, to redress this material grievance. Thus in the 25th of Edward III. it is provided that "no one shall be taken by petition or suggestion to the king or his counsel, unless it be (*i. e.* but only) by indictment or presentment, or by writ original at the common law." And this is again enacted three years afterwards, with little variation, and once again in the course of the same reign. It was never understood, whatever the loose language of these old statutes might suggest, that no man could be kept in custody upon a criminal charge before indictment, which would have afforded too great security to offenders. But it was the regular practice that every warrant of commitment, and every return by a gaoler to the writ of habeas corpus, must express the nature of the charge, so that it might appear whether it were no legal offence; in which case the party must be instantly set at liberty; or one for which bail ought to be taken; or one for which he must be remanded to prison. It appears also to have been admitted without controversy, though not perhaps according to the strict letter of law, that the privy-council might commit to prison on a criminal charge, since it seemed preposterous to deny that power to those intrusted with the care of the commonwealth which every petty magistrate enjoyed. But it was contended that they were as much bound as every petty magistrate to assign such a cause for their commitments as might enable the court of king's bench to determine whether it should release or remand the prisoner brought before them by habeas corpus.

The advocates for this principle alleged several precedents, from the reign of Henry VII. to that of James, where persons committed by the council generally, or even by the special command of the king, had been admitted to bail on their habeas corpus. "But I conceive," said one of these, "that our case will not stand upon precedent, but upon the fundamental laws and statutes of this realm; and though the precedents look one way or the other, they are to be brought

back unto the laws by which the kingdom is governed." He was aware that a pretext might be found to elude most of his precedents. The warrant had commonly declared the party to be charged on *suspicion* of treason or of felony; in which case he would of course be bailed by the court. Yet in some of these instances the words "by the king's special command," were inserted in the commitment; so that they served to repel the pretension of an arbitrary right to supersede the law by his personal authority. Ample proof was brought from the old law books that the king's command could not excuse an illegal act. "If the king command me," said one of the judges under Henry VI., "to arrest a man, and I arrest him, he shall have an action of false imprisonment against me, though it were done in the king's presence." "The king," said chief justice Markham to Edward IV., "cannot arrest a man upon suspicion of felony or treason, as any of his subjects may; because if he should wrong a man by such arrest, he can have no remedy against him." No verbal order of the king, nor any under his sign manual or privy signet, was a command, it was contended by Selden, which the law would recognize as sufficient to arrest or detain any of his subjects; a writ duly issued under the seal of a court being the only language in which he could signify his will. They urged farther that, even if the first commitment by the king's command were lawful, yet when a party had continued in prison for a reasonable time, he should be brought to answer, and not be indefinitely detained; liberty being a thing so favoured by the law that it will not suffer any man to remain in confinement for any longer time than of necessity it must.

To these pleadings for liberty, Heath, the attorney-general, replied, in a speech of considerable ability, full of those high principles of prerogative which, trampling as it were on all statute and precedent, seemed to tell the judges that they were placed there to obey rather than to determine. "This commitment," he says, "is not in a legal and ordinary way, but by the special command of our lord the king, which implies not only the fact done, but so extraordinarily done, that it is notoriously his majesty's immediate act and will that it should be so." He alludes afterwards, though some-

what obscurely, to the king's absolute power, as contradistinguished from that according to law; a favourite distinction, as I have already observed, with the supporters of despotism. "Shall we make enquiries," he says, "whether his commands are lawful? — who shall call in question the justice of the king's actions, who is not to give account for them?" He argues from the legal maxim that the king can do no wrong, that a cause must be presumed to exist for the commitment, though it be not set forth. He adverts with more success to the number of papists and other state-prisoners, detained for years in custody for mere political jealousy. "Some there were," he says, "in the Tower who were put in it when very young; should they bring a habeas corpus, would the court deliver them?" Passing next to the precedents of the other side, and condescending to admit their validity, however contrary to the tenor of his former argument, he evades their application by such distinctions as I have already mentioned.

The judges behaved during this great cause with apparent moderation and sense of its importance to the subject's freedom. Their decision, however, was in favour of the crown; and the prisoners were remanded to custody. In pronouncing this judgment the chief justice, sir Nicholas Hyde, avoiding the more extravagant tenets of absolute monarchy, took the narrower line of denying the application of those precedents, which had been alleged to show the practice of the court in bailing persons committed by the king's special command. He endeavoured also to prove that, where no cause had been expressed in the warrant, except such command as in the present instance, the judges had always remanded the parties; but with so little success, that I cannot perceive more than one case mentioned by him, and that above a hundred years old, which supports this doctrine. The best authority on which he had to rely, was the resolution of the judges in the 34th of Elizabeth, published in Anderson's Reports.* For, though this is not gramma-

* See above, in chap. v. Coke himself, while chief justice, had held that one committed by the privy-council was not bailable by any court in England. Parl. Hist. 310. He had nothing to say when pressed with this in the next parliament,

but that he had misgrounded his opinion upon a certain precedent, which being nothing to the purpose, he was now assured his opinion was as little to the purpose. Id. 325. State Trials, iii. 81.

tically worded, it seems impossible to doubt that it acknowledges the special command of the king or the authority of the privy-council as a body, to be such sufficient warrant for a commitment as to require no further cause to be expressed, and to prevent the judges from discharging the party from custody, either absolutely or upon bail. Yet it was evidently the consequence of this decision, that every statute from the time of Magna Charta, designed to protect the personal liberties of Englishmen, became a dead letter; since the insertion of four words in a warrant (*per speciale mandatum regis*), which might become matter of form, would control their remedial efficacy. And this wound was the more deadly, in that the notorious cause of these gentlemen's imprisonment was their withstanding an illegal exaction of money. Every thing that distinguished our constitutional laws, all that rendered the name of England valuable, was at stake in this issue. If the judgment in the case of ship-money was more flagrantly iniquitous, it was not so extensively destructive as the present.*

Neither these measures, however, of illegal severity towards the uncompliant, backed as they were by a timid court of justice, nor the exhortations of a more prostitute and shameless band of churchmen, could divert the nation from its cardinal point of faith in its own prescriptive franchises. To call another parliament appeared the only practicable means of raising money for a war, in which the king persisted with great impolicy or rather blind trust in his favourite. He consented to this with extreme unwillingness.† Previously to its assembling, he released a considerable number of gentlemen and others who had been committed for their refusal of the loan. These were, in many cases, elected to the new parliament; coming thither with just indignation at their country's wrongs, and pardonable resentment at their own. No year, indeed, within the memory of any one living, had witnessed such violations of public liberty as 1627. Charles seemed born to carry into daily practice those theories of absolute power

A parliament called in 1628.

* State Trials, iii. 1—234. Parl. Hist. 246. 259, &c. Rushworth.

a parliament, the king said, he did abominate the name. Mede's Letters, 30th Sept. 1626.

† At the council table, some proposing

which had been promulgated from his father's lips. Even now, while the writs were out for a new parliament, commissioners were appointed to raise money "by impositions or otherwise, as they should find most convenient in a case of such inevitable necessity, wherein form and circumstance must be dispensed with rather than the substance be lost and hazarded*;" and the levying of ship-money was already debated in the council. Anticipating, as indeed was natural, that this house of commons would correspond as ill to the king's wishes as their predecessors, his advisers were preparing schemes more congenial, if they could be rendered effective, to the spirit in which he was to govern. A contract was entered into for transporting some troops and a considerable quantity of arms from Flanders into England, under circumstances at least highly suspicious, and which, combined with all the rest that appears of the court policy at that time, leaves no great doubt on the mind that they were designed to keep under the people, while the business of contribution was going forward.† Shall it be imputed as a reproach to the Cokes, the Seldens, the Glanvils, the Pym, the Eliots, the Philipsons, of this famous parliament, that they endeavoured to devise more effectual restraints than the law had hitherto imposed on a prince who had snapped like bands of tow the ancient statutes of the land, to remove from his presence counsellors, to have been misled by whom was his best apology, and to subject him to an entire dependence on his people for the expenditure of government, as the surest pledge of his obedience to the laws?

The principal matters of complaint taken up by the commons in this session were, the exaction of money under the name of loans; the commitment of those who refused compliance, and the late decision of the king's bench, remanding them upon a habeas corpus; the billeting of soldiers on private persons, which had occurred in the last year, whether for convenience or for purposes of intimidation and annoyance; and the commissions to try military offenders by martial law—a procedure necessary within certain limits to

* Rushworth, Mede's Letters in Harl. MSS. passim. part. ii. 217. See what is said of this by Mr. Brodie, ii. 158.

† Rushworth's Abr. i. 304. Cabala,

the discipline of an army, but unwarranted by the constitution of this country which was little used to any regular forces, and stretched by the arbitrary spirit of the king's administration beyond all bounds.* These four grievances or abuses form the foundation of the Petition of Right. Petition of Right, presented by the commons in the shape of a declaratory statute. Charles had recourse to many subterfuges in hopes to elude the passing of this law; rather perhaps through wounded pride, as we may The king's reluctance to grant it. judge from his subsequent conduct, than much apprehension that it would create a serious impediment to his despotic schemes. He tried to persuade them to acquiesce in his royal promise not to arrest any one without just cause, or in a simple confirmation of the Great Charter and other statutes in favour of liberty. The peers, too pliant in this instance to his wishes, and half receding from the patriot banner they had lately joined, lent him their aid by proposing amendments (insidious in those who suggested them, though not in the body of the house), which the commons firmly rejected.† Even when the bill was tendered to him for that assent, which it had been necessary for the last two centuries that the king should grant or refuse in a word, he returned a long and equivocal answer, from which it could only be collected that he did not intend to remit any portion of what he had claimed as his prerogative. But on an address from both houses for a more explicit answer, he thought fit to consent to the bill in the usual form. The commons, of

* A commission addressed to lord Wimbleton, 28th Dec. 1625, empowers him to proceed against soldiers or dissolute persons joining with them, who should commit any robberies, &c. which by martial law ought to be punished with death, by such summary course as is agreeable to martial law, &c. Rymer, xviii. 254. Another, in 1626, may be found, p. 763. It is unnecessary to point out how unlike these commissions are to our present mutiny bills.

† Bishop Williams, as we are informed by his biographer, though he promoted the petition of right, stickled for the additional clause adopted by the lords, reserving the king's sovereign power; which very justly exposed him to suspi-

cion of being corrupted. For that he was so is most evident by what follows; where we are told that he had an interview with the duke of Buckingham, when they were reconciled; and "his grace had the bishop's consent with a little asking, that he would be his grace's faithful servant in the next session of parliament, and was allowed to hold up a seeming enmity, and his own popular estimation, that he might the sooner do the work." Hackett's Life of Williams, p. 77. 80. With such instances of baseness and treachery in the public men of this age, surely the distrust of the commons was not so extravagant as the school of Hume pretend.

whose harshness towards Charles his advocates have said so much, immediately passed a bill for granting five subsidies, about 350,000*l.*; a sum not too great for the wealth of the kingdom or for his exigencies, but considerable according to the precedents of former times, to which men naturally look.*

The sincerity of Charles in thus according his assent to the Petition of Right may be estimated by the following very remarkable conference which he held on the subject with his judges. Before the bill was passed, he sent for the two chief justices, Hyde and Richardson, to Whitehall; and propounded certain questions, directing that the other judges should be assembled in order to answer them. The first question was, "Whether in no case whatsoever the king may not commit a subject without showing cause?" To which the judges gave an answer the same day under their hands, which was the next day presented to his majesty by the two chief justices in these words: "We are of opinion that, by the general rule of law, the cause of commitment by his majesty ought to be shown; yet some cases may require such secrecy, that the king may commit a subject without showing the cause for a convenient time." The king then delivered them a second question, and required them to keep it very secret, as the former: "Whether, in case a habeas corpus be brought, and a warrant from the king without any general or special cause returned, the judges ought to deliver him before they understand the cause from the king?" Their answer was as follows: "Upon a habeas corpus brought for one committed by the king, if the cause be not specially or generally returned, so as the court may take knowledge thereof, the party ought by the general rule of law to be delivered. But, if the case be such that the same

* The debates and conferences on this momentous subject, especially on the article of the habeas corpus, occupy near two hundred columns in the *New Parliamentary History*, to which I refer the reader.

In one of these conferences, the lords, observing what a prodigious weight of legal ability was arrayed on the side of the petition, very fairly determined to

hear counsel for the crown. One of these, serjeant Ashley, having argued in behalf of the prerogative in a high tone, such as had been usual in the late reign, was ordered into custody; and the lords assured the other house, that he had no authority from them for what he had said. *Id.* 327. A remarkable proof of the rapid growth of popular principles!

requireth secrecy, and may not presently be disclosed, the court in discretion may forbear to deliver the prisoner for a convenient time, to the end the court may be advertised of the truth thereof." On receiving this answer, the king proposed a third question: "Whether, if the king grant the commons' petition, he doth not thereby exclude himself from committing or restraining a subject for any time or cause whatsoever, without showing a cause?" The judges returned for answer to this important query: "Every law, after it is made, hath its exposition, and so this petition and answer must have an exposition as the case in the nature thereof shall require to stand with justice; which is to be left to the courts of justice to determine, which cannot particularly be discovered until such case shall happen. And although the petition be granted, there is no fear of conclusion as is intimated in the question."*

The king, a very few days afterwards, gave his *first* answer to the Petition of Right. For even this indirect promise of compliance, which the judges gave him, did not relieve him from apprehensions that he might lose the prerogative of arbitrary commitment. And though, after being beaten from this evasion, he was compelled to accede in general terms to the petition, he had the insincerity to circulate one thousand five hundred copies of it through the country, after the prorogation, with his first answer annexed; an attempt to deceive without the possibility of success.† But instances of such ill faith, accumulated as they are through the life of Charles, render the assertion of his sincerity a proof either of historical ignorance, or of a want of moral delicacy.

The Petition of Right, as this statute is still called, from its not being drawn in the common form of an act of parliament, after reciting the various laws which have established certain essential privileges of the subject, and enumerating the violations of them which had recently occurred, in the four points of illegal exactions, arbitrary commitments, quartering of soldiers or sailors, and infliction of punishment by martial law, prays the king, "That no man hereafter be compelled to make or yield any gift, loan, benevolence, tax,

* Hargrave MSS. xxxii. 97.

† Parl. Hist. 436.

or such like charge, without common consent by act of parliament; and that none be called to answer or take such oath, or to give attendance, or be confined or otherwise molested or disquieted concerning the same, or for refusal thereof; and that no freeman in any such manner as is before mentioned be imprisoned or detained; and that your majesty would be pleased to remove the said soldiers and marines, and that your people may not be so burthened in time to come; and that the aforesaid commissions for proceeding by martial law may be revoked and annulled; and that hereafter no commissions of the like nature may issue forth to any person or persons whatever, to be executed as aforesaid, lest by colour of them any of your majesty's subjects be destroyed or put to death contrary to the laws and franchises of the land."*

It might not unreasonably be questioned whether the language of this statute were sufficiently general to comprehend duties charged on merchandize at the out-ports, as well as internal taxes and exactions, especially as the former had received a sort of sanction, though justly deemed contrary to law, by the judgment of the court of exchequer in Bates's case. The commons however were steadily determined not to desist till they should have rescued their fellow-subjects from a burthen as unwarrantably imposed as those specifically enumerated in their Petition of Right. Tonnage and poundage, the customary grant of every reign, had been taken by the present king without consent of parliament; the lords having rejected, as before mentioned, a bill that limited it to a single year. The house now prepared a bill to grant it, but purposely delayed its passing; in order to remonstrate with the king against his unconstitutional anticipation of their consent. They declared "that there ought not any imposition to be laid upon the goods of merchants, exported or imported, without common consent by act of parliament;" that tonnage and poundage, like other subsidies, sprung from the free grant of the people; that "when impositions had been laid on the subjects' goods and

* Stat. 3 Car. I. c. 1. Hume has of brevity, and because it may be found printed in a note the whole statute with in so common a book. the preamble, which I omit for the sake

merchandizes without authority of law, which had very seldom occurred, they had, on complaint in parliament, been forthwith relieved; except in the late king's reign, who, through evil counsel, had raised the rates and charges to the height at which they then were." They conclude, after repeating their declaration that the receiving of tonnage and poundage and other impositions not granted by parliament is a breach of the fundamental liberties of this kingdom, and contrary to the late petition of right, with most humbly beseeching his majesty to forbear any further receiving of the same, and not to take it in ill part from those of his loving subjects who should refuse to make payment of any such charges without warrant of law.*

The king anticipated the delivery of this remonstrance by proroguing parliament. Tonnage and poundage, he told them, was what he had never meant to give away, nor could possibly do without. By this abrupt prorogation while so great a matter was unsettled, he trod back his late footsteps, and dissipated what little hopes might have arisen from his tardy assent to the Petition of Right. During the interval before the ensuing session, those merchants, among whom Chambers, Rolls, and Vassal are particularly to be remembered with honour, who gallantly refused to comply with the demands of the custom-house, had their goods distrained, and on suing writs of replevin, were told by the judges that the king's right, having been established in the case of Bates, could no longer be disputed.† Thus the commons re-assembled, by no means less inflamed against the king's administration than at the commencement of the preceding session. Their proceedings were conducted with more than usual warmth.‡ Buckingham's death, which had occurred since the prorogation, did not allay their resentment against the advisers of the crown. But the king, who had very much lowered his tone in speaking of tonnage and poundage, and would have been content to receive it as their grant, perceiving that they were bent on a full statutory recognition of the illegality of impositions without their consent, and that they had opened a fresh battery on another side, by mingling

* Parl. Hist. 431.

† Parl. Hist. 441, &c.

‡ Rushworth, Abr. i. 409.

in certain religious disputes in order to attack some of his favourite prelates, took the step, to which he was always inclined, of dissolving this third parliament.

The religious disputes to which I have just alluded are chiefly to be considered, for the present purpose, in their relation to those jealousies and resentments springing out of the ecclesiastical administration, which during the reigns of the two first Stuarts furnished unceasing food to political discontent. James having early shown his inflexible determination to restrain the puritans, the bishops proceeded with still more rigour than under Elizabeth. No longer thwarted, as in her time, by an unwilling council, they succeeded in exacting a general conformity to the ordinances of the church. It had been solemnly decided by the judges in the queen's reign, and in 1604, that, although the statute establishing the high-commission court did not authorize it to deprive ministers of their benefices, yet this law being only in affirmation of the queen's inherent supremacy, she might, by virtue of that, regulate all ecclesiastical matters at her pleasure, and erect courts with such powers as she should think fit. Upon this somewhat dangerous principle, archbishop Bancroft deprived a considerable number of puritan clergymen*; while many more, finding that the interference of the commons in their behalf was not regarded, and that all schemes of evasion were come to an end, were content to submit to the obnoxious discipline. But their affections being very little conciliated by this coercion, there remained a large party within the bosom of the established church, prone to watch for and magnify the errors of their spiritual rulers. These men preserved the name of puritans. Austere in their lives, while many of the others

* Cawdrey's Case, 5 Reports. Cro. Jac. 37. Neal, p. 432. The latter says, above three hundred were deprived; but Collier reduces them to forty-nine, p. 687. The former writer states the non-conformist ministers at this time in twenty-four counties to have been 754; of course the whole number was much greater, p. 434. This minority was considerable; but it is chiefly to be noticed, that it contained the more exemplary portion of the clergy; no scandalous or absolutely

illiterate incumbent, of whom there was a very large number, being a non-conformist. This general enforcement of conformity, however it might compel the majority's obedience, rendered the separation of the incontinent more decided. Neal, 446. Many retired to Holland, especially of the Brownist or Independent denomination. Id. 436. And Bancroft, like his successor Laud, interfered to stop some who were setting out for Virginia. Id. 454.

were careless or irregular, learned as a body comparatively with the opposite party, implacably averse to every thing that could be construed into an approximation to popery, they acquired a degree of respect from grave men, which would have been much more general, had they not sometimes given offence by a moroseness and even malignity of disposition, as well as by a certain tendency to equivocation and deceitfulness; faults, however, which so frequently belong to the weaker party under a rigorous government that they scarcely afford a marked reproach against the puritans. They naturally fell in with the patriotic party in the house of commons, and kept up throughout the kingdom a distrust of the crown, which has never been so general in England as when connected with some religious apprehensions.

The system pursued by Bancroft and his imitators, bishops Neyle and Laud, with the approbation of the king, far opposed to the healing counsels of Burleigh and Bacon, was just such as low-born and little-minded men, raised to power by fortune's caprice, are ever found to pursue. They studiously aggravated every difference, and irritated every wound. As the characteristic prejudice of the puritans was so bigoted an abhorrence of the Romish faith, that they hardly deemed its followers to deserve the name of Christians, the prevailing high-church party took care to shock that prejudice by somewhat of a retrograde movement, and various seeming, or indeed real, accommodations of their tenets to those of the abjured religion. They began by preaching the divine right, as it is called, or absolute indispensability, of episcopacy; a doctrine of which the first traces, as I apprehend, are found about the end of Elizabeth's reign.* They insisted on the necessity of epis-

Growth of
high-church
tenets.

* Lord Bacon, in his advertisement respecting the Controversies of the Church of England, written under Elizabeth, speaks of this notion as newly broached. "Yea and some indiscreet persons have been bold in open preaching to use dishonourable and derogatory speech and censure of the churches abroad; and that so far, as some of our men ordained in foreign parts have been pronounced to be no lawful ministers:" vol. i. p. 382. It is evident, by some passages in Strype,

attentively considered, that natives regularly ordained abroad in the presbyterian churches were admitted to hold preferment in England; the first bishop who objected to them seems to have been Aylmer. Instances, however, of foreigners holding preferment without any reordination, may be found down to the civil wars. *Annals of Reformation*, ii. 522., and Appendix, 116. *Life of Grindal*, 271. *Collier*, ii. 594. *Neal*, i. 258. The cases of laymen, such as Casaubon,

copal succession regularly derived from the apostles. They drew an inference from this tenet, that ordinations by presbyters were in all cases null. And as this affected all the reformed churches in Europe except their own, the Lutherans not having preserved the succession of their bishops, while the Calvinists had altogether abolished that order, they began to speak of them not as brethren of the same faith, united in the same cause, and distinguished only by differences little more material than those of political commonwealths, (which had been the language of the church of England ever since the Reformation,) but as aliens to whom they were not at all related, and schismatics with whom they held no communion; nay, as wanting the very essence of a Christian society. This again brought them nearer, by irresistible consequence, to the disciples of Rome, whom, with becoming charity, but against the received creed of the puritans and perhaps against their own articles, they all acknowledged to be a part of the catholic church, while they were withholding that appellation, expressly or by inference, from Heidelberg and Geneva.

The founders of the English reformation, after abolishing most of the festivals kept before that time, had made little or no change as to the mode of observance of those they retained. Sundays and holidays stood much on the same footing as days on which no work except for good cause was to be performed, the service of

Differences as to the observance of Sunday.

holding prebends by dispensation, are not in point.

The divine right of episcopacy is said to have been laid down by Bancroft, in his famous sermon at Paul's Cross, in 1588. But I do not find any thing in it to that effect. It is however pretty distinctly asserted, if I mistake not the sense, in the canons of 1606. Overall's Convocation Book, 179, &c. Yet Laud had been reproved by the university of Oxford, in 1604, for maintaining, in his exercise for bachelor of divinity, that there could be no true church without bishops, which was thought to cast a bone of contention between the church of England and the reformed upon the Continent. Heylin's Life of Laud, 54.

Cranmer and some of the original

founders of the Anglican church, far from maintaining the divine and indispensable right of episcopal government, held bishops and priests to be the same order.

[A learned and candid Oxford writer (Cardwell's Annals of the Church, vol. ii. p. 5.) has supposed me to have overlooked a passage in Bancroft's Sermon at Paul's Cross, p. 97., where he asserts the divine right of episcopacy. But, on referring again to this passage, it is perfectly evident that he says nothing about what is commonly meant by the *jure divino* doctrine, the perpetual and indispensable government by bishops, confining himself to an assertion of the fact, and that in no strong terms. 1845.]

the church was to be attended, and any lawful amusement might be indulged in.* A just distinction however soon grew up; an industrious people could spare time for very few holidays; and the more scrupulous party, while they slighted the church-festivals as of human appointment, prescribed a stricter observance of the Lord's day. But it was not till about 1595 that they began to place it very nearly on the footing of the Jewish sabbath, interdicting not only the slightest action of worldly business, but even every sort of pastime and recreation; a system which, once promulgated, soon gained ground as suiting their atrabilious humour, and affording a new theme of censure on the vices of the great.† Those who opposed them on the high-church side, not only derided the extravagance of the Sabbatarians, as the others were called, but pretended that the commandment having been confined to the Hebrews, the modern observance of the first day of the week as a season of rest and devotion was an ecclesiastical institution, and in no degree more venerable than that of the other festivals or the season of Lent, which the puritans stubbornly despised.‡ Such a controversy might

* See the queen's injunctions of 1559, Somers Tracts, i. 65., and compare preamble of 5 and 6 of Ed. VI. c. 3.

† The first of these Sabbatarians was a Dr. Bound, whose sermon was suppressed by Whitgift's order. But some years before, one of Martin Mar-prelate's charges against Aylmer was for playing at bowls on Sundays: and the word sabbath, as applied to that day, may be found occasionally under Elizabeth, though by no means so usual as afterwards; it is even recognised in the Homilies. One of Bound's recommendations was that no feasts should be given on that day, "except by lords, knights, and persons of quality;" for which unlucky reservation his adversaries did not forget to deride him. Fuller's Church History, p. 227. This writer describes, in his quaint style, the abstinence from sports produced by this new doctrine; and remarks, what a slight acquaintance with human nature would have taught archbishop Laud, that "the more liberty people were offered, the less they used it; it was sport for them to refrain from sport." See also Collier, 643. Neal, 386. Strype's

Whitgift, 530. May's Hist. of Parliament, 16.

‡ Heylin's Life of Laud, 15. Fuller, part ii. p. 76.

The regulations enacted at various times since the Reformation for the observance of abstinence in as strict a manner, though not ostensibly on the same grounds, as it is enjoined in the church of Rome, may deserve some notice. A statute of 1548 (2 and 3 Edward VI. c. 19.), after reciting that one day or one kind of meat is not more holy, pure, or clean than another, and much else to the same effect, yet "forasmuch as divers of the king's subjects, turning their knowledge therein to gratify their sensuality, have of late more than in times past broken and contemned such abstinence, which hath been used in this realm upon the Fridays and Saturdays, the embering days, and other days commonly called vigils, and in the time commonly called Lent, and other accustomed times; the king's majesty considering that due and godly abstinence is a mean to virtue and to subdue men's bodies to their soul and spirit, and considering also

well have been left to the usual weapons. But James I., or some of the bishops to whom he listened, bethought them-

especially that fishers and men using the trade of fishing in the sea may thereby the rather be set on work, and that by eating of fish much flesh shall be saved and increased," enacts, after repealing all existing laws on the subject, that such as eat flesh at the forbidden seasons shall incur a penalty of ten shillings, or ten days' imprisonment *without flesh*, and a double penalty for the second offence.

The next statute relating to abstinence is one (5th Eliz. c. 5.) entirely for the increase of the fishery. It enacts, § 15, &c. that no one, unless having a licence, shall eat flesh on fish-days, or on Wednesdays, now made an additional fish-day, under a penalty of 3*l.* or three months' imprisonment. Except that every one having three dishes of sea-fish at his table, might have one of flesh also. But "because no manner of person shall misjudge of the intent of this statute," it is enacted, that whosoever shall notify that any eating of fish or forbearing of flesh mentioned therein is of any necessity for the saving of the soul of man, or that it is the service of God, otherwise than as other politic laws are and be; that then such persons shall be punished as spreaders of false news, § 39 and 40. The act 27th Eliz. c. 11. repeals the prohibition as to Wednesday; and provides that no victuallers shall vend flesh in Lent, nor upon Fridays or Saturdays, under a penalty. The 35th Eliz. c. 7. § 22. reduces the penalty of three pounds or three months' imprisonment, enacted by 5th of Eliz. to one third. This is the latest statute that appears on the subject.

Many proclamations appear to have been issued in order to enforce an observance so little congenial to the propensities of Englishmen. One of those in the first year of Edward was before any statute; and its very words respecting the indifference of meats in a religious sense were adopted by the legislature the next year. (Strype's Eccles. Memor. ii. 81.) In one of Elizabeth's, A. D. 1572, as in the statute of Edward, the political motives of the prohibition seem in some measure associated with the superstition it disclaims; for eating in the season of Lent is called "licentious and carnal disorder, in contempt of God and man, and only to the satisfaction of devilish

and carnal appetite;" and butchers, &c. "ministering to such foul lust of the flesh," were severely mulcted. Strype's Annals, ii. 208. But in 1576 another proclamation to the same effect uses no such hard words, and protests strongly against any superstitious interpretation of its motives. Life of Grindal, p. 226. So also in 1579, Strype's Annals, ii. 608., and, as far as I have observed, in all of a later date, the encouragement of the navy and fishery is set forth as their sole ground. In 1596, Whitgift, by the queen's command, issued letters to the bishops of his province, to take order that the fasting days, Wednesday and Friday, should be kept, and no suppers eaten, especially on Friday evens. This was on account of the great dearth of that and the preceding year. Strype's Whitgift, p. 490. These proclamations for the observance of Lent continued under James and Charles, as late, I presume, as the commencement of the civil war. They were diametrically opposed to the puritan tenets; for, notwithstanding the pretext about the fishery, there is no doubt that the dominant ecclesiastics maintained the observance of Lent as an ordinance of the church. But I suspect that little regard was paid to Friday and Saturday as days of weekly fast. Rymer, xvii. 131. 134. 349.; xviii. 268. 282. 961.

This abstemious system, however, was only compulsory on the poor. Licences were easily obtained by others from the privy council in Edward's days, and afterwards from the bishop. They were empowered, with their guests, to eat flesh on all fasting days for life. Sometimes the number of guests was limited. Thus the marquis of Winchester had permission for twelve friends; and John Sandford, draper of Gloucester, for two. Strype's Memorials, ii. 82. The act above mentioned for encouragement of the fishery, 5th Eliz. c. 5., provides that 1*l.* 6*s.* 8*d.* shall be paid for granting every licence, and 6*s.* 8*d.* annually afterwards, to the poor of the parish. But no licence was to be granted for eating beef at any time of the year, or veal from Michaelmas to the 1st of May. A melancholy privation to our countrymen! but, I have no doubt, little regarded. Strype makes known to us the interest-

selves that this might serve as a test of puritan ministers. He published accordingly a declaration to be read in churches, permitting all lawful recreations on Sunday after divine service, such as dancing, archery, May-games, and morrice-dances, and other usual sports; but with a prohibition of bear-baiting and other unlawful games. No recusant, or any one who had not attended the church-service, was entitled to this privilege; which might consequently be regarded as a bounty on devotion. The severe puritan saw it in no such point of view. To his cynical temper, May-games and morrice-dances were hardly tolerable on six days of the week; they were now recommended for the seventh. And this impious licence was to be promulgated in the church itself. It is indeed difficult to explain so unnecessary an insult on the precise clergy, but by supposing an intention to harass those who should refuse compliance.* But this intention, from whatever cause, perhaps through the influence of archbishop Abbot, was not carried into effect; nor was the declaration itself enforced till the following reign.

The house of commons displayed their attachment to the puritan maxims, or their dislike of the prelatical clergy, by bringing in bills to enforce a greater strictness in this respect. A circumstance that occurred in the session of 1621 will serve to prove their fanatical violence. A bill having been brought in "for the better observance of the Sabbath, usually called Sunday," one Mr. Shepherd, sneering at the puritans, remarked that, as Saturday was dies Sabbati, this might be entitled a bill for the observance of Saturday, commonly called Sunday. This witticism brought on his head the wrath of that dangerous assembly. He was reprimanded on his knees, expelled the house, and when he saw what befell poor Floyd, might deem himself cheaply saved from their fangs with no worse chastisement.† Yet when the upper house sent down

ing fact, that Ambrose Potter, of Gravesend, and his wife, had permission from archbishop Whitgift "to eat flesh and white meats in Lent, during their lives; so that it was done soberly and frugally, cautiously, and avoiding public scandal as much as might be, and giving 6s. 8d. annually to the poor of the parish." *Life of Whitgift*, 246.

The civil wars did not so put an end to the compulsory observance of Lent and fish-days, but that similar proclamations are found after the Restoration, I know not how long. *Kennet's Register*, p. 367. and 558.

* *Wilson*, 709.

† *Debates in Parliament*, 1621, vol. i. p. 45. 52. The king requested them not

their bill with "the Lord's day" substituted for "the Sabbath," observing, "that people do now much incline to words of Judaism," the commons took no exception.* The use of the word Sabbath instead of Sunday became in that age a distinctive mark of the puritan party.

A far more permanent controversy sprang up about the end of the same reign, which afforded a new pretext for intolerance, and a fresh source of mutual hatred. Every one of my readers is acquainted more or less with the theological tenets of original sin, free will, and predestination, variously taught in the schools, and debated by polemical writers for so many centuries; and few can be ignorant that the articles of our own church, as they relate to these doctrines, have been very differently interpreted, and that a controversy about their meaning has long been carried on with a pertinacity which could not have continued on so limited a topic, had the combatants been merely influenced by the love of truth. Those who have no bias to warp their judgment will not perhaps have much hesitation in drawing their line between, though not at an equal distance between, the conflicting parties. It appears, on the one hand, that the articles are worded on some of these doctrines with considerable ambiguity; whether we attribute this to the intrinsic obscurity of the subject, to the additional difficulties with which it had been entangled by theological systems, to discrepancy of opinion in the compilers, or to their solicitude to prevent disunion by adopting formularies which men of different sentiments might subscribe. It is also manifest that their framers came, as it were, with averted eyes to the Augustinian doctrine of predestination, and wisely reprehended those who turned

to pass this bill, being so directly against his proclamation. *Id.* 60. Shepherd's expulsion is mentioned in Mede's Letters, Harl. MSS. 389.

* Vol. ii. 97. Two acts were passed, 1 Car. I. c. 1. and 3 Car. I., c. 2. for the better observance of Sunday; the former of which gave great annoyance, it seems, to the orthodox party. "Had any such bill," says Heylin, "been offered in king James's time, it would have found a sorry welcome; but this king, being under a necessity of compliance with them, re-

solved to grant them their desires in that particular, to the end that they might grant his also in the aid required, when that obstruction was removed. The Sabatarians took the benefit of this opportunity for the obtaining of this grant, the first that ever they obtained by all their strugglings, which of what consequence it was we shall see hereafter." *Life of Laud*, p. 129. Yet this statute permits the people lawful sports and pastimes on Sundays within their own parishes.

Arminian
controversy.

their attention to a system so pregnant with objections, and so dangerous, when needlessly dwelt upon, to all practical piety and virtue. But, on the other hand, this very reluctance to inculcate the tenet is so expressed as to manifest their undoubting belief in it; nor is it possible either to assign a motive for inserting the seventeenth article, or to give any reasonable interpretation to it, upon the theory which at present passes for orthodox in the English church. And upon other subjects intimately related to the former, such as the penalty of original sin and the depravation of human nature, the articles, after making every allowance for want of precision, seem totally irreconcilable with the scheme usually denominated Arminian.

The force of those conclusions, which we must, in my judgment, deduce from the language of these articles, will be materially increased by that appeal to contemporary and other early authorities, to which recourse has been had in order to invalidate them. Whatever doubts may be raised as to the Calvinism of Cranmer and Ridley, there can surely be no room for any as to the chiefs of the Anglican church under Elizabeth. We find explicit proofs that Jewell, Nowell, Sandys, Cox, professed to concur with the reformers of Zurich and Geneva in every point of doctrine.* The works of Calvin and Bullinger became text-books in the English universities.† Those who did not hold the predestinarian theory were branded with reproach by the names of free-willers and Pelagians.‡ And when the opposite tenets came to be advanced, as they were at Cambridge about 1590, a clamour was raised as if some unusual heresy had been broached. Whitgift, with the concurrence of some other prelates, in order to withstand its progress, published what were called the Lambeth articles, containing the broadest and most repulsive declaration of all the Calvinistic tenets. But, lord Burleigh having shown some disapprobation, these articles never obtained any legal sanction.§

* Without loading the page with too many references on a subject so little connected with this work, I mention Strype's Annals, vol. i. p. 118., and a

letter from Jewell to P. Martyr, in Burnet, vol. iii. Appendix, 275.

† Collier, 568.

‡ Strype's Annals, i. 207. 294.

§ Strype's Whitgift, 434-472.

These more rigorous tenets, in fact, especially when so crudely announced, were beginning to give way. They had been already abandoned by the Lutheran church. They had long been opposed in that of Rome by the Franciscan order, and latterly by the Jesuits. Above all, the study of the Greek fathers, with whom the first reformers had been little conversant, taught the divines of a more learned age, that men of as high a name as Augustin, and whom they were prone to overvalue, had entertained very different sentiments.* Still the novel opinions passed for heterodox, and were promulgated with much vacillation and indistinctness. When they were published in unequivocal propositions by Arminius and his school, James declared himself with vehemence against this heresy.† He not only sent English divines to sit in the synod of Dort, where the Calvinistic system was fully established, but instigated the proceedings against the remonstrants with more of theological pedantry than charity or decorum.‡ Yet this inconsistent monarch within a very few years was so wrought on by one or two favourite ecclesiastics, who inclined towards the doctrines condemned in that assembly, that openly to maintain the Augustinian system became almost a sure means of exclusion from preferment in our church. This was carried to its height under Charles. Laud, his sole counsellor in ecclesiastical matters, advised a declaration enjoining silence on the controverted points; a measure by no means unwise, if it had been fairly acted upon.

* It is admitted on all hands that the Greek fathers did not inculcate the predestinarian system. Elizabeth having begun to read some of the fathers, bishop Cox writes of it with some disapprobation, adverting especially to the Pelagianism of Chrysostom and the other Greeks. *Strype's Annals*, i. 324.

† *Winwood*, iii. 293. The intemperate and even impertinent behaviour of James, in pressing the states of Holland to inflict some censure or punishment on Vorstius, is well known. But though Vorstius was an Arminian, it was not precisely on account of those opinions that he incurred the king's peculiar displeasure, but for certain propositions as to the nature of the Deity, which James called atheistical, but which were in fact Arian.

The letters on this subject in *Winwood* are curious. Even at this time the king is said to have spoken moderately of predestination as a dubious point, p. 452., though he had treated Arminius as a mischievous innovator for raising a question about it; and this is confirmed by his letter to the States in 1613. *Brandt*, iii. 129., and see p. 138. See *Collier*, p. 711., for the king's sentiments in 1616; also *Brandt*, iii. 313.

‡ *Sir Dudley Carleton's Letters and Negotiations*, passim. *Brandt's History of Reformation in Low Countries*, vol. iii. The English divines sent to this synod were decidedly inclined to Calvinism, but they spoke of themselves as deputed by the king, not by the church of England which they did not represent.

It is alleged however that the preachers on one side only were silenced, the printers of books on one side censured in the star-chamber, while full scope was indulged to the opposite sect.*

The house of commons, especially in their last session, took up the increase of Arminianism as a public grievance. It was coupled in their remonstrances with popery, as a new danger to religion, hardly less terrible than the former. This bigoted clamour arose in part from the nature of their own Calvinistic tenets, which, being still prevalent in the kingdom, would, independently of all political motives, predominate in any popular assembly. But they had a sort of excuse for it in the close, though accidental and temporary, connexion that subsisted between the partisans of these new speculative tenets and those of arbitrary power; the churchmen who receded most from Calvinism being generally the zealots of prerogative. They conceived also that these

* There is some obscurity about the rapid transition of the court from Calvinism to the opposite side. It has been supposed that the part taken by James at the synod of Dort was chiefly political, with a view to support the house of Orange against the party headed by Barnevelt. But he was so much more of a theologian than a statesman, that I much doubt whether this will account satisfactorily for his zeal in behalf of the Gomarists. He wrote on the subject with much polemical bitterness, but without reference, so far as I have observed, to any political faction; though sir Dudley Carleton's letters show that *he* contemplated the matter as a minister ought to do. Heylin intimates that the king grew "more moderate afterwards, and into a better liking of those opinions which he had laboured to condemn at the synod of Dort." Life of Laud, 120. The court language, indeed, shifted so very soon after this, that Antonio de Dominis, the famous half-converted archbishop of Spalato, is said to have invented the name of doctrinal puritans for those who distinguished themselves by holding the Calvinistic tenets. Yet the synod of Dort was in 1618; while De Dominis left England not later than 1622. Buckingham seems to have gone very warmly into Laud's scheme of excluding the Calvinists. The latter gave him a list of

divines on Charles's accession, distinguishing their names by O. and P. for orthodox and puritan; including several tenets in the latter denomination, besides those of the quinquarticular controversy; such as the indispensable observance of the Lord's day, the indiscrimination of bishops and presbyters, &c. Life of Laud, 119. The influence of Laud became so great, that to preach in favour of Calvinism, though commonly reputed to be the doctrine of the church, incurred punishment in any rank. Davenant, bishop of Salisbury, one of the divines sent to Dort, and reckoned among the principal theologians of that age, was reprimanded on his knees before the privy council for this offence. Collier, p. 750. But in James's reign, the university of Oxford was decidedly Calvinistic. A preacher about 1623, having used some suspicious expressions, was compelled to recant them, and to maintain the following theses in the divinity school: *Decretum prædestinationis non est conditionale—Gracia sufficiens ad salutem non conceditur omnibus.* Wood, ii. 348. And I suppose it continued so in the next reign, so far as the university's opinions could be manifested. But Laud took care that no one should be promoted, as far as he could help it, who held these tenets.

theories, conformable in the main to those most countenanced in the church of Rome, might pave the way for that restoration of her faith which from so many other quarters appeared to threaten them. Nor was this last apprehension so destitute of all plausibility as the advocates of the two first Stuarts have always pretended it to be.

James, well instructed in the theology of the reformers, and inured himself to controversial dialectics, was far removed in point of opinion from any bias towards the Romish creed. But he had, while in Scotland, given rise to some suspicions at the court of Elizabeth, by a little clandestine coquetry with the pope, which he fancied to be a politic means of disarming enmity.* Some knowledge of this, probably, as well as his avowed dislike of

* Winwood, vol. i. p. 1. 52. 388. *Lettres d'Ossat*, i. 221. Birch's *Negotiations of Edmond*, p. 36. These references do not relate to the letter said to have been forged in the king's name, and addressed to Clement VIII. by lord Balmerino. But Laing, *Hist. of Scotland*, iii. 59., and Birch's *Negotiations*, &c. 177., render it almost certain that this letter was genuine, which indeed has been generally believed by men of sense. James was a man of so little consistency or sincerity, that it is difficult to solve the problem of this clandestine intercourse. But it might very likely proceed from his dread of being excommunicated, and, in consequence, assassinated. In a proclamation, commanding all jesuits and priests to quit the realm, dated in 1603, he declares himself personally "so much beholden to the new bishop of Rome for his kind office and private temporal carriage towards us in many things, as we shall ever be ready to requite the same towards him as bishop of Rome in state and condition of a secular prince." Rymer, xvi. 573. This is explained by a passage in the memoirs of Sully (l. 15.). Clement VIII., though before Elizabeth's death he had abetted the project of placing Arabella on the throne, thought it expedient, after this design had failed, to pay some court to James, and had refused to accept the dedication of a work written against him, besides, probably, some other courtesies. There is a letter from the king addressed to the

pope, and probably written in 1603, among the Cottonian MSS. Nero, B. vi. 9., which shows his disposition to coax and coquet with the Babylonian, against whom he so much inveighs in his printed works. It seems that Clement had so far presumed, as to suggest that the prince of Wales should be educated a catholic; which the king refuses, but not in so strong a manner as he should have done. I cannot recollect whether this letter has been printed, though I can scarcely suppose the contrary. Persons himself began to praise the works of James, and show much hope of what he would do. Cotton, Jul. B. vi. 77.

The severities against catholics seem at first to have been practically mitigated. Winwood, ii. 78. Archbishop Hutton wrote to Cecil, complaining of the toleration granted to papists, while the puritans were severely treated. Id. p. 40. Lodge, iii. 251. "The former," he says, "partly by this round dealing with the puritans, and partly by some extraordinary favour, had grown mightily in number, courage, and influence."—"If the gospel shall quail, and popery prevail, it will be imputed principally unto your great counsellors, who either procure or yield to grant toleration to some." James told some gentlemen who petitioned for toleration, that the utmost they could expect was connivance. Carte, iii. 711. This seems to have been what he intended through his reign, till importuned by Spain and France to promise more.

sanguinary persecution, and a foolish reliance on the trifling circumstance that one if not both of his parents had professed their religion, led the English catholics to expect a great deal of indulgence, if not support, at his hands. This hope might receive some encouragement from his speech on opening the parliament of 1604, wherein he intimated his design to revise and explain the penal laws, "which the judges might perhaps," he said, "in times past, have too rigorously interpreted." But the temper of those he addressed was very different. The catholics were disappointed by an act inflicting new penalties on recusants, and especially debarring them from educating their children according to their consciences.* The administration took a sudden turn towards severity; the prisons were filled, the penalties exacted, several suffered death †, and the general helplessness of their condition impelled a few persons (most of whom had belonged to what was called the Spanish party in the last reign) to the gunpowder conspiracy, unjustly imputed to the majority of catholics, though perhaps extending beyond those who appeared in it. ‡ We

Jealousy of
the court's
favour to-
wards them.

* 1 Jac. I. c. 4. The penalties of recusancy were particularly hard upon women, who, as I have observed in another place, adhered longer to the old religion than the other sex; and still more so upon those who had to pay for their scruples. It was proposed in parliament, but with the usual fate of humane suggestions, that husbands going to church, should not be liable for their wives' recusancy. Carte, 754. But they had the alternative afterwards, by 7 Jac. I. c. 6., of letting their wives lie in prison or paying 10*l.* a month.

† Lingard, ix. 41. 55.

‡ From comparing some passages in sir Charles Cornwallis's despatches, Winwood, vol. ii. p. 143, 144. 153., with others in Birch's account of sir Thomas Edmondes's negotiations, p. 233. et seq., it appears that the English catholics were looking forward at this time to some crisis in their favour, and that even the court of Spain was influenced by their hopes. A letter from sir Thomas Parry to Edmondes, dated at Paris, 10 Oct. 1605, is remarkable: "Our priests are very busy about petitions to be exhibited to the king's majesty at this parliament,

and some further designs upon refusal. These matters are secretly managed by intelligence with their colleagues in those parts where you reside, and with the two nuncios. I think it were necessary for his majesty's service that you found means to have privy spies amongst them, to discover their negotiations. Something is at present in hand amongst these desperate hypocrites, which I trust God shall divert by the vigilant care of his majesty's faithful servants and friends abroad, and prudence of his council at home." Birch, p. 233. There seems indeed some ground for suspicion, that the nuncio at Brussels was privy to the conspiracy; though this ought not to be asserted as an historical fact. Whether the offence of Garnet went beyond misprision of treason has been much controverted. The catholic writers maintain that he had no knowledge of the conspiracy, except by having heard it in confession. But this rests altogether on his word; and the prevarication of which he has been proved to be guilty (not to mention the damning circumstance that he was taken at Hendlip in concealment along with the other conspirators), makes it difficult for a candid

cannot wonder that a parliament so narrowly rescued from personal destruction endeavoured to draw the cord still tighter round these dangerous enemies. The statute passed on this occasion is by no means more harsh than might be expected. It required not only attendance on worship, but participation in the communion, as a test of conformity, and gave an option to the king of taking a penalty of 20*l.* a month from rescusants, or two thirds of their lands. It prescribed also an oath of allegiance, the refusal of which incurred the penalties of a *præmunire*. This imported that, notwithstanding any sentence of deprivation or excommunication by the pope, the taker would bear true allegiance to the king, and defend him against any conspiracies which should be made by reason of such sentence or otherwise, and do his best endeavour to disclose them; that he from his heart abhorred, detested, and abjured as impious and he-

man to acquit him of a thorough participation in their guilt. Compare Townsend's *Accusations of History against the Church of Rome* (1825), p. 247., containing extracts from some important documents in the State Paper Office, not as yet published, with *State Trials*, vol. ii.; and see *Lingard*, ix. 160, &c. Yet it should be kept in mind that it was easy for a few artful persons to keep on the alert by indistinct communications a credulous multitude whose daily food was rumour; and the general hopes of the English Romanists at the moment are not evidence of their privity to the gunpowder-treason, which was probably contrived late, and imparted to very few. But to deny that there was such a plot, or, which is the same thing, to throw the whole on the contrivance and management of Cecil, as has sometimes been done, argues great effrontery in those who lead, and great stupidity in those who follow. The letter to lord Monteaule, the discovery of the powder, the simultaneous rising in arms in Warwickshire, are as indisputable as any facts in history. What then had Cecil to do with the plot, except that he hit upon the clue to the dark allusions in the letter to Monteaule, of which he was courtier enough to let the king take the credit? James's admirers have always reckoned this, as he did himself, a vast proof of sagacity; yet there seems no

great acuteness in the discovery, even if it had been his own. He might have recollected the circumstances of his father's catastrophe, which would naturally put him on the scent of gunpowder. In point of fact, however, the happy conjecture appears to be Cecil's. *Winwood*, ii. 170. But had he no previous hint? See *Lodge*, iii. 301.

The earl of Northumberland was not only committed to the Tower on suspicion of privity in the plot, but lay fourteen years there, and paid a fine of 11,000*l.* (by composition for 30,000*l.*), before he was released. *Lingard*, ix. 89. It appears almost incredible that a man of his ability, though certainly of a dangerous and discontented spirit, and rather destitute of religion than a zealot for popery, which he did not, I believe, openly profess, should have mingled in so flagitious a design. There is indeed a remarkable letter in *Winwood*, vol. iii. p. 287., which tends to corroborate the suspicions entertained of him. But this letter is from Salisbury, his inveterate enemy. Every one must agree, that the fine imposed on this nobleman was preposterous. Were we even to admit that suspicion might justify his long imprisonment, a participation in one of the most atrocious conspiracies recorded in history was, if proved, to be more severely punished; if unproved, not at all.

retical, the damnable doctrine and position that princes, excommunicated or deprived by the pope, may be deposed or murdered by their subjects, or any other whatsoever; and that he did not believe that the pope or any other could absolve him from this oath.*

Except by cavilling at one or two words, it seemed impossible for the Roman catholics to decline so reasonable a test of loyalty, without justifying the worst suspicions of protestant jealousy. Most of the secular priests in England, asking only a connivance in the exercise of their ministry, and aware how much the good work of reclaiming their apostate countrymen was retarded by the political obloquy they incurred, would have willingly acquiesced in the oath. But the court of Rome, not yet receding an inch from her proudest claims, absolutely forbade all catholics to abjure her deposing power by this test, and employed Bellarmine to prove its unlawfulness. The king stooped to a literary controversy with this redoubted champion, and was prouder of no exploit of his life than his answer to the cardinal's book; by which he incurred the contempt of foreign courts and of all judicious men.† Though neither the murderous conspiracy of 1605, nor this refusal to abjure the principles on which it was founded, could dispose James to persecution, or even render the papist so obnoxious in his eyes as the puritan, yet he was long averse to any thing like a general remission of the penal laws. In sixteen instances after this time, the sanguinary enactments of his predecessor were enforced, but only perhaps against priests who refused the oath‡; the catholics enjoyed on the whole somewhat more indulgence than before, in respect to the private exercise of their religion; at least enough to offend narrow-spirited

* 3 Jac. I. c. 4, 5.

† Carte, iii. 782. Collier, 690. Butler's Memoirs of Catholics. Lingard, vol. ix. 97. Aikin, i. 319. It is observed by Collier, ii. 695., and indeed by the king himself, in his Apology for the Oath of Allegiance, edit. 1619, p. 46., that Bellarmine plainly confounds the oath of allegiance with that of supremacy. But this cannot be the whole of the case; it is notorious that Bellarmine protested

against any denial of the pope's deposing power.

‡ Lingard, ix. 215. Drury, executed in 1607, was one of the twelve priests who, in 1602, had signed a declaration of the queen's right to the crown, notwithstanding her excommunication. But, though he evidently wavered, he could not be induced to say as much now in order to save his life. State Trials, ii. 358.

zealots, and furnish pretext for the murmurs of a discontented parliament, but under condition of paying compositions for recusancy; a regular annual source of revenue which, though apparently trifling in amount, the king was not likely to abandon, even if his notions of prerogative, and the generally received prejudices of that age, had not determined him against an express toleration.*

In the course, however, of that impolitic negotiation, which exposed him to all eyes as the dupe and tool of the court of Madrid, James was led on to promise concessions for which his protestant subjects were ill prepared. That court had wrought on his feeble mind by affected coyness about the infant's marriage, with two private aims; to secure his neutrality in the war of the Palatinate, and to obtain better terms for the English catholics. Fully successful in both ends, it would probably have at length permitted the union to take place, had not Buckingham's rash insolence broken off the treaty; but I am at a loss to perceive the sincere and even generous conduct which some have found in the Spanish council during this negotiation. † The king acted with such

* Lord Bacon, wise in all things, always recommended mildness towards recusants. In a letter to Villiers, in 1616, he advises that the oath of supremacy should by no means be tendered to recusant magistrates in Ireland; "the new plantation of protestants," he says, "must mate the other party in time." Vol. ii. p. 530. This has not indeed proved true; yet as much, perhaps, for want of following Bacon's advice, as for any other cause. He wished for a like toleration in England. But the king, as Buckingham lets him know, was of a quite contrary opinion; for, "though he would not by any means have a more severe course held than his laws appoint in that case, yet there are many reasons why there should be no mitigation above that which his laws have exerted, and his own conscience telleth him to be fit." He afterwards professes "to account it a baseness in a prince to show such a desire of the match [this was in 1617] as to slack any thing in his course of government, much more in propagation of the religion he professeth, for fear of giving hinderance to the match thereby." Page 562. What

a contrast to the behaviour of this same king six years afterwards! The commons were always dissatisfied with lenity, and complained that the lands of recusants were undervalued; as they must have been, if the king got only 6000*l.* per annum by the compositions. Debates in 1621, vol. i. p. 24. 91. But he valued those in England and Ireland at 36,000*l.* Lingard, 215., from Hardwicke Papers.

† The absurd and highly blameable conduct of Buckingham has created a prejudice in favour of the court of Madrid. That they desired the marriage is easy to be believed; but that they would have ever sincerely co-operated for the restoration of the Palatinate, or even withdrawn the Spanish troops from it, is neither rendered probable by the general policy of that government, nor by the conduct it pursued in the negotiation. Compare Hardwicke State Papers, vol. i. Cabala, l. et post. Howell's Letters, Clarendon State Papers, vol. i. ad initium, especially p. 13.

A very curious paper in the latter collection, p. 14., may be thought, perhaps, to throw a light on Buckingham's pro-

culpable weakness, as even in him excites our astonishment. Buckingham, in his first eagerness for the marriage, on arriving in Spain, wrote to ask if the king would acknowledge the pope's spiritual supremacy, as the surest means of success. James professed to be shocked at this, but offered to recognize his jurisdiction as patriarch of the west, to whom ecclesiastical appeals might ultimately be made; a concession as incompatible with the code of our protestant laws as the former. Yet with this knowledge of his favourite's disposition, he gave the prince and him a written promise to perform whatever they should agree upon with the court of Madrid.* On the treaty being almost concluded, the king, prince, and privy-council swore to observe certain stipulated articles, by which the infanta was not only to have the exercise of her religion, but the education of her children till ten

jects, and account in some measure for his sudden enmity to Spain. During his residence at Madrid in 1623, a secretary who had been dissatisfied with the court revealed to him a pretended secret discovery of gold mines in a part of America, and suggested that they might be easily possessed by any association that could command seven or eight hundred men; and that after having made such a settlement, it would be easy to take the Spanish flotilla and attempt the conquest of Jamaica and St. Domingo. This made so great an impression on the mind of Buckingham, that, long afterwards, in 1628, he entered into a contract with Gustavus Adolphus, who bound himself to defend him against all opposers in the possession of these mines, as an absolute prince and sovereign, on condition of receiving one tenth of the profits; promising especially his aid against any puritans who might attack him from Barbadoes or elsewhere, and to furnish him with four thousand men and six ships of war, to be paid out of the revenue of the mines.

This is a very strange document, if genuine. It seems to show that Buckingham, aware of his unpopularity in England, and that sooner or later he must fall, and led away, as so many were, by the expectation of immense wealth in America, had contrived this arrangement, which was probably intended to take

place only in the event of his banishment from England. The share that Gustavus appears to have taken in so wild a plan is rather extraordinary, and may expose the whole to some suspicion. It is not clear how this came among the Clarendon papers; but the indorsement runs:—“Presented, and the design attempted and in some measure attained by Cromwell, anno 1652.” I should conjecture therefore that some spy of the king's procured the copy from Cromwell's papers.

I have since found that Harte had seen a sketch of this treaty, but he does not tell us by what means. *Hist. Gust. Adolph. i.* 130. But that prince, in 1627, laid before the diet of Sweden a plan for establishing a commerce with the West Indies; for which sums of money were subscribed. *Id.* 143.

* *Hardwicke Papers, p.* 402. 411. 417. The very curious letters in this collection relative to the Spanish match are the vouchers for my text. It appears by one of secretary Conway's, since published, *Ellis, iii.* 154., that the king was in great distress at the engagement for a complete immunity from penal laws for the catholics, entered into by the prince and Buckingham; but, on full deliberation in the council, it was agreed that he must adhere to his promise. This rash promise was the cause of his subsequent prevarications.

years of age. But the king was also sworn to private articles; that no penal laws should be put in force against the catholics, that there should be a perpetual toleration of their religion in private houses, that he and his son would use their authority to make parliament confirm and ratify these articles, and revoke all laws (as it is with strange latitude expressed) containing any thing repugnant to the Roman catholic religion, and that they would not consent to any new laws against them. The prince of Wales separately engaged to procure the suspension or abrogation of the penal laws within three years, and to lengthen the term for the mother's education of their children from ten to twelve years, if it should be in his own power. He promised also to listen to catholic divines, whenever the infanta should desire it.*

These secret assurances, when they were whispered in England, might not unreasonably excite suspicion of the prince's wavering in his religion, which he contrived to aggravate by an act as imprudent as it was reprehensible. During his stay at Madrid, while his inclinations were still bent on concluding the marriage, the sole apparent obstacle being the pope's delay in forwarding the dispensation, he wrote a letter to Gregory XV., in reply to one received from him, in language evidently intended to give an impression of his favourable dispositions towards the Roman faith. The whole tenor of his subsequent life must have satisfied every reasonable inquirer into our history, of Charles's real attachment to the Anglican church; nor could he have had any other aim than to facilitate his arrangements with the court of Rome by this deception. It would perhaps be uncandid to judge severely a want of ingenuousness, which youth, love, and bad counsels may extenuate; yet I cannot help remarking that the letter is written with the precautions of a veteran in dissimulation; and, while it is full of what might raise expectation, contains no special pledge that he could be called on to redeem. But it was rather presumptuous to hope that he could foil the subtlest masters of artifice with their own weapons. †

* Hardwicke Papers. Rushworth.

† Hardwicke Papers, p. 452., where the letter is printed in Latin. The translation in Wilson, Rushworth, and Cabala, p. 214. is not by any means exact, going in several places much be-

James, impatient for this ill-omened alliance, lost no time in fulfilling his private stipulations with Spain. He published a general pardon of all penalties already incurred for recusancy. It was designed to follow this up by a proclamation prohibiting the bishops, judges, and other magistrates to execute any penal statute against the catholics. But the lord-keeper, bishop Williams, hesitated at so unpopular a stretch of power.* And, the rupture with Spain ensuing almost immediately, the king, with a singular defiance of all honest men's opinions, though the secret articles of the late treaty had become generally known, declared in his first speech to parliament in 1624, that "he had only thought good sometimes to wink and connive at the execution of some penal laws, and not to go on so rigorously as at other times, but not to dispense with any, or to forbid or alter any that concern religion: he never permitted or yielded, he never did think it with his heart, nor spoke it with his mouth."†

When James soon after this, not yet taught by experience to avoid a Romish alliance, demanded the hand of Henrietta Maria for his son, Richelieu thought himself bound by policy and honour as well as religion to obtain the same or greater advantages for the English catholics than had been promised in the former negotiation. Henrietta was to have the education of her children till they reached the age of twelve; thus were added two years, at a time of life when the mind be-

yond the original. If Hume knew nothing but the translation, as is most probable, we may well be astonished at his way of dismissing this business; that "the prince having received a very civil letter from the pope, he was induced to return a very civil answer." Clarendon saw it in a different light: *Clar. State Papers*, ii. 337.

Urban VIII. had succeeded Gregory XV. before the arrival of Charles's letter. He answered it of course in a style of approbation, and so as to give the utmost meaning to the prince's compliments, expressing his satisfaction, "*cum pontificem Romanum ex officii genere colere princeps Britannus inciperet,*" &c. *Rushworth*, vol. i. p. 98.

It is said by Howell, who was then on the spot, that the prince never used the

service of the church of England while he was at Madrid, though two chaplains, church-plate, &c. had been sent over. *Howell's Letters*, p. 140. Bristol and Buckingham charged each other with advising Charles to embrace the Romish religion; and he himself in a letter to Bristol, Jan. 21. 1625-6, imputes this to him in the most positive terms. *Cabala*, p. 17. 4to. edit. As to Buckingham's willingness to see this step taken, there can, I presume, be little doubt.

* *Rushworth*. *Cabala*, p. 19.

† *Parl. Hist.* 1375. Both houses, however, joined in an address that the laws against recusants might be put in execution. *Id.* 1408.; and the commons returned again to the charge afterwards. *Idem*, 1484.

comes susceptible of lasting impressions, to the term at which, by the treaty with Spain, the mother's superintendence was to cease.* Yet there is the strongest reason to believe that this condition was merely inserted for the honour of the French crown, with a secret understanding that it should never be executed.† In fact, the royal children were placed at a very early age under protestant governors of the king's appointment; nor does Henrietta appear to have ever insisted on her right. That James and Charles should have incurred the scandal of this engagement, since the articles, though called private, must be expected to transpire, without any real intentions of performing it, is an additional instance of that arrogant contempt of public opinion which distinguished the Stuart family. It was stipulated in the same private articles, that prisoners on the score of religion should be set at liberty, and that none should be molested in future.‡

* Rushworth.

‡ See a series of letters from lord Kensington (better known afterwards as earl of Holland), the king's ambassador at Paris for this marriage-treaty; in the appendix to Clarendon State Papers, vol. ii. p. v. viii. ix.

‡ Hardwicke Papers, i. 536. Birch, in one of those volumes given by him to the British Museum (and which ought to be published according to his own intention), has made several extracts from the MS. despatches of Tillieres, the French ambassador, which illustrate this negotiation. The pope, it seems, stood off from granting the dispensation, requiring that the English catholic clergy should represent to him their approbation of the marriage. He was informed that the cardinal had obtained terms much more favourable for the catholics than in the Spanish treaty. In short, they evidently fancied themselves to have gained a full assurance of toleration; nor could the match have been effected on any other terms. The French minister writes to Louis XIII. from London, October 6. 1624, that he had obtained a supersedeas of all prosecutions, more than themselves expected, or could have believed possible; "en somme, un acte très publique, et qui fut résolu en plein conseil, le dit roi l'ayant assemblé exprès pour cela le jour d'hier." The pope

agreed to appoint a bishop for England, nominated by the king of France. Oct. 22. The oath of allegiance, however, was a stumbling-block; the king could not change it by his own authority, and establish another in parliament, "où la faction des puritains prédomine, de sorte qu'ils peuvent ce qu'ils veulent." Buckingham however promised "de nous faire obtenir l'assurance que votre majesté désire tant, que les catholiques de ce pais ne seront jamais inquiétés pour le raison du serment de fidélité, du quel votre majesté a si souvent ouï parler." Dec. 22. He speaks the same day of an audience he had of king James, who promised never to persecute his catholic subjects, nor desire of them any oath which spoke of the pope's spiritual authority, "mais seulement un acte de la reconnoissance de la domination temporelle qui Dieu lui a donnée, et qu'ils auroient en considération de votre majesté, et de la confiance que vous prenez en sa parole, beaucoup plus de liberté qu'ils n'auroient eu en vertu des articles du traité d'Espagne." The French advised that no parliament should be called till Henrietta should come over, "de qui la présence serviroit de bride aux puritains." It is not wonderful, with all this good-will on the part of their court, that the English catholics should now send a letter to request the granting of the dispensation.

These promises were irregularly fulfilled, according to the terms on which Charles stood with his brother-in-law. Sometimes general orders were issued to suspend all penal laws against papists; again, by capricious change of policy, all officers and judges are directed to proceed in their execution; and this severity gave place in its turn to a renewed season of indulgence. If these alterations were not very satisfactory to the catholics, the whole scheme of lenity displeased and alarmed the protestants. Tolerance, in any extensive sense, of that proscribed worship, was equally abhorrent to the prelatist and the puritan; though one would have winked at its peaceable and domestic exercise, which the other was zealous to eradicate. But, had they been capable of more liberal reasoning upon this subject, there was enough to justify their

A few days after, Dec. 26. the ambassador announces the king's letter to the archbishops, directing them to stop the prosecution of catholics, the enlargement of prisoners on the score of religion, and the written promises of the king and prince to let the catholics enjoy more liberty than they would have had by virtue of the treaty with Spain. On the credit of this, Louis wrote on the 23d of January to request six or eight ships of war to employ against Soubise, the chief of the Hugonots; with which, as is well known, Charles complied in the ensuing summer.

The king's letter above mentioned does not, I believe, appear. But his ambassadors, Carlisle and Holland, had promised in his name that he would give a written promise, on the word and honour of a king, which the prince and a secretary of state should also sign, that all his Roman-catholic subjects should enjoy more freedom as to their religion than they could have had by any articles agreed on with Spain; not being molested in their persons or property for their profession and exercise of their religion, provided they used their liberty with moderation, and rendered due submission to the king, who would not force them to any oath contrary to their religion. This was signed 18th Nov. Hardw. Pap. 546.

Yet after this concession on the king's part, the French cabinet was encouraged by it to ask for "a direct and public

toleration, not by connivance, promise, or *écrit secret*, but by a public notification to all the Roman catholics, and that of all his majesty's kingdoms whatsoever, confirmed by his majesty's and the prince's oath, and attested by a public act, whereof a copy to be delivered to the pope or his minister, and the same to bind his majesty and the prince's successors for ever." *Id.* p. 552. The ambassadors expressed the strongest indignation at this proposal, on which the French did not think fit to insist. In all this wretched negotiation, James was as much the dupe as he had been in the former, expecting that France would assist in the recovery of the Palatinate, towards which, in spite of promises, she took no steps. Richelieu had said, "*Donnez-nous des prêtres, et nous vous donnerons des colonels.*" *Id.* p. 538. Charles could hardly be expected to keep his engagements as to the catholics, when he found himself so grossly outwitted.

It was during this marriage-treaty of 1624, that the archbishop of Embrun, as he relates himself, in the course of several conferences with the king on that subject, was assured by him that he was desirous of re-entering the fold of the church. Wilson in Kennet, p. 786. note by Wellwood. I have not seen the original passage; but Dr. Lingard puts by no means so strong an interpretation on the king's words, as related by the archbishop, vol. ix. 323.

indignation at this attempt to sweep away the restrictive code established by so many statutes, and so long deemed essential to the security of their church, by an unconstitutional exertion of the prerogative, prompted by no more worthy motive than compliance with a foreign power, and tending to confirm suspicions of the king's wavering between the two religions, or his indifference to either. In the very first months of his reign, and while that parliament was sitting, which has been reproached for its parsimony, he sent a fleet to assist the French king in blocking up the port of Rochelle; and, with utter disregard of the national honour, ordered the admiral, who reported that the sailors would not fight against protestants, to sail to Dieppe, and give up his ships into the possession of France.* His subsequent alliance with the Hugonot party in consequence merely of Buckingham's unwarrantable hostility to France, founded on the most extraordinary motives, could not redeem, in the eyes of the nation, this instance of lukewarmness, to say the least, in the general cause of the Reformation. Later ages have had means of estimating the attachment of Charles the First to protestantism, which his contemporaries in that early period of his reign did not enjoy; and this has led some to treat the apprehensions of parliament as either insincere or preposterously unjust. But can this be fairly pretended by any one who has acquainted himself with the course of proceedings on the Spanish marriage, the whole of which was revealed by the earl of Bristol to the house of lords? Was there nothing, again, to excite alarm in the frequent conversions of persons of high rank to popery, in the more dangerous partialities of many more, in the evident bias of certain distinguished churchmen to tenets rejected at the Reformation? The course pursued with respect to religious matters after the dissolution of parliament in 1629, to which I shall presently advert, did by no means show the misgivings of that assembly to have been ill-founded.

It was neither, however, the Arminian opinions of the higher clergy, nor even their supposed leaning towards those of Rome, that chiefly rendered them obnoxious to the commons. They had studiously

Unconstitu-
tional tenets
promulgated
by the high-
church party.

* Kennet, p. vi. Rushworth. Lingard, ix. 353. Cabala, p. 144.

inculcated that resistance to the commands of rulers was in every conceivable instance a heinous sin; a tenet so evidently subversive of all civil liberty that it can be little worth while to argue about right and privilege, wherever it has obtained a real hold on the understanding and conscience of a nation. This had very early been adopted by the Anglican reformers, as a barrier against the disaffection of those who adhered to the ancient religion, and in order to exhibit their own loyalty in a more favourable light. The homily against wilful disobedience and rebellion was written on occasion of the rising of the northern earls in 1569, and is full of temporary and even personal allusions.* But the same doctrine is enforced in others of those compositions, which enjoy a kind of half authority in the English church. It is laid down in the canons of convocation in 1606. It is very frequent in the writings of English divines, those especially who were much about the court. And an unlucky preacher at Oxford, named Knight, about 1622, having thrown out some intimation that subjects oppressed by their prince on account of religion might defend themselves by arms; that university, on the king's highly resenting such heresy, not only censured the preacher, (who had the audacity to observe that the king by then sending aid to the French Hugonots

* "God alloweth (it is said in this homily, among other passages to the same effect) neither the dignity of any person, nor the multitude of any people, nor the weight of any cause, as sufficient for the which the subjects may move rebellion against their princes." The next sentence contains a bold position. "Turn over and read the histories of all nations, look over the chronicles of our own country, call to mind so many rebellions of old time, and some yet fresh in memory; ye shall not find that God ever prospered any rebellion against their natural and lawful prince, but contrariwise, that the rebels were overthrown and slain, and such as were taken prisoners dreadfully executed." They illustrate their doctrine by the most preposterous examples I have ever seen alleged in any book: that of the Virgin Mary, who "being of the royal blood of the ancient natural kings of Jewry obeyed the proclamation of

Augustus to go to Bethlehem. This obedience of this most noble and most virtuous lady to a foreign and pagan prince doth well teach us, who in comparison of her are both base and vile, what ready obedience we do owe to our natural and gracious sovereign."

In another homily entitled "On Obedience," the duty of non-resistance, even in defence of religion, is most decidedly maintained; and in such a manner as might have been inconvenient in case of a popish successor. Nor was this theory very consistent with the aid and countenance given to the United Provinces. Our learned churchmen, however, cared very little for the Dutch. They were more puzzled about the Maccabees. But that knot is cut in bishop Overall's Convocation Book, by denying that Antiochus Epiphanes had lawful possession of Palestine; a proposition not easy to be made out.

of Rochelle, as was rumoured to be designed, had sanctioned his position,) but pronounced a solemn decree that it is in no case lawful for subjects to make use of force against their princes, nor to appear offensively or defensively in the field against them. All persons promoted to degrees were to subscribe this article, and to take an oath that they not only at present detested the opposite opinion, but would at no future time entertain it. A ludicrous display of the folly and despotic spirit of learned academies! *

Those however who most strenuously denied the abstract right of resistance to unlawful commands were by no means obliged to maintain the duty of yielding them an active obedience. In the case of religion, it was necessary to admit that God was rather to be obeyed than man. Nor had it been pretended, except by the most servile churchmen, that subjects had no positive rights, in behalf of which they might decline compliance with illegal requisitions. This however was openly asserted in the reign of Charles. Those who refused the general loan of 1626 had to encounter assaults from very different quarters, and were not only imprisoned, but preached at. Two sermons by Sibthorp and Mainwaring excited particular attention. These men, eager for preferment which they knew the readiest method to attain, taught that the king might take the subject's money at his pleasure, and that no one might refuse his demand, on penalty of damnation. "Parliaments," said Mainwaring, "were not ordained to contribute any right to the king, but for the more equal imposing and more easy exacting of that which unto kings doth appertain by natural and original law and justice, as their proper inheritance annexed to their imperial crowns from their birth."† These extravagances of rather obscure men would have passed with less notice, if the government had not given them the most indecent encouragement. Abbot,

* Collier, 724. Neal, 495. Wood's History of the University of Oxford, ii. 341. Knight was sent to the Gatehouse prison, where he remained two years. Laud was the chief cause of this severity, if we may believe Wood; and his own diary seems to confirm this.

† Parl. Hist. 877. 395. 410, &c. Ken-

net, p. 30. Collier, 740. 743. This historian, though a non-juror, is Englishman enough to blame the doctrines of Sibthorp and Mainwaring, and, consistently with his high-church principles, is displeased at the suspension of Abbot by the king's authority.

archbishop of Canterbury, a man of integrity, but upon that account, as well as for his Calvinistic partialities, long since obnoxious to the courtiers, refused to license Sibthorp's sermon, alleging some unwarrantable passages which it contained. For no other cause than this, he was sequestered from the exercise of his archiepiscopal jurisdiction, and confined to a country-house in Kent.* The house of commons, after many complaints of those ecclesiastics, finally proceeded against Mainwaring by impeachment at the bar of the lords. He was condemned to pay a fine of 1000*l.*, to be suspended for three years from his ministry, and to be incapable of holding any ecclesiastical dignity. Yet the king almost immediately pardoned Mainwaring, who became in a few years a bishop, as Sibthorp was promoted to an inferior dignity. †

There seems on the whole to be very little ground for censure in the proceedings of this illustrious parliament. I admit that, if we believe Charles the First

General
remarks.

* State Trials, ii. 1449. A few years before this, Abbot had the misfortune, while hunting deer in a nobleman's park, to shoot one of the keepers with his cross-bow. Williams and Laud, who then acted together, with some others, affected scruples at the archbishop's continuance in his function, on pretence that, by some old canon, he had become irregular in consequence of this accidental homicide; and Spelman disgraced himself by writing a treatise in support of this doctrine. James, however, had more sense than the antiquary, and less ill-nature than the churchmen; and the civilians gave no countenance to Williams's hypocritical scruples. Hacket's Life of Williams, p. 651. Biograph. Britann. art. Abbot. Spelman's Works, part 2. p. 3. Aikin's James I., ii. 259. Williams's real object was to succeed the archbishop on his degradation.

It may be remarked that Abbot, though a very worthy man, had not always been untainted by the air of a court. He had not scrupled grossly to flatter the king (see his article in Biograph. Brit. and Aikin, i. 368.): and tells us himself, that he introduced Villiers, in order to supplant Somerset; which, though well-meant did not become his function.

Even in the delicate business of promising toleration to the catholics by the secret articles of the treaty with Spain, he gave satisfaction to the king (Hardwicke Papers, i. 428.), which could only be by compliance. This shows that the letter in Rushworth, ascribed to the archbishop, deprecating all such concessions, is not genuine. In Cabala, p. 13., it is printed with the name of the archbishop of York, Mathews.

† The bishops were many of them mere sycophants of Buckingham. Besides Laud, Williams, and Neyle, one Field, bishop of Llandaff, was an abject courtier. See a letter of his in Cabala, p. 118. 4to. edit. Mede says, (27th May, 1626,) "I am sorry to hear they (the bishops) are so habituated to flattery that they seem not to know of any other duty that belongs to them." See Ellis's Letters, iii. 228. for the account Mede gives of the manner in which the heads of houses forced the election of Buckingham as Chancellor of Cambridge, while the impeachment was pending against him. The junior masters of arts however made a good stand; so that it was carried against the earl of Berkshire only by three voices.

to have been a gentle and beneficent monarch, incapable of harbouring any design against the liberties of his people, or those who stood forward in defence of their privileges, wise in the choice of his counsellors, and patient in listening to them, the commons may seem to have carried their opposition to an unreasonable length. But, if he had shown himself possessed with such notions of his own prerogative, no matter how derived, as could bear no effective control from fixed law or from the nation's representatives; if he was hasty and violent in temper, yet stooping to low arts of equivocation and insincerity, whatever might be his estimable qualities in other respects, they could act, in the main, no otherwise than by endeavouring to keep him in the power of parliament, lest his power should make parliament but a name. Every popular assembly, truly zealous in a great cause, will display more heat and passion than cool-blooded men after the lapse of centuries may wholly approve.* But so far were they from encroaching, as our Tory writers pretend, on the just powers of a limited monarch, that they do not appear to have conceived, they at least never hinted at, the securities without which all they had obtained or attempted would become ineffectual. No one member of that house, in the utmost warmth of debate, is recorded to have suggested the abolition of the court of Star-chamber, or any provision for the periodical meeting of parliament. Though such remedies for the greatest abuses were in reality consonant to the actual unrepealed law of the land; yet, as they implied, in the apprehension of the generality, a retrenchment of the king's prerogative, they had not yet become familiar to their hopes. In asserting the illegality of arbitrary detention, of compulsory loans, of tonnage and poundage levied without consent of parliament, they stood in defence of positive rights

* Those who may be inclined to dissent from my text will perhaps bow to their favourite Clarendon. He says that in the three first parliaments, though there were "several distempered speeches of particular persons, not fit for the reverence due to his majesty," yet he "does not know any formed act of either house (for neither the remonstrance nor votes

of the last day were such) that was not agreeable to the wisdom and justice of great courts upon those extraordinary occasions; and whoever considers the acts of power and injustice in the intervals of parliament will not be much scandalized at the warmth and vivacity of those meetings." Vol. i. p. 8. edit. 1826.

won by their fathers, the prescriptive inheritance of Englishmen. Twelve years more of repeated aggressions taught the long parliament what a few sagacious men might perhaps have already suspected, that they must recover more of their ancient constitution from oblivion, that they must sustain its partial weakness by new securities, that, in order to render the existence of monarchy compatible with that of freedom, they must not only strip it of all it had usurped, but of something that was its own.

CHAPTER VIII.

FROM THE DISSOLUTION OF CHARLES'S THIRD PARLIAMENT TO THE MEETING OF THE LONG PARLIAMENT.

Declaration of the King after the Dissolution — Prosecutions of Eliot and others for Conduct in Parliament — Of Chambers for refusing to pay Customs — Commendable Behaviour of Judges in some instances — Means adopted to raise the Revenue — Compositions for Knighthood — Forest Laws — Monopolies — Ship Money — Extension of it to inland Places — Hampden's Refusal to pay — Arguments on the Case — Proclamations — Various arbitrary Proceedings — Star-Chamber Jurisdiction — Punishments inflicted by it — Cases of Bishop Williams, Prynne, &c. — Laud, his Character — Lord Strafford — Correspondence between these two — Conduct of Laud in the Church-Prosecution of Puritans — Favour shown to Catholics — Tendency to their Religion — Expectations entertained by them — Mission of Panzani — Intrigue of Bishop Montagu with him — Chillingworth — Hales — Character of Clarendon's Writings — Animadversions on his Account of this Period — Scots Troubles, and Distress of the Government — Parliament of April, 1640 — Council of York — Convocation of Long Parliament.

THE dissolution of a parliament was always to the prerogative, what the dispersion of clouds is to the sun. As if in mockery of the transient obstruction, it shone forth as splendid and scorching as before. Even after the exertions of the most popular and intrepid house of commons that had ever met, and after the most important statute that had been passed for some hundred years, Charles found himself in an instant unshackled by his law or his word; once more that absolute king, for whom his sycophants had preached and pleaded, as if awakened from a fearful dream of sounds and sights that such monarchs hate to endure, to the full enjoyment of an unrestrained prerogative. He announced his intentions of government for the future in a long declaration of the causes of the late dissolution of parliament, which, though not without the usual promises to maintain the laws and liberties of the people, gave evident hints that his own inter-

Declaration
of the king
after the
dissolution.

pretation of them must be humbly acquiesced in.* This was followed up by a proclamation that he “should account it presumption for any to prescribe a time to him for parliament, the calling, continuing, or dissolving of which was always in his own power; and he should be more inclinable to meet parliament again, when his people should see more clearly into his intents and actions, when such as have bred this interruption shall have received their condign punishment.” He afterwards declares that he should “not overcharge his subjects by any more burthens, but satisfy himself with those duties that were received by his father, which he neither could nor would dispense with; but should esteem them unworthy of his protection who should deny them.”†

The king next turned his mind, according to his own and his father’s practice, to take vengeance on those who had been most active in their opposition to him. A few days after the dissolution, sir John Eliot, Holles, Selden, Long, Strode, and other eminent members of the commons, were committed some to the Tower, some to the King’s Bench, and their papers seized. Upon suing for their habeas corpus, a return was made that they were detained for notable contempts, and for stirring up sedition, alleged in a warrant under the king’s sign manual. Their counsel argued against the sufficiency of this return, as well on the principles and precedents employed in the former case of sir Thomas Darnel and his colleagues, as on the late explicit confirmation of them in the Petition of Right. The king’s counsel endeavoured, by evading the authority of that enactment, to set up anew that alarming pretence to a power of arbitrary imprisonment, which the late parliament had meant to silence for ever. “A petition in parliament,” said the attorney-general Heath, “is no law, yet it is for the honour and dignity of the king to observe it faithfully: but it is the duty of the people not to stretch it beyond the words and intention of the king. And no other construction can be

Prosecutions
of Eliot and
others for
conduct in
parliament.

* “It hath so happened,” he says, “by the disobedient and seditious carriage of those said ill-affected persons of the house of commons, that we and our regal authority and commandment have been so highly contemned as our kingly office cannot bear, nor any former age can parallel.” Rymer, xix. 30.

† Rymer, xix. 62.

made of the petition, than that it is a confirmation of the ancient liberties and rights of the subjects. So that now the case remains in the same quality and degree as it was before the petition." Thus, by dint of a sophism which turned into ridicule the whole proceedings of the late parliament, he pretended to recite afresh the authorities on which he had formerly relied, in order to prove that one committed by the command of the king or privy council is not bailable. The judges, timid and servile, yet desirous to keep some measures with their own consciences, or looking forward to the wrath of future parliaments, wrote what Whitelock calls "a humble and stout letter" to the king, that they were bound to bail the prisoners; but requested that he would send his direction to do so.* The gentlemen in custody were, on this intimation, removed to the Tower; and the king, in a letter to the court, refused permission for them to appear on the day when judgment was to be given. Their restraint was thus protracted through the long vacation; towards the close of which, Charles, sending for two of the judges, told them he was content the prisoners should be bailed, notwithstanding their obstinacy in refusing to present a petition, declaring their sorrow for having offended him. In the ensuing Michaelmas term accordingly they were brought before the court, and ordered not only to find bail for the present charge, but sureties for their good behaviour. On refusing to comply with this requisition, they were remanded to custody.

The attorney-general, dropping the charge against the rest, exhibited an information against sir John Eliot for words uttered in the house; namely, That the council and judges had conspired to trample under foot the liberties of the subject; and against Mr. Denzil Holles and Mr. Valentine for a tumult on the last day of the session; when the speaker having attempted to adjourn the house by the king's com-

* Whitelock's Memorials, p. 14. Whitelock's father was one of the judges of the king's bench: his son takes pains to exculpate him from the charge of too much compliance, and succeeded so well with the long parliament that when they voted chief-justice Hyde and justice

Jones guilty of delay in not bailing these gentlemen, they voted also that Croke and Whitelock were not guilty of it. The proceedings, as we now read them, hardly warrant this favourable distinction. Parl. Hist. ii. 869. 876.

mand, had been forcibly held down in the chair by some of the members, while a remonstrance was voted. They pleaded to the court's jurisdiction, because their offences were supposed to be committed in parliament, and consequently not punishable in any other place. This brought forward the great question of privilege, on the determination of which the power of the house of commons, and consequently the character of the English constitution, seemed evidently to depend.

Freedom of speech, being applied in the nature of a representative assembly called to present grievances and suggest remedies, could not stand in need of any special law or privilege to support it. But it was also sanctioned by positive authority. The speaker demands it at the beginning of every parliament among the standing privileges of the house; and it had received a sort of confirmation from the legislature by an act passed in the fourth year of Henry VIII., on occasion of one Strode, who had been prosecuted and imprisoned in the Stannary court, for proposing in parliament some regulations for the tanners in Cornwall; which annuls all that had been done, or might hereafter be done, towards Strode, for any matter relating to the parliament, in words so strong as to form, in the opinion of many lawyers, a general enactment. The judges however held, on the question being privately sent to them by the king, that the statute concerning Strode was a particular act of parliament extending only to him and those who had joined with him to prefer a bill to the commons concerning tanners; but that, although the act were private and extended to them alone, yet it was no more than all other parliament men, by privilege of the house, ought to have; namely, freedom of speech concerning matters there debated.*

It appeared by a constant series of precedents, the counsel for Eliot and his friends argued, that the liberties and privileges of parliament could only be determined therein, and not by any inferior court; that the judges had often declined to give their opinions on such subjects, alleging that they were

* Strode's act is printed in Hatsell's *Precedents*, vol. i. p. 80., and in several other books, as well as in the great edition of *Statutes of the Realm*. It is worded, like many of our ancient laws, so confusedly, as to make its application uncertain; but it rather appears to me not to have been intended as a public act.

beyond their jurisdiction ; that the words imputed to Eliot were in the nature of an accusation of persons in power which the commons had an undoubted right to prefer ; that no one would venture to complain of grievances in parliament, if he should be subjected to punishment at the discretion of an inferior tribunal ; that whatever instances had occurred of punishing the alleged offences of members after a dissolution were but acts of power, which no attempt had hitherto been made to sanction ; finally, that the offences imputed might be punished in a future parliament.

The attorney-general replied to the last point, that the king was not bound to wait for another parliament ; and moreover, that the house of commons was not a court of justice, nor had any power to proceed criminally, except by imprisoning its own members. He admitted that the judges had sometimes declined to give their judgment upon matters of privilege ; but contended that such cases had happened during the session of parliament, and that it did not follow, but that an offence committed in the house might be questioned after a dissolution. He set aside the application of Strode's case, as being a special act of parliament ; and dwelt on the precedent of an information preferred in the reign of Mary against certain members for absenting themselves from their duty in parliament, which, though it never came to a conclusion, was not disputed on the ground of right.

The court were unanimous in holding that they had jurisdiction, though the alleged offences were committed in parliament, and that the defendants were bound to answer. The privileges of parliament did not extend, one of them said, to breaches of the peace, which was the present case ; and all offences against the crown, said another, were punishable in the court of King's Bench. On the parties refusing to put in any other plea, judgment was given that they should be imprisoned during the king's pleasure, and not released without giving surety for good behaviour, and making submission ; that Eliot, as the greatest offender and ring-leader, should be fined in 2000*l.*, Holles and Valentine to a smaller amount.*

Eliot, the most distinguished leader of the popular party,

* State Trials, vol. iii. from Rushworth.

died in the Tower without yielding to the submission required. In the long parliament, the commons came to several votes on the illegality of all these proceedings, both as to the delay in granting their habeas corpus, and the overruling their plea to the jurisdiction of the King's Bench. But the subject was revived again in a more distant and more tranquil period. In the year 1667, the commons resolved that the act of 4 H. VIII. concerning Strode was a general law, "extending to indemnify all and every the members of both houses of parliament, in all parliaments, for and touching any bills, speaking, reasoning or declaring of any matter or matters, in and concerning the parliament to be communed and treated of, and is a declaratory law of the ancient and necessary rights and privileges of parliament." They resolved also that the judgment given 5 Car. I. against sir John Eliot, Denzil Holles, and Benjamin Valentine, is an illegal judgment, and against the freedom and privilege of parliament. To these resolutions the lords gave their concurrence. And Holles, then become a peer, having brought the record of the King's Bench by writ of error before them, they solemnly reversed the judgment.* An important decision with respect to our constitutional law, which has established beyond controversy the great privilege of unlimited freedom of speech in parliament; unlimited, I mean, by any authority except that by which the house itself ought always to restrain indecent and disorderly language in its members. It does not, however, appear to be a necessary consequence from the reversal of this judgment, that no actions committed in the house by any of its members are punishable in a court of law. The argument in behalf of Holles and Valentine goes indeed to this length; but it was admitted in the debate on the subject in 1667, that their plea to the jurisdiction of the King's Bench could not have been supported as to the imputed riot in detaining the speaker in the chair, though the judgment was erroneous in extending to words spoken in parliament. And it is obvious that the house could inflict no adequate punishment in the possible case of treason or felony committed within its walls; nor, if its power of imprisonment be limited to the session, in that of many smaller offences.

* Hatsell, p. 212. 242.

The customs on imported merchandizes were now rigorously enforced.* But the late discussions in parliament, and the growing disposition to probe the legality of all acts of the crown, rendered the merchants more discontented than ever. Richard Chambers, having refused to pay any further duty for a bale of silks than might be required by law, was summoned before the privy-council. In the presence of that board he was provoked to exclaim that in no part of the world, not even in Turkey, were the merchants so screwed and wrung as in England. For these hasty words an information was preferred against him in the Star-chamber; and the court, being of opinion that the words were intended to make the people believe that his majesty's happy government might be termed Turkish tyranny, manifested their laudable abhorrence of such tyranny by sentencing him to pay a fine of 2000*l.*, and to make a humble submission. Chambers, a sturdy puritan, absolutely refused to subscribe the form of submission tendered to him, and was of course committed to prison. But the court of King's Bench admitted him to bail on a habeas corpus; for which, as Whitelock tells us, they were reprimanded by the council.†

There were several instances, besides this just mentioned, wherein the judges manifested a more courageous spirit than they were able constantly to preserve; and the odium under which their memory labours for a servile compliance with the court, especially in the case of ship-money, renders it but an act of justice to record those testimonies they occasionally gave of a nobler sense of duty. They unanimously declared, when Charles expressed a desire that Felton, the assassin of the duke of Buckingham, might be put to the rack in order to make him discover his accomplices, that the law of England did not allow the use of torture. This is a remarkable proof that, amidst all the arbitrary principles and arbitrary measures of the time, a truer sense of the inviolability of law had begun

* Rushworth.

† Rushworth. *State Trials*, iii. 373. Whitelock, p. 12. Chambers applied several times for redress to the long parliament on account of this and subsequent

injuries, but seems to have been cruelly neglected, while they were voting large sums to those who had suffered much less, and he died in poverty.

to prevail, and that the free constitution of England was working off the impurities with which violence had stained it. For, though it be most certain that the law never recognised the use of torture, there had been many instances of its employment, and even within a few years.* In this public assertion of its illegality, the judges conferred an eminent service on their country, and doubtless saved the king and his council much additional guilt and infamy which they would have incurred in the course of their career. They declared about the same time, on a reference to them concerning certain disrespectful words alleged to have been spoken by one Pine against the king, that no words can of themselves amount to treason within the statute of Edward III.† They resolved, some years after, that Prynne's, Burton's, and Bastwick's libels against the bishops were no treason.‡ In their old controversy with the ecclesiastical jurisdiction, they were inflexibly tenacious. An action having been brought against some members of the high-commission court for false imprisonment, the king, on Laud's remonstrance, sent a message to desire that the suit might not proceed till he should have conversed with the judges. The chief-justice made answer that they were bound by their

* I have remarked in former passages that the rack was much employed, especially against Roman catholics, under Elizabeth. Those accused of the gun-powder conspiracy were also severely tortured; and others in the reign of James. Coke, in the countess of Shrewsbury's case, 1612, State Trials, ii. 773., mentions it as a privilege of the nobility, that "their bodies are not subject to torture in causâ criminis læsæ majestatis." Yet, in his third Institute, p. 35., he says, the rack in the Tower was brought in by the duke of Exeter, under Henry VI., and is, therefore, familiarly called the duke of Exeter's daughter; and after quoting Fortescue to prove the practice illegal, concludes—"There is no law to warrant tortures in this land, nor can they be justified by any prescription, being so lately brought in." Bacon observes, in a tract written in 1603, "In the highest cases of treason, torture is used for discovery, and not for evidence." i. 393. See also Miss Aikin's Memoirs of James I., ii. 158.

[This subject has been learnedly elucidated by Mr. Jardine, in his "Reading on the Use of Torture in the Criminal Law of England," 1837. The historical facts are very well brought together in this essay; but I cannot agree with this highly intelligent author in considering the use of torture as having been "lawful as an act of prerogative, though not so by the common and statute law," p. 59. The whole tenor of my own views of the constitution, as developed in this and in former works, forbids my acquiescence in a theory, which does, as it seems to me, go the full length of justifying, in a legal sense, the violent proceedings of the crown under all the Plantagenets, Tudors, and Stuarts. 1845.]

† State Trials, iii. 359. This was a very important determination, and put an end to such tyrannical persecution of Roman catholics for bare expressions of opinion as had been used under Elizabeth and James.

‡ Rushworth (Abridged), ii. 253. Stafford's Letters, ii. 74.

oaths not to delay the course of justice; and after a contention before the privy-council, the commissioners were compelled to plead.*

Such instances of firmness serve to extenuate those unhappy deficiencies which are more notorious in history. Had the judges been as numerous and independent as those of the parliament of Paris, they would not probably have been wanting in equal vigour. But holding their offices at the king's will, and exposed to the displeasure of his council whenever they opposed any check to the prerogative, they held a vacillating course, which made them obnoxious to those who sought for despotic power, while it forfeited the esteem of the nation.

In pursuance of the system adopted by Charles's ministers, they had recourse to exactions, some odious and obsolete, some of very questionable legality, and others clearly against law. Of the former class may be reckoned the compositions for not taking the order of knighthood. The early kings of England, Henry III. and Edward I., very little in the spirit of chivalry, had introduced the practice of summoning their military tenants, holding 20*l.* per annum, to receive knighthood at their hands. Those who declined this honour were permitted to redeem their absence by a moderate fine.† Elizabeth, once in her reign, and James, had availed themselves of this ancient right. But the change in the value of money rendered it far more oppressive than formerly, though limited to the holders of 40*l.* per annum in military tenure. Commissioners were now appointed to compound with those who had neglected some years before to obey the proclamation, summoning them to receive knighthood at the king's coronation.‡

* Whitelock, 16. Kennet, 63. We find in Rymer, xix. 279., a commission, dated May 6. 1631, enabling the privy-council at all times to come, "to hear and examine all differences which shall arise betwixt any of our courts of justice, especially between the civil and ecclesiastical jurisdictions," &c. This was in all probability contrived by Laud, or some of those who did not favour the common law. But I do not find that any thing was done under this commission, which,

I need hardly say, was as illegal as most of the king's other proceedings.

† 2 Inst. 593. The regulations contained in the statute de militibus, 1 Ed. II., though apparently a temporary law, seem to have been considered by Coke as permanently binding. Yet in this statute the estate requiring knighthood, or a composition for it, is fixed at 20*l.* per annum.

‡ According to a speech of Mr. Hyde in the long parliament, not only military

In particular instances, very severe fines are recorded to have been imposed upon defaulters, probably from some political resentment.*

Still greater dissatisfaction attended the king's attempt to revive the ancient laws of the forests, — those laws, ^{Forest laws.} of which, in elder times, so many complaints had been heard, exacting money by means of pretensions which long disuse had rendered dubious, and showing himself to those who lived on the borders of those domains in the hateful light of a litigious and encroaching neighbour. The earl of Holland held a court almost every year, as chief-justice in eyre, for the recovery of the king's forestal rights, which made great havoc with private property. No prescription could be pleaded against the king's title, which was to be found, indeed, by the inquest of a jury, but under the direction of a very partial tribunal. The royal forests in Essex were so enlarged, that they were hyperbolically said to include the whole county.† The earl of Southampton was nearly ruined by a decision that stripped him of his estate near the New Forest.‡ The boundaries of Rockingham forest were increased from six miles to sixty, and enormous fines imposed on the trespassers; lord Salisbury being amerced in 20,000*l.*, lord Westmoreland in 19,000*l.*, sir Christopher Hatton in 12,000. § It is probable that much of these was remitted.

A greater profit was derived from a still more pernicious

tenants, but all others, and even lessees and merchants, were summoned before the council on this account. *Parl. Hist.* ii. 948. This was evidently illegal; especially if the *Statutum de militibus* was in force, which by express words exempts them. See Mr. Brodie's *Hist. of British Empire*, ii. 282. There is still some difficulty about this, which I cannot clear up, nor comprehend why the title, if it could be had for asking, was so continually declined; unless it were, as Mr. B. hints, that the fees of knighthood greatly exceeded the composition. Perhaps none who could not prove their gentility were admitted to the honour, though the fine was extorted from them. It is said that the king got 100,000*l.* by this resource. *Macaulay*, ii. 107.

* *Rushworth Abr.* ii. 102.

† *Strafford's Letters*, i. 335.

‡ *Id.* p. 463. 467.

§ *Id.* ii. 117. It is well known that Charles made Richmond Park by means of depriving many proprietors not only of common rights, but of their freehold lands. *Clarendon*, i. 176. It is not clear that they were ever compensated; but I think this probable, as the matter excited no great clamour in the long parliament. And there is in *Rymer*, xx. 585., a commission to Cottington, and others, directing them to compound with the owners of lands within the intended enclosures. Dec. 12. 1634.

and indefensible measure, the establishment of a chartered company, with exclusive privileges of making soap. The recent statute against monopolies seemed to secure the public against this species of grievance. Noy, however, the attorney-general, a lawyer of uncommon eminence, and lately a strenuous asserter of popular rights in the house of commons, devised this project, by which he probably meant to evade the letter of the law, since every manufacturer was permitted to become a member of the company. They agreed to pay eight pounds for every ton of soap made, as well as 10,000*l.* for their charter. For this they were empowered to appoint searchers, and exercise a sort of inquisition over the trade. Those dealers who resisted their interference were severely fined, on informations in the star-chamber. Some years afterwards, however, the king received money from a new corporation of soap-makers, and revoked the patent of the former.*

This precedent was followed in the erection of a similar company of starch-makers, and in a great variety of other grants, which may be traced in Rymer's *Fœdera*, and in the proceedings of the long parliament; till monopolies, in transgression or evasion of the late statute, became as common as they had been under James or Elizabeth. The king, by a proclamation at York in 1639, beginning to feel the necessity of diminishing the public odium, revoked all these grants.† He annulled at the same time a number of commissions that had been issued in order to obtain money by compounding with offenders against penal statutes. The catalogue of these, as well as of the monopolies, is very curious. The former were, in truth, rather vexatious than illegal, and sustained by precedents in what were called the golden ages of Elizabeth and James, though at all times the source of great and just discontent.

The name of Noy has acquired an unhappy celebrity by a far more famous invention, which promised to realize the most sanguine hopes that could have been formed of carrying on the government for an indefinite length of

* Kennet, 64. Rushworth's Abridg. ii. 132. Strafford's Letters, i. 446. Rymer, xix. 323. Laud's Diary, 51.

† Rymer, xx. 340.

time without the assistance of parliament. Shaking off the dust of ages from parchments in the Tower, this man of venal diligence and prostituted learning discovered that the sea-ports and even maritime counties had in early times been sometimes called upon to furnish ships for the public service; nay, there were instances of a similar demand upon some inland places. Noy himself died almost immediately afterwards. Notwithstanding his apostasy from the public cause, it is just to remark that we have no right to impute to him the more extensive and more unprecedented scheme of ship-money as a general tax, which was afterwards carried into execution. But it sprang by natural consequence from the former measure, according to the invariable course of encroachment, which those who have once bent the laws to their will ever continue to pursue. The first writ issued from the council in October, 1634. It was directed to the magistrates of London and other sea-port towns. Reciting the depredations lately committed by pirates, and slightly adverting to the dangers imminent in a season of general war on the continent, it enjoins them to provide a certain number of ships of war of a prescribed tonnage and equipage; empowering them also to assess all the inhabitants for a contribution towards this armament according to their substance. The citizens of London humbly remonstrated that they conceived themselves exempt, by sundry charters and acts of parliament, from bearing such a charge. But the council peremptorily compelled their submission; and the murmurs of inferior towns were still more easily suppressed. This is said to have cost the city of London 35,000*l*.*

There wanted not reasons in the cabinet of Charles for placing the navy at this time on a respectable footing. Algerine pirates had become bold enough to infest the Channel; and what was of more serious importance, the Dutch were rapidly acquiring a maritime preponderance, which excited a natural jealousy, both for our commerce, and the

* Kennet, 74, 75. Strafford Letters, i. 358. Some petty sea-ports in Sussex refused to pay ship-money; but finding that the sheriff had authority to distrain on them, submitted. The deputy-lieutenants of Devonshire wrote to the council

in behalf of some towns a few miles distant from the sea, that they might be spared from this tax, saying it was a novelty. But they were summoned to London for this, and received a reprimand for their interference. Id. 372.

honour of our flag. This commercial rivalry conspired with a far more powerful motive at court, an abhorrence of every thing republican or Calvinistic, to make our course of policy towards Holland not only unfriendly, but insidious and inimical in the highest degree. A secret treaty is extant, signed in 1631, by which Charles engaged to assist the king of Spain in the conquest of that great protestant commonwealth, retaining the isles of Zealand as the price of his co-operation.*

Yet, with preposterous inconsistency as well as ill-faith, the two characteristics of all this unhappy prince's foreign policy, we find him in the next year carrying on a negotiation with a disaffected party in the Netherlands, in some strange expectation of obtaining the sovereignty on their separation from Spain. Lord Cottington betrayed this intrigue (of which one whom we should little expect to find in these paths of conspiracy, Peter Paul Rubens, was the negotiator) to the court of Madrid.† It was in fact an unpardonable and unprovoked breach of faith on the king's part, and accounts for the indifference, to say no more, which that government always showed to his misfortunes. Charles, whose domestic position rendered a pacific system absolutely necessary, busied himself, far more than common history has recorded, with the affairs of Europe. He was engaged in a tedious and unavailing negotiation with both branches of the house of Austria, especially with the court of Madrid, for the restitution of the Palatinate. He took a much greater interest than his father had done in the fortunes of his sister and her family; but, like his father, he fell into the delusion, that the cabinet of Madrid, for whom he could effect but little, or that of Vienna, to whom he could offer nothing, would so far realise the cheap professions of friendship they were always making, as to sacrifice a conquest wherein the preponderance of the house of Austria and the catholic religion in Germany was so deeply concerned. They drew him on accordingly through the labyrinths of diplomacy; assisted, no doubt, by that party in his council, composed at this time of lord Cottington, secretary Windebank, and some others, who had

* Clarendon State Papers, i. 49. and ii. Append. p. xxvi.

† This curious intrigue, before un-

known, I believe, to history, was brought to light by lord Hardwicke. State Papers, ii. 54.

always favoured Spanish connexions.* It appears that the fleet raised in 1634 was intended, according to an agreement entered into with Spain, to restrain the Dutch from fishing in the English seas, nay even, as opportunities should arise, to co-operate hostilely with that of Spain.† After above two years spent in these negotiations, Charles discovered that the house of Austria were deceiving him; and, still keeping in view the restoration of his nephew to the electoral dignity and territories, entered into stricter relations with France; a policy which might be deemed congenial to the queen's inclinations, and recommended by her party in his council, the earl of Holland, sir Henry Vane, and perhaps by the earls of Northumberland and Arundel. In the first impulse of indignation at the duplicity of Spain, the king yielded so far to their counsels as to meditate a declaration of war against that power.‡ But his own cooler judgment, or the strong dissuasions of Strafford, who saw that external peace was an indispensable condition for the security of despotism§, put

* See Clarendon State Papers, i. 490., for a proof of the manner in which, through the Hispano-popish party in the cabinet, the house of Austria hoped to dupe and dishonour Charles.

† Clarendon State Papers, i. 109. et post. Five English ships out of twenty were to be at the charge of the king of Spain. Besides this agreement, according to which the English were only bound to protect the ships of Spain within their own seas, or the limits claimed as such, there were certain secret articles, signed Dec. 16. 1634; by one of which Charles bound himself, in case the Dutch should not make restitution of some Spanish vessels taken by them within the English seas, to satisfy the court of Spain himself out of ships and goods belonging to the Dutch; and by the second, to give secret instructions to the commanders of his ships, that when those of Spain and Flanders should encounter their enemies at open sea, far from his coasts and limits, they should assist them if over-matched, and should give the like help to the prizes which they should meet, taken by the Dutch, that they might be freed and set at liberty; taking some convenient pretext to justify it, that the Hollanders might not hold it an act of hostility.

But no part of this treaty was to take effect till the imperial ban upon the Elector Palatine should be removed. Id. 215.

‡ Clarendon State Papers, i. 721. 761.

§ Strafford Papers, ii. 52, 53. 60. 66. Richelieu sent d'Estrades to London, in 1637, according to Père Orleans, to secure the neutrality of England in case of his attacking the maritime towns of Flanders conjointly with the Dutch. But the ambassador was received haughtily, and the neutrality refused; which put an end to the scheme, and so irritated Richelieu, that he sent a priest named Chamberlain to Edinburgh the same year, in order to foment troubles in Scotland. Révol. d'Auglet. iii. 42. This is confirmed by d'Estrades himself. See note in Sidney Papers, ii. 447., and Harris's Life of Charles, 189.; also Lingard, x. 69. The connexion of the Scotch leaders with Richelieu in 1639 is matter of notorious history. It has lately been confirmed and illustrated by an important note in Mazure, Hist. de la Révolution en 1688, ii. 402. It appears by the above-mentioned note of M. Mazure, that the celebrated letter of the Scotch lords, addressed "Au Roy," was really sent, and is extant. There seems reason

an end to so imprudent a project ; though he preserved, to the very meeting of the long parliament, an intimate connexion with France, and even continued to carry on negotiations, tedious and insincere, for an offensive alliance.* Yet he still made, from time to time, similar overtures to Spain † ; and this unsteadiness, or rather duplicity, which could not easily be concealed from two cabinets eminent for their secret intelligence, rendered both of them his enemies, and the instruments, as there is much reason to believe, of some of his greatest calamities. It is well known that the Scots covenanters were in close connexion with Richelieu ; and many circumstances render it probable, that the Irish rebellion was countenanced and instigated both by him and by Spain.

This desire of being at least prepared for war, as well as the general system of stretching the prerogative beyond all limits, suggested an extension of the former writs from the sea-ports to the whole kingdom.

Finch, chief justice of the common pleas, has the honour of this improvement on Noy's scheme. He was a man of little learning or respectability, a servile tool of the despotic cabal ; who, as speaker of the last parliament, had, in obedience to a command from the king to adjourn, refused to put the question upon a remonstrance moved in the house. By the new writs for ship-money, properly so denominated, since the former had only demanded the actual equipment of vessels, for which inland counties were of course obliged to compound, the sheriffs were directed to assess every landholder and other inhabitant according to their judgment of his means, and to enforce the payment by distress. ‡

This extraordinary demand startled even those who had hitherto sided with the court. Some symptoms of opposition were shown in different places, and actions brought against those who had collected the money. But the greater part yielded to an overbearing power, exercised with such rigour that no one in this king's reign, who had ventured on the

to think that Henrietta joined the Austrian faction about 1639 ; her mother being then in England, and very hostile to Richelieu. This is in some degree corroborated by a passage in a letter of lady Carlisle. Sidney Papers, ii. 614.

* Sidney Papers, ii. 613.

† Clarendon State Papers, ii. 16.

‡ See the instructions in Rushworth, ii. 214.

humblest remonstrance against any illegal act, had escaped without punishment. Indolent and improvident men satisfied themselves that the imposition was not very heavy, and might not be repeated. Some were content to hope that their contribution, however unduly exacted, would be faithfully applied to public ends. Others were overborne by the authority of pretended precedents, and could not yet believe that the sworn judges of the law would pervert it to its own destruction. The ministers prudently resolved to secure, not the law, but its interpreters on their side. The judges of assize were directed to inculcate on their circuits the necessary obligation of forwarding the king's service by complying with his writ. But, as the measure grew more obnoxious, and strong doubts of its legality came more to prevail, it was thought expedient to publish an extra-judicial opinion of the twelve judges, taken at the king's special command, according to the pernicious custom of that age. They gave it as their unanimous opinion that "when the good and safety of the kingdom in general is concerned, and the whole kingdom in danger, his majesty might, by writ under the great seal, command all his subjects, at their charge, to provide and furnish such number of ships, with men, munition, and victuals, and for such time as he should think fit, for the defence and safeguard of the kingdom; and that by law he might compel the doing thereof, in case of refusal or refractoriness; and that he was the sole judge both of the danger, and when and how the same was to be prevented and avoided."

This premature declaration of the judges, which was publicly read by the lord-keeper Coventry in the star-chamber, did not prevent a few intrepid persons from bringing the question solemnly before them, that the liberties of their country might at least not perish silently, nor those who had betrayed them avoid the responsibility of a public avowal of their shame. The first that resisted was the gallant Richard Chambers, who brought an action against the lord-mayor for imprisoning him on account of his refusal to pay his assessment on the former writ. The magistrate pleaded the writ as a special justification; when Berkley, one of the judges of the king's bench, declared that there was a rule of law and a rule of government, that many things which could not be

done by the first rule might be done by the other, and would not suffer counsel to argue against the lawfulness of ship-money.* The next were lord Say and Mr. Hampden, both of whom appealed to the justice of their country; but the famous decision which has made the latter so illustrious, put an end to all attempts at obtaining redress by course of law.

Hampden, it seems hardly necessary to mention, was a gentleman of good estate in Buckinghamshire, whose assessment to the contribution for ship-money demanded from his county amounted only to twenty shillings.† The cause, though properly belonging to the court of exchequer, was heard, on account of its magnitude, before all the judges in the exchequer-chamber.‡ The precise question, so far as related to Mr. Hampden, was, Whether the king had a right, on his own allegation of public danger, to require an inland county to furnish ships, or a prescribed sum of money by way of commutation, for the defence of the kingdom? It was argued by St. John and Holborne in behalf of Hampden; by the solicitor-general Littleton and the attorney-general Banks, for the crown.§

The law and constitution of England, the former maintained, had provided in various ways for the public safety and protection against enemies. First, there

* Rushworth, 253. The same judge declared afterwards, in a charge to the grand jury of York, that ship-money was an inseparable flower of the crown, glancing at Hutton and Croke for their opposition to it. *Id.* 267.

† As it is impossible to reconcile the trifling amount of this demand with Hampden's known estate, the tax being probably not much less than sixpence in the pound, it has been conjectured that his property was purposely rated low. But it is hard to perceive any motive for this indulgence; and it seems more likely that a nominal sum was fixed upon, in order to try the question; or that it was only assessed on a part of his estate.

[Lord Nugent has published a facsimile of the return made by the assessors of ship-money for the parish of Great Kimble, wherein Mr. Hampden is set down for 31s. 6d., and is returned,

with many others, as refusing to pay. *Memoirs of Hampden and his Times*, vol. i. p. 230. But the suit in the Exchequer was not on account of this demand, but for 20s., as stated in the text, due for property situate in the parish of Stoke Mandevile. This explains the smallness of the sum immediately in question; it was assessed only on a portion of Hampden's lands. 1845.]

‡ There seems to have been something unusual, if not irregular, in this part of the proceeding. The barons of the exchequer called in the other judges, not only by way of advice but direction, as the chief baron declares. *State Trials*, 1203. And a proof of this is, that the court of exchequer being equally divided, no judgment could have been given by the barons alone.

§ *State Trials*, iii. 826—1252.

were the military tenures, which bound great part of the kingdom to a stipulated service at the charge of the possessors. The cinque ports also, and several other towns, some of them not maritime, held by a tenure analogous to this; and were bound to furnish a quota of ships or men, as the condition of their possessions and privileges. These for the most part are recorded in Domesday-book, though now in general grown obsolete. Next to this specific service, our constitution had bestowed on the sovereign his certain revenues, the fruits of tenure, the profits of his various minor prerogatives; whatever, in short, he held in right of his crown, was applicable, so far as it could be extended, to the public use. It bestowed on him, moreover, and perhaps with more special application to maritime purposes, the customs on importation of merchandize. These indeed had been recently augmented far beyond ancient usage. "For these modern impositions," says St. John, "of the legality thereof I intend not to speak: for in case his majesty may impose upon merchandize what himself pleaseth, there will be less cause to tax the inland counties; and in case he cannot do it, it will be strongly presumed that he can much less tax them."

But as the ordinary revenues might prove quite unequal to great exigencies, the constitution has provided another means, as ample and sufficient as it is lawful and regular, parliamentary supply. To this the kings of England have in all times had recourse; yet princes are not apt to ask as a concession what they might demand of right. The frequent loans and benevolences which they have required, though not always defensible by law, are additional proofs that they possessed no general right of taxation. To borrow on promise of repayment, to solicit, as it were, alms from their subjects, is not the practice of sovereigns whose prerogatives entitle them to exact money. Those loans had sometimes been repaid, expressly to discharge the king's conscience. And a very arbitrary prince, Henry VIII., had obtained acts of parliament to release him from the obligation of repayment.

These merely probable reasonings prepare the way for that conclusive and irresistible argument that was founded on statute law. Passing slightly over the charter of the Conqueror, that his subjects shall hold their lands free from all

unjust tallage, and the clause in John's Magna Charta, that no aid or scutage should be assessed but by consent of the great council (a provision not repeated in that of Henry III.), the advocates of Hampden relied on the 25 E. I., commonly called the *Confirmatio Chartarum*, which for ever abrogated all taxation without consent of parliament; and this statute itself, they endeavoured to prove, was grounded on requisitions very like the present, for the custody of the sea, which Edward had issued the year before. Hence it was evident that the saving contained in that act for the accustomed aids and prizes could not possibly be intended, as the opposite counsel would suggest, to preserve such exactions as ship-money; but related to the established feudal aids, and to the ancient customs on merchandize. They dwelt less however (probably through fear of having this exception turned against them) on this important statute than on one of more celebrity, but of very equivocal genuineness, denominated, *De Tallagio non Concedendo*; which is nearly in the same words as the *Confirmatio Chartarum*, with the omission of the above-mentioned saving. More than one law, enacted under Edward III., re-asserts the necessity of parliamentary consent to taxation. It was indeed the subject of frequent remonstrance in that reign, and the king often infringed this right. But the perseverance of the commons was successful, and ultimately rendered the practice conformable to the law. In the second year of Richard II., the realm being in imminent danger of invasion, the privy council convoked an assembly of peers and other great men, probably with a view to avoid the summoning of a parliament. This assembly lent their own money, but declared that they could not provide a remedy without charging the commons, which could not be done out of parliament, advising that one should be speedily summoned. This precedent was the more important, as it tended to obviate that argument from peril and necessity, on which the defenders of ship-money were wont to rely. But they met that specious plea more directly. They admitted that a paramount overruling necessity silences the voice of law; that an actual invasion, or its immediate prospect, the rights of private men must yield to the safety of the whole; that not only the sovereign, but each man in respect of his neigh-

bour, might do many things, absolutely illegal at other seasons; and this served to distinguish the present case from some strong acts of prerogative exerted by Elizabeth in 1588, when the liberties and religion of the people were in the most apparent jeopardy. But here there was no overwhelming danger; the nation was at peace with all the world: could the piracies of Turkish corsairs, or even the insolence of rival neighbours, be reckoned among those instant perils for which a parliament would provide too late?

To the precedents alleged on the other side, it was replied, that no one of them met the case of an inland county; that such as were before the 25 E. I. were sufficiently repelled by that statute, such as occurred under Edward III. by the later statutes, and by the remonstrances of parliament during his reign; and there were but very few afterwards. But that, in a matter of statute law, they ought not to be governed by precedents, even if such could be adduced. Before the latter end of Edward I.'s reign, St. John observes, "All things concerning the king's prerogative and the subjects' liberties were upon uncertainties." "The government," says Holborne truly, "was more of force than law." And this is unquestionably applicable, in a less degree, to many later ages.

Lastly, the petition of right, that noble legacy of a slandered parliament, reciting and confirming the ancient statutes, had established that no man thereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament. This latest and most complete recognition must sweep away all contrary precedent, and could not, without a glaring violation of its obvious meaning, be stretched into an admission of ship-money.

The king's counsel, in answer to these arguments, appealed to that series of records which the diligence of Noy had collected. By far the greater part of these were commissions of array. But several, even of those addressed to inland towns, (and, if there were no service by tenure in the case, it does not seem easy to distinguish these in principle from counties,) bore a very strong analogy to the present. They were, however, in early times. No sufficient answer could

be offered to the statutes that had prohibited unparliamentary taxation. The attempts made to elude their force were utterly ineffectual, as those who are acquainted with their emphatic language may well conceive. But the council of Charles the First, and the hirelings who ate their bread, disdained to rest their claim of ship-money (big as it was with other and still more novel schemes) on obscure records, or on cavils about the meaning of statutes. They resorted rather to the favourite topic of the times, the intrinsic, absolute authority of the king. This the attorney-general Banks placed in the very front of his argument. "This power," says he, "is innate in the person of an absolute king, and in the persons of the kings of England. All magistracy it is of nature, and obedience and subjection it is of nature. This power is not any ways derived from the people, but reserved unto the king when positive laws first began. For the king of England, he is an absolute monarch; nothing can be given to an absolute prince but what is inherent in his person. He can do no wrong. He is the sole judge, and we ought not to question him. Where the law trusts, we ought not to distrust. The acts of parliament," he observed, "contained no express words to take away so high a prerogative; and the king's prerogative, even in lesser matters, is always saved, wherever express words do not restrain it."

But this last argument appearing too modest for some of the judges who pronounced sentence in this cause, they denied the power of parliament to limit the high prerogatives of the crown. "This imposition without parliament," says justice Crawley, "appertains to the king originally, and to the successor ipso facto, if he be a sovereign in right of his sovereignty from the crown. You cannot have a king without these royal rights, no, not by act of parliament." "Where Mr. Holborne," says justice Berkley, "supposed a fundamental policy in the creation of the frame of this kingdom, that in case the monarch of England should be inclined to exact from his subjects at his pleasure, he should be restrained, for that he could have nothing from them, but upon a common consent in parliament; he is utterly mistaken herein. The law knows no such king-yoking policy. The law is itself an old and trusty servant of the king's; it is his instru-

ment or means which he useth to govern his people by : I never read nor heard that *lex was rex* ; but it is common and most true, that *rex is lex*.” Vernon, another judge, gave his opinion in few words : “ That the king, *pro bono publico*, may charge his subjects for the safety and defence of the kingdom, notwithstanding any act of parliament, and that a statute derogatory from the prerogative doth not bind the king ; and the king may dispense with any law in cases of necessity.” Finch, the adviser of the ship-money, was not backward to employ the same argument in its behalf. “ No act of parliament,” he told them, “ could bar a king of his regality, as that no land should hold of him, or bar him of the allegiance of his subjects or the relative on his part, as trust and power to defend his people ; therefore acts of parliament to take away his royal power in the defence of his kingdom are void ; they are void acts of parliament to bind the king not to command the subjects, their persons, and goods, and I say, their money too ; for no acts of parliament make any difference.”

Seven of the twelve judges, namely, Finch, chief justice of the common pleas, Jones, Berkley, Vernon, Crawley, Trevor, and Weston gave judgment for the crown. Brampton, chief justice of the king's bench, and Davenport, chief baron of the exchequer, pronounced for Hampden, but on technical reasons, and adhering to the majority on the principal question. Denham, another judge of the same court, being extremely ill, gave a short written judgment in favour of Hampden. But justices Croke and Hutton, men of considerable reputation and experience, displayed a most praiseworthy intrepidity in denying, without the smallest qualification, the alleged prerogative of the crown and the lawfulness of the writ for ship-money. They had unfortunately signed, along with the other judges, the above-mentioned opinion in favour of the right. For this they made the best apology they could, that their voice was concluded by the majority. But in truth it was the ultimate success that sometimes attends a struggle between conscience and self-interest or timidity.*

* Croke, whose conduct on the bench in other political questions was not without blemish, had resolved to give judgment for the king, but was withheld by his wife, who implored him not to sacrifice his conscience for fear of any danger

or prejudice to his family, being content to suffer any misery with him, rather than to be an occasion for him to violate his integrity. Whitelock, p. 25. Of such high-minded and inflexible women our British history produces many examples.

The length to which this important cause was protracted, six months having elapsed from the opening speech of Mr. Hampden's counsel to the final judgment, was of infinite disservice to the crown. During this long period, every man's attention was directed to the exchequer-chamber. The convincing arguments of St. John and Holborne, but still more the division on the bench, increased their natural repugnance to so unusual and dangerous a prerogative.* Those who had trusted to the faith of the judges were undeceived by the honest repentance of some, and looked with indignation on so prostituted a crew. That respect for courts of justice, which the happy structure of our judicial administration has in general kept inviolate, was exchanged for distrust, contempt, and desire of vengeance. They heard the speeches of some of the judges with more displeasure than even their final decision. Ship-money was held lawful by Finch and several other judges, not on the authority of precedents, which must in their nature have some bounds, but on principles subversive of any property or privilege in the subject. Those paramount rights of monarchy, to which they appealed to-day in justification of ship-money, might to-morrow serve to supersede other laws, and maintain new exertions of despotic power. It was manifest, by the whole strain of the court lawyers, that no limitations on the king's authority could exist but by the king's sufferance. This alarming tenet, long bruited among the churchmen and courtiers, now resounded in the halls of justice. But ship-money, in consequence, was paid with far less regularity and more reluctance than before.† The discontent that had been tolerably smothered, was now displayed in every county; and though the council did not flinch in the least from exacting payment, nor willingly remit any part of its rigour towards the uncom-

* Laud writes to lord Wentworth, that Croke and Hutton had both gone against the king very sourly. "The accidents which have followed upon it already are these: First, the faction are grown very bold. Secondly, the king's monies come in a great deal more slowly than they did in former years, and that to a very considerable sum. Thirdly, it puts thoughts into wise and moderate men's heads,

which were better out; for they think if the judges, which are behind, do not their parts both exceeding well and thoroughly, it may much distemper this extraordinary and great service." *Stratford Letters*, ii. 170.

† It is notoriously known that pressure was borne with much more cheerfulness before the judgment for the king than ever it was after. *Clarendon*, p. 122.

plying, it was impossible either to punish the great body of the country gentlemen and citizens, or to restrain their murmurs by a few examples. Whether in consequence of this unwillingness, or for other reasons, the revenue levied in different years under the head of ship-money is more fluctuating than we should expect from a fixed assessment; but may be reckoned at an average sum of 200,000*l*.*

It would doubtless be unfair to pass a severe censure on the government of Charles the First for transgressions of law, which a long course of precedents ^{Proclamations.} might render dubious, or at least extenuate. But this common apology for his administration, on which the artful defence of Hume is almost entirely grounded, must be admitted cautiously, and not until we have well considered how far such precedents could be brought to support it. This is particularly applicable to his proclamations. I have already pointed out the comparative novelty of these unconstitutional ordinances, and their great increase under James. They had not been fully acquiesced in; the commons had remonstrated against their abuse; and Coke, with other judges, had endeavoured to fix limits to their authority, very far within that which they arrogated. It can hardly, therefore, be said that Charles's council were ignorant of their illegality; nor is the case at all parallel to that of general warrants, or any similar irregularity into which an honest government may inadvertently be led. They serve at least to display the practical state of the constitution, and the necessity of an entire reform in its spirit.

The proclamations of Charles's reign are far more numerous than those of his father. They imply a prerogative of intermeddling with all matters of trade, ^{Various arbitrary proceedings.} prohibiting or putting under restraint the importation of various articles, and the home growth of others, or establishing regulations for manufactures.† Prices of several minor articles were fixed by proclamation, and in one instance this was extended to poultry, butter, and coals.‡ The king de-

* Rushworth, Abr. ii. 341. Clarendon, State Papers, i. 600. It is said by Heylin that the clergy were much spared in the assessment of ship-money. Life of Laud, 302.

† Rymer, passim.

‡ Id. xix. 512. It may be curious to mention some of these. The best turkey was to be sold at 4*s*. 6*d*.; the best goose at 2*s*. 4*d*.; the best pullet, 1*s*. 8*d*.; three

clares by a proclamation that he had incorporated all tradesmen and artificers within London and three miles round; so that no person might set up any trade without having served a seven years' apprenticeship, and without admission into such corporation.* He prohibits in like manner any one from using the trade of a maltster or that of a brewer, without admission into the corporations of maltsters or brewers erected for every county.† I know not whether these projects were in any degree founded on the alleged pretext of correcting abuses, or were solely designed to raise money by means of these corporations. We find, however, a revocation of the restraint on malting and brewing soon after. The illegality of these proclamations is most unquestionable.

The rapid increase of London continued to disquiet the court. It was the stronghold of political and religious disaffection. Hence the prohibitions of erecting new houses, which had begun under Elizabeth, were continually repeated.‡ They had indeed some laudable objects in view; to render the city more healthy, cleanly, and magnificent, and by prescribing the general use of brick instead of wood, as well as by improving the width and regularity of the streets, to afford the best security against fires, and against those epidemical diseases which visited the metropolis with unusual severity in the earlier years of this reign. The most jealous censor of royal encroachments will hardly object to the proclamations enforcing certain regulations of police in some of those alarming seasons.

It is probable, from the increase which we know to have taken place in London during this reign, that licences for building were easily obtained. The same supposition is applicable to another class of proclamation, enjoining all persons who had residences in the country to quit the capital and repair to them.§ Yet, that these were not always a

eggs for a penny; fresh butter at *5d.* in summer, and *6d.* in winter. This was in 1634.

* *Id.* xx. 113.

† *Id.* 157.

‡ *Rymer*, xviii. 33. et alibi. A commission was granted to the earl of Arundel and others, May 30. 1625, to enquire what houses, shops, &c. had been built

for ten years past, especially since the last proclamation, and to commit the offenders. It recites the care of Elizabeth and James to have the city built in an uniform manner with brick, and also to clear it from under-tenants and base people who live by begging and stealing. *Id.* xviii. 97.

§ *Rymer*, xix. 375.

dead letter, appears from an information exhibited in the star-chamber against seven lords, sixty knights, and one hundred esquires, besides many ladies, for disobeying the king's proclamation, either by continuing in London, or returning to it after a short absence.* The result of this prosecution, which was probably only intended to keep them in check, does not appear. No proclamation could stand in need of support from law, while this arbitrary tribunal assumed a right of punishing misdemeanors. It would have been a dangerous aggravation of any delinquent's offence to have questioned the authority of a proclamation, or the jurisdiction of the council.

The security of freehold rights had been the peculiar boast of the English law. The very statute of Henry VIII., which has been held up to so much infamy, while it gave the force of law to his proclamations, interposed its barrier in defence of the subject's property. The name of freeholder, handed down with religious honour from an age when it conveyed distinct privileges, and as it were a sort of popular nobility, protected the poorest man against the crown's and the lord's rapacity. He at least was recognised as the *liber homo* of Magna Charta, who could not be disseised of his tenements and franchises. His house was his castle, which the law respected, and which the king dared not enter. Even the public good must give way to his obstinacy; nor had the legislature itself as yet compelled any man to part with his lands for a compensation which he was loth to accept. The council and star-chamber had very rarely presumed to meddle with his right; never perhaps where it was acknowledged and ancient. But now this reverence of the common law for the sacredness of real property was derided by those who revered nothing as sacred but the interests of the church and crown. The privy council, on a suggestion that the demolition of some houses and shops in the vicinity of St. Paul's would show the cathedral to more advantage, directed that the owners should receive such satisfaction as should seem reasonable; or on their refusal the sheriff was required to see the buildings pulled down, "it not being thought fit the

* Rushworth, Abridgm., ii. 232.

obstinacy of those persons should hinder so considerable a work."* By another order of council, scarcely less oppressive and illegal, all shops in Cheapside and Lombard-street, except those of goldsmiths, were directed to be shut up, that the avenue to St. Paul's might appear more splendid; and the mayor and aldermen were repeatedly threatened for remissness in executing this mandate of tyranny.†

In the great plantation of Ulster by James, the city of London had received a grant of extensive lands in the county of Derry, on certain conditions prescribed in their charter. The settlement became flourishing, and enriched the city. But the wealth of London was always invidious to the crown, as well as to the needy courtiers. On an information filed in the star-chamber for certain alleged breaches of their charter, it was not only adjudged to be forfeited to the king, but a fine of 70,000*l.* was imposed on the city. They paid this enormous mulct; but were kept out of their lands till restored by the long parliament.‡ In this proceeding Charles forgot his duty enough to take a very active share, personally exciting the court to give sentence for himself.§ Is it then to be a matter of surprise or reproach, that the citizens of London refused him assistance in the Scottish war, and through the ensuing times of confusion harboured an implacable resentment against a sovereign who had so deeply injured them?

We may advert in this place to some other stretches of power, which no one can pretend to justify, though in general they seem to have escaped notice amidst the enormous mass of national grievances. A commission was issued in 1635, to the recorder of London and others, to examine all persons going beyond seas, and tender to them an oath of the most

* Rushworth, Abr. ii. 79.

† Id. p. 313.

‡ Rushworth, Abr. iii. 123. White-lock, p. 35. Strafford Letters, i. 374. et alibi. See what Clarendon says, p. 293. (ii. 151. edit. 1826.) The second of these tells us, that the city offered to build for the king a palace in St. James's park by way of composition, which was refused. If this be true, it must allude to the palace already projected by him, the magnificent designs for which by

Inigo Jones are well known. Had they been executed, the metropolis would have possessed a splendid monument of Palladian architecture; and the reproach sometimes thrown on England, of wanting a fit mansion for its monarchs, would have been prevented. But the exchequer of Charles I. had never been in such a state as to render it at all probable that he could undertake so costly a work.

§ Strafford Letters, i. 340.

inquisitorial nature.* Certain privy-councillors were empowered to enter the house of sir Robert Cotton, and search his books, records, and papers, setting down such as ought to belong to the crown.† This renders probable what we find in a writer who had the best means of information, that secretary Windebank, by virtue of an order of council, entered sir Edward Coke's house while he lay on his death-bed, took away his manuscripts, together with his last will, which was never returned to his family.‡ The high-commission court were enabled, by the king's "supreme power ecclesiastical," to examine such as were charged with offences cognizable by them on oath, which many had declined to take, according to the known maxims of English law.§

It would be improper to notice as illegal or irregular the practice of granting dispensations in particular instances, either from general acts of parliament or the local statutes of colleges. Such a prerogative, at least in the former case, was founded on long usage and judicial recognition. Charles, however, transgressed its admitted boundaries, when he empowered others to dispense with them as there might be occasion. Thus, in a commission to the president and council of the North, directing them to compound with recusants, he in effect suspends the statute which provides that no recusant shall have a lease of that portion of his lands which the law sequestered to the king's use during his recusancy; a clause in this patent enabling the commissioners to grant such leases notwithstanding any law or statute to the contrary. This seems to go beyond the admitted limits of the dispensing prerogative.||

The levies of tonnage and poundage without authority of parliament, the exaction of monopolies, the extension of the forests, the arbitrary restraints of proclamations, above all, the general exaction of ship-money, form the principal articles of charge against the government of Charles, so far as relates to its inroads on the subject's property. These were maintained by a vigilant and unsparing exercise of jurisdiction in

* Rymer, xix. 699.

† Id. 198.

‡ Roger Coke's *Detection of the Court*

of England, i. 309. He was sir Edward's grandson.

§ Rymer, xx. 190.

|| Id. xix. 740. See also 82.

the court of star-chamber. I have, in another chapter, traced the revival of this great tribunal, probably under Henry VIII., in at least as formidable a shape as before the now-neglected statutes of Edward III. and Richard II., which had placed barriers in its way. It was the great weapon of executive power under Elizabeth and James; nor can we reproach the present reign with innovation in this respect, though in no former period had the proceedings of this court been accompanied with so much violence and tyranny. But this will require some fuller explication.

I hardly need remind the reader that the jurisdiction of the ancient Concilium regis ordinarium, or court of star-chamber, continued to be exercised, more or less frequently, notwithstanding the various statutes enacted to repress it; and that it neither was supported by the act erecting a new court in the third of Henry VII., nor originated at that time. The records show the star-chamber to have taken cognizance both of civil suits and of offences throughout the time of the Tudors. But precedents of usurped power cannot establish a legal authority in defiance of the acknowledged law. It appears that the lawyers did not admit any jurisdiction in the council, except so far as the statute of Henry VII. was supposed to have given it. "The famous Plowden put his hand to a demurrer to a bill," says Hudson, "because the matter was not within the statute; and, although it was then over-ruled, yet Mr. Serjeant Richardson, thirty years after, fell again upon the same rock, and was sharply rebuked for it."* The chancellor, who

* Hudson's Treatise of the Court of Star-Chamber, p. 51. This valuable work, written about the end of James's reign, is published in *Collectanea Juridica*, vol. ii. There is more than one manuscript of it in the British Museum.

In another treatise, written by a clerk of the Council about 1590 (Hargrave MSS. ccxvi. 195.), the author says:—"There was a time when there grew a controversy between the star-chamber and the King's Bench, for their jurisdiction in a cause of perjury concerning tithes, sir Nicholas Bacon, that most grave and worthy counsellor, then being lord-keeper of the great seal, and sir Robert Catlyn,

knight, then lord chief justice of the bench. To the deciding thereof were called by the plaintiff and defendant a great number of the learned counsellors of the law: they were called into the inner star-chamber after dinner, where before the lords of the council they argued the cause on both sides, but could not find the court of greater antiquity by all their books than Henry VII. and Richard III. On this I fell in cogitation how to find some further knowledge thereof." He proceeds to inform us, that by search into records he traced its jurisdiction much higher. This shows, however, the doubts entertained of its

was the standing president of the court of star-chamber, would always find pretences to elude the existing statutes, and justify the usurpation of this tribunal.

The civil jurisdiction claimed and exerted by the star-chamber was only in particular cases, as disputes between alien merchants and Englishmen, questions of prize or unlawful detention of ships, and in general such as now belong to the court of admiralty; some testamentary matters, in order to prevent appeals to Rome, which might have been brought from the ecclesiastical courts; suits between corporations, "of which," says Hudson, "I dare undertake to show above a hundred in the reigns of Henry VII. and Henry VIII., or sometimes between men of great power and interest, which could not be tried with fairness by the common law." * For the corruption of sheriffs and juries furnished an apology for the irregular, but necessary, interference of a controlling authority. The ancient remedy, by means of attain, which renders a jury responsible for an unjust verdict, was almost gone into disuse, and, depending on the integrity of a second jury, not always easy to be obtained; so that in many parts of the kingdom, and especially in Wales, it was impossible to find a jury who would return a verdict against a man of good family, either in a civil or criminal proceeding.

The statutes, however, restraining the council's jurisdiction, and the strong prepossession of the people as to the sacredness of freehold rights, made the star-chamber cautious of determining questions of inheritance, which they commonly remitted to the judges; and from the early part of Elizabeth's reign they took a direct cognizance of any civil suits less frequently than before; partly, I suppose, from the increased business of the court of chancery, and the admiralty court,

jurisdiction in the queen's time. This writer, extolling the court highly, admits that "some of late have deemed it to be new, and put the same in print, to the blemish of its beautiful antiquity." He then discusses the question (for such it seems it was), whether any peer, though not of the council, might sit in the star-chamber; and decides in the negative. "A^o. 5^{to}. of her majesty," he says, in the case of the earl of Hertford, "there were assembled a great number of the noble

barons of this realm, not being of the council, who offered there to sit; but at that time it was declared unto them by the lord-keeper that they were to give place, and so they did, and divers of them tarried the hearing of the cause at the bar."

This note ought to have been inserted in Chapter I., where the antiquity of the star-chamber is mentioned, but was accidentally overlooked.

* P. 56.

which took away much wherein they had been wont to meddle; partly from their own occupation as a court of criminal judicature, which became more conspicuous as the other went into disuse.* This criminal jurisdiction is that which rendered the star-chamber so potent and so odious an auxiliary of a despotic administration.

The offences principally cognizable in this court were forgery, perjury, riot, maintenance, fraud, libel, and conspiracy.† But besides these, every misdemeanor came within the proper scope of its inquiry; those especially of public importance, and for which the law, as then understood, had provided no sufficient punishment. For the judges interpreted the law in early times with too great narrowness and timidity; defects which, on the one hand, raised up the over-ruling authority of the court of chancery, as the necessary means of redress to the civil suitor who found the gates of justice barred against him by technical pedantry; and on the other, brought this usurpation and tyranny of the star-chamber upon the kingdom by an absurd scrupulosity about punishing manifest offences against the public good. Thus corruption, breach of trust, and malfeasance in public affairs, or attempts to commit felony, seem to have been reckoned not indictable at common law, and came in consequence under the cognizance of the star-chamber.‡ In other cases its jurisdiction was merely concurrent; but the greater certainty of conviction, and the greater severity of punishment, rendered it incomparably more formidable than the ordinary benches of justice. The law of libel grew up in this unwholesome atmosphere, and was moulded by the plastic hands of successive judges and attorneys-general. Prosecutions of this kind, according to Hudson, began to be more frequent from the last years of Elizabeth, when Coke was attorney-general; and it is easy to conjecture what kind of interpretation they received. To hear a libel sung or read, says that writer, and

* P. 62. Lord Bacon observes, that the council in his time did not meddle with *meum* and *tuum* as formerly; and that such causes ought not to be entertained. Vol. i. 720.; vol. ii. 208. "The king," he says, "should be sometimes present, yet not too often." James was

too often present, and took one well-known criminal proceeding, that against sir Thomas Lake and his family, entirely into his own hands.

† P. 82.

‡ P. 108.

to laugh at it, and make merriment with it, has ever been held a publication in law. The gross error that it is not a libel if it be true, has long since, he adds, been exploded out of this court.*

Among the exertions of authority practised in the star-chamber which no positive law could be brought to warrant, he enumerates “punishments of breach of proclamations before they have the strength of an act of parliament; which this court hath stretched as far as ever any act of parliament did. As in the 41st of Elizabeth, builders of houses in London were sentenced, and their houses ordered to be pulled down, and the materials to be distributed to the benefit of the parish where the building was; which disposition of the goods soundeth as a great extremity, and beyond the warrant of our laws; and yet, surely, very necessary, if any thing would deter men from that horrible mischief of increasing that head which is swoln to a great hugeness already.” †

The mode of process was sometimes of a summary nature; the accused person being privately examined, and his examination read in the court, if he was thought to have confessed sufficient to deserve sentence, it was immediately awarded without any formal trial or written process. But the more regular course was by information filed at the suit of the attorney-general, or in certain cases, of a private relator. The party was brought before the court by writ of subpœna; and having given bond with sureties not to depart without leave, was to put in his answer upon oath, as well to

* P. 100. 102.

† P. 107. The following case in the queen's reign goes a great way: An information was preferred in the star-chamber against Griffin and another for erecting a tenement in Hog-lane, which he divided into several rooms, wherein were inhabiting two poor tenants, that only lived and were maintained by the relief of their neighbours, &c. The attorney-general, and also the lord mayor and aldermen, prayed some condign punishment on Griffin and the other, and that the court would be pleased to set down and decree some general order in this and other like cases of new building and division of tenements. Whereupon

the court, generally considering the great growing evils and inconveniences that continually breed and happen by this new erected building and divisions made and divided contrary to her majesty's said proclamation, commit the offenders to the Fleet, and fine them 20*l.* each; but considering that if the houses be pulled down, other habitations must be found, did not, as requested, order this to be done for the present, but that the tenants should continue for their lives without payment of rent, and the landlord is directed not to molest them, and after the death or departure of the tenants the houses to be pulled down. Harl. MSS. N. 299. fol. 7.

the matters contained in the information, as to special interrogatories. Witnesses were examined upon interrogatories, and their depositions read in court. The course of proceeding on the whole seems to have nearly resembled that of the chancery.*

It was held competent for the court to adjudge any punishment short of death. Fine and imprisonment were of course the most usual. The pillory, whipping, branding, and cutting off the ears, grew into use by degrees. In the reign of Henry VII. and Henry VIII., we are told by Hudson, the fines were not so ruinous as they have been since, which he ascribes to the number of bishops who sat in the court, and inclined to mercy; "and I can well remember," he says, "that the most reverend archbishop Whitgift did ever constantly maintain the liberty of the free charter, that men ought to be fined, salvo contentemento. But they have been of late imposed according to the nature of the offence, and not the estate of the person. The slavish punishment of whipping," he proceeds to observe, "was not introduced till a great man of the common law, and otherwise a worthy justice, forgot his place of session, and brought it in this place too much in use."† It would be difficult to find precedents for the aggravated cruelties inflicted on Leighton, Lilburne, and others; but instances of cutting off the ears may be found under Elizabeth.‡

The reproach, therefore, of arbitrary and illegal jurisdiction does not wholly fall on the government of Charles. They found themselves in possession of this almost unlimited au-

* Harl. MSS. p. 142, &c. It appears that the court of star-chamber could not sentence to punishment on the deposition of an eye-witness (Rushw. Abr. ii. 114.): a rule which did not prevent their receiving the most imperfect and inconclusive testimony.

† P. 36. 224. Instead of "the slavish punishment of whipping," the printed book has "the slavish speech of whispering," which of course entirely alters the sense, or rather makes nonsense. I have followed a MS. in the Museum (Hargrave, vol. 250.), which agrees with the abstract of this treatise by Rushworth, ii. 348.

‡ Vallenger, author of seditious libels, was sentenced in the queen's reign to stand twice in the pillory, and lose both his ears. Harl. MSS. 6265., fol. 373. So also the conspirators who accused archbishop Sandys of adultery. Id. 376. And Mr. Pound, a Roman catholic gentleman, who had suffered much before for his religion, was sentenced by that court, in 1603, to lose both his ears, to be fined 1000*l.*, and imprisoned for life, unless he declare who instigated him to charge sergeant Philips with injustice in condemning a neighbour of his to death. Winwood, ii. 36.

thority. But doubtless, as far as the history of proceedings in the star-chamber are recorded, they seem much more numerous and violent in the present reign than in the two preceding. Rushworth has preserved a copious selection of cases determined before this tribunal. They consist principally of misdemeanors, rather of an aggravated nature; such as disturbances of the public peace, assaults accompanied with a good deal of violence, conspiracies, and libels. The necessity, however, for such a paramount court to restrain the excesses of powerful men no longer existed, since it can hardly be doubted that the common administration of the law was sufficient to give redress in the time of Charles the First; though we certainly do find several instances of violence and outrage by men of a superior station in life, which speak unfavourably for the state of manners in the kingdom. But the object of drawing so large a number of criminal cases into the star-chamber seems to have been twofold: first, to inure men's minds to an authority more immediately connected with the crown than the ordinary courts of law, and less tied down to any rules of pleading or evidence; secondly, to eke out a scanty revenue by penalties and forfeitures. Absolutely regardless of the provision of the Great Charter, that no man shall be amerced even to the full extent of his means, the councillors of the star-chamber inflicted such fines as no court of justice, even in the present reduced value of money, would think of imposing. Little objection indeed seems to lie, in a free country, and with a well-regulated administration of justice, against the imposition of weighty pecuniary penalties, due consideration being had of the offence and the criminal. But, adjudged by such a tribunal as the star-chamber, where those who inflicted the punishment reaped the gain, and sat, like famished birds of prey, with keen eyes and bended talons, eager to supply for a moment, by some wretch's ruin, the craving emptiness of the exchequer, this scheme of enormous penalties became more dangerous and subversive of justice, though not more odious, than corporal punishment. A gentleman of the name of Allington was fined 12,000*l.* for marrying his niece. On who had sent a challenge to the earl of Northumberland was fined 5000*l.*; another for saying the earl of Suffolk was a base lord, 4000*l.*

to him, and a like sum to the king. Sir David Forbes, for opprobrious words against lord Wentworth, incurred 5000*l.* to the king, and 3000*l.* to the party. On some soap-boilers, who had not complied with the requisitions of the newly incorporated company, mulcts were imposed of 1500*l.* and 1000*l.* One man was fined and set in the pillory for engrossing corn, though he only kept what grew on his own land, asking more in a season of dearth than the overseers of the poor thought proper to give.* Some arbitrary regulations with respect to prices may be excused by a well-intentioned, though mistaken, policy. The charges of inns and taverns were fixed by the judges. But, even in those, a corrupt motive was sometimes blended. The company of vintners, or victuallers, having refused to pay a demand of the lord treasurer, one penny a quart for all wine drank in their houses, the star-chamber, without information filed or defence made, interdicted them from selling or dressing victuals till they submitted to pay forty shillings for each tun of wine to the king.† It is evident that the strong interest of the court in these fines must not only have had a tendency to aggravate the punishment, but to induce sentences of condemnation on inadequate proof. From all that remains of proceedings in the star-chamber, they seem to have been very frequently as iniquitous as they were severe. In many celebrated instances, the accused party suffered less on the score of any imputed offence than for having provoked the malice of a powerful adversary, or for notorious dissatisfaction with the existing government. Thus Williams, bishop of

Case of
Bishop
Williams.

Lincoln, once lord keeper, the favourite of king James, the possessor for a season of the power that was turned against him, experienced the rancorous and ungrateful malignity of Laud; who, having been brought forward by Williams into the favour of the court, not only sup-

* The scarcity must have been very great this season (1631), for he refused 2*l.* 18*s.* for the quarter of rye. Rushworth, ii. 110.

† Rushworth, ii. 340. Garrard, the correspondent of Wentworth, who sent him all London news, writes about this: "The attorney-general hath sent to all taverns

to prohibit them to dress meat; somewhat was required of them, a halfpenny a quart for French wine, and a penny for sack and other richer wines, for the king: the gentlemen vintners grew sullen, and would not give it, so they are all well enough served." Strafford Letters, i. 507.

planted by his intrigues, and incensed the king's mind against his benefactor, but harassed his retirement by repeated persecutions.* It will sufficiently illustrate the spirit of these times to mention that the sole offence imputed to the bishop of Lincoln in the last information against him in the star-chamber was, that he had received certain letters from one Osbaldiston, master of Westminster school, wherein some contemptuous nickname was used to denote Laud.† It did not appear that Williams had ever divulged these letters. But it was held that the concealment of a libellous letter was a high misdemeanor. Williams was therefore adjudged to pay 5000*l.* to the king, and 3000*l.* to the archbishop, to be imprisoned during pleasure, and to make a submission; Osbaldiston to pay a still heavier fine, to be deprived of all his benefices, to be imprisoned and make submission; and moreover to stand in the pillory before his school in Dean's-yard, with his ears nailed to it. This man had the good fortune to conceal himself; but the bishop of Lincoln, refusing to make the required apology, lay about three years in the Tower, till released at the beginning of the long parliament.

It might detain me too long to dwell particularly on the punishments inflicted by the court of star-chamber in this reign. Such historians as have not written in order to palliate the tyranny of Charles, and especially Rushworth, will furnish abundant details, with all those circumstances that portray the barbarous and tyrannical spirit of those who composed that tribunal. Two or three instances are so celebrated that I cannot pass them over. Leighton, a Scots divine, having published an angry libel against the hierarchy, was sentenced to be publicly whipped at Westminster and set in the pillory, to have one side of his nose slit, one ear cut off, and one side of his cheek branded with a hot iron, to have the whole of this repeated the next week at Cheapside, and to suffer perpetual imprisonment in the Fleet.‡

* Hacket's Life of Williams. Rushworth, Abr. ii. 315. et post. Brodie, ii. 363.

† Osbaldiston swore that he did not mean Laud; an undoubted perjury.

‡ Mr. Brodie (Hist. of Brit. Emp.,

vol. ii. p. 309.) observes, that he cannot find in Leighton's book (which I have never seen) the passage constantly brought forward by Laud's apologists, wherein he is supposed to have recommended the assassination of the bishops. He admits,

Lilburne, for dispersing pamphlets against the bishops, was whipped from the Fleet prison to Westminster, there set in the pillory, and treated afterwards with great cruelty.*

Case of Prynne. Prynne, a lawyer of uncommon erudition and a zealous puritan, had printed a bulky volume, called *Hiſtriomastix*, full of invectives against the theatre, which he sustained by a profusion of learning. In the course of this, he adverted to the appearance of courtezans on the Roman stage, and by a satirical reference in his index seemed to range all female actors in the class.† The queen unfortunately, six weeks after the publication of Prynne's book, had performed a part in a mask at court. This passage was accordingly dragged to light by the malice of Peter Heylin, a chaplain of Laud, on whom the archbishop devolved the burthen of reading this heavy volume in order to detect its offences. Heylin, a bigoted enemy of every thing puritanical, and not scrupulous as to veracity, may be suspected of having aggravated, if not misrepresented, the tendency of a book much more tiresome than seditious. Prynne however was already obnoxious, and the star-chamber adjudged him to stand twice in the pillory, to be branded in the forehead, to lose both his ears, to pay a fine of 5000*l.*, and to suffer perpetual imprisonment. The dogged puritan employed the leisure of a gaol in writing a fresh libel against the hierarchy. For this, with two other delinquents of the same class, Burton a divine, and Bastwick a physician, he stood again at the bar of that terrible tribunal. Their demeanour was what the court deemed intolerably contumacious, arising in fact from the despair of men who knew that no humiliation

indeed, as does Harris, that the book was violent; but what can be said of the punishment?

* Rushworth. *State Trials*.

† *Id.* Whitelocke, p. 18. Harris's *Life of Charles*, p. 262. The unfortunate words in the index, "Women actors notorious whores," cost Prynne half his ears; the remainder he saved by the hangman's mercy for a second harvest. When he was brought again before the star-chamber, some of the lords turned up his hair, and expressed great indignation that his ears had not been better

cropped. *State Trials*, 717. The most brutal and servile of these courtiers seems to have been the earl of Dorset, though Clarendon speaks well of him. He was also impudently corrupt, declaring that he thought it no crime for a courtier that lives at a great expense in his attendance, to receive a reward to get a business done by a great man in favour. *Rush. Abr.* ii. 246. It is to be observed that the star-chamber tribunal was almost as infamous for its partiality and corruption as its cruelty. See proofs of this in the same work, p. 241.

would procure them mercy.* Prynne lost the remainder of his ears in the pillory; and the punishment was inflicted on them all with extreme and designed cruelty, which they endured, as martyrs always endure suffering, so heroically as to excite a deep impression of sympathy and resentment in the assembled multitude.† They were sentenced to perpetual confinement in distant prisons. But their departure from London, and their reception on the road, were marked by signal expressions of popular regard; and their friends resorting to them even in Launceston, Chester, and Carnarvon castles, whither they were sent, an order of council was made to transport them to the isles of the Channel. It was the very first act of the long parliament to restore these victims of tyranny to their families. Punishments by mutilation, though not quite unknown to the English law, had been of rare occurrence; and thus inflicted on men whose station appeared to render the ignominy of whipping and branding more intolerable, they produced much the same effect as the still greater cruelties of Mary's reign, in exciting a detestation for that ecclesiastical dominion which protected itself by means so atrocious.

The person on whom public hatred chiefly fell, and who proved in a far more eminent degree than any other individual the evil genius of this unhappy sovereign, was Laud. His talents, though enabling him to acquire a large portion of theological learning, seem to have been by no means considerable. There cannot be a more contemptible work than his *Diary*‡; and his letters to Strafford display some smartness, but no great capacity. He managed indeed his own defence, when impeached, with some ability; but on such occasions ordinary men are apt to put forth a remarkable readiness and energy. Laud's inherent ambition had impelled him to court the favour of Buckingham, of

* The intimidation was so great, that no counsel dared to sign Prynne's plea; yet the court refused to receive it without such signature. Rushworth, ii. 277. Strafford Letters, ii. 74.

† Id. 85. Rushw. 295. State Trials. Clarendon, who speaks in a very unbecoming manner of this sentence, admits

that it excited general disapprobation. P. 73.

‡ [This has lately been re-published at Oxford, 1839, under the title, "Autobiography of Archbishop Laud," with a preface, sufficiently characteristic of its celebrated editor; who has subjoined the "Acts of his Martyrdom."]]

Williams, and of both the kings under whom he lived, till he rose to the see of Canterbury on Abbot's death, in 1633. No one can deny that he was a generous patron of letters, and as warm in friendship as in enmity. But he had placed before his eyes the aggrandisement, first of the church, and next of the royal prerogative, as his end and aim in every action. Though not literally destitute of religion, it was so subordinate to worldly interest, and so blended in his mind with the impure alloy of temporal pride, that he became an intolerant persecutor of the puritan clergy, not from bigotry, which in its usual sense he never displayed, but systematic policy. And being subject, as his friends call it, to some infirmities of temper, that is, choleric, vindictive, harsh, and even cruel to a great degree, he not only took a prominent share in the severities of the star-chamber, but, as his correspondence shows, perpetually lamented that he was restrained from going further lengths.*

Laud's extraordinary favour with the king, through which he became a prime adviser in matters of state, rendered him secretly obnoxious to most of the council, jealous, as ministers must always be, of a churchman's overweening ascendancy. His faults, and even his virtues, contributed to this odium. For being exempt from the thirst of lucre, and, though in the less mature state of his fortunes a subtle intriguer, having become frank through heat of temper and self-confidence, he discountenanced all schemes to serve the private interest of courtiers at the expense of his master's exhausted treasury, and went right onward to his object, the exaltation of the church and crown. He aggravated the invidiousness of his own situation, and gave an astonishing proof of his influence, by placing Juxon, bishop of London, a creature of his own, in the greatest of all posts, that of lord

* Laud's character is justly and fairly drawn by May, neither in the coarse caricature style of Prynne, nor with the absurdly flattering pencil of Clarendon. "The archbishop of Canterbury was a main agent in this fatal work; a man vigilant enough, of an active or rather of a restless mind; more ambitious to undertake than politic to carry on; of a disposition too fierce and cruel for his

coat; which notwithstanding he was so far from concealing in a subtle way, that he increased the envy of it by insolence. He had few vulgar and private vices, as being neither taxed of covetousness, intemperance, or incontinence; and in a word a man not altogether so bad in his personal character, as unfit for the state of England." History of Parliament, 19.

high-treasurer. Though Williams had lately been lord-keeper of the seal, it seemed more preposterous to place the treasurer's staff in the hands of a churchman, and of one so little distinguished even in his own profession, that the archbishop displayed his contempt of the rest of the council, especially Cottington, who aspired to it, by such a recommendation.* He had previously procured the office of secretary of state for Windebank. But, though overawed by the king's infatuated partiality, the faction adverse to Laud were sometimes able to gratify their dislike, or to manifest their greater discretion, by opposing obstacles to his impetuous spirit.

Of these impediments, which a rash and ardent man calls lukewarmness, indolence, and timidity, he frequently complains in his correspondence with the lord-deputy of Ireland—that lord Wentworth, so much better known by the title of earl of Strafford, which he only

Lord
Strafford.

* The following entry appears in Laud's Diary (March 6, 1636): "Sunday, William Juxon, lord bishop of London, made lord high-treasurer of England: no churchman had it since Henry VII.'s time. I pray God bless him to carry it so that the church may have honour, and the king and the state service and contentment by it. And now, if the church will not hold themselves up under God, I can do no more."

Those who were far from puritanism could not digest this strange elevation. James Howell writes to Wentworth: "The news that keeps greatest noise here at this present, is that there is a new lord-treasurer; and it is news indeed, it being now twice time out of mind since the white robe and the white staff marched together; we begin to live here in the church triumphant; and there wants but one more to keep the king's conscience, which is more proper for a churchman than his coin, to make it a triumvirate." *Straff. Letters*, i. 522. Gardard, another correspondent, expresses his surprise, and thinks Strafford himself, or Cottington, would have done better, p. 523. And afterwards, vol. ii. p. 2. "The clergy are so high here since the joining of the white sleeves with the white staff, that there is much talk of having as secretary a bishop, Dr. Wren,

bishop of Norwich, and as chancellor of the exchequer, Dr. Bancroft, bishop of Oxford; but this comes only from the young fry of the clergy; little credit is given to it, but it is observed, they swarm mightily about the court." The tone of these letters shows that the writer suspected that Wentworth would not be well pleased at seeing a churchman set over his head. But in several of his own letters he positively declares his aversion to the office, and perhaps with sincerity. Ambition was less predominant in his mind than pride, and impatience of opposition. He knew, that as lord-treasurer he would be perpetually thwarted and undermined by Cottington and others of the council. They, on the other hand, must have dreaded that such a colleague might become their master. Laud himself, in his correspondence with Strafford, never throws out the least hint of a wish that he should succeed Weston, which would have interfered with his own views.

It must be added that Juxon redeemed the scandal of his appointment by an unblemished probity, and gave so little offence in this invidious greatness, that the long parliament never attacked him, and he remained in his palace at Fulham without molestation till 1647.

obtained the year before his death, that we may give it him by anticipation, whose doubtful fame and memorable end have made him nearly the most conspicuous character of a reign so fertile in recollections. Strafford had in his early years sought those local dignities to which his ambition probably was at that time limited, the representation of the county of York and the post of *custos rotulorum*, through the usual channel of court favour. Slighted by the duke of Buckingham, and mortified at the preference shown to the head of a rival family, sir John Saville, he began to quit the cautious and middle course he had pursued in parliament, and was reckoned among the opposers of the administration after the accession of Charles.* He was one of those who were made sheriffs of their counties, in order to exclude them from the parliament of 1626. This inspired so much resentment, that he signalled himself as a refuser of the arbitrary loan exacted the next year, and was committed in consequence to prison. He came to the third parliament with a determination to make the court sensible of his power, and possibly with some real zeal for the liberties of his country. But patriotism unhappily, in his self-interested and ambitious mind, was the seed sown among thorns. He had never lost sight of his hopes from the court; even a temporary reconciliation with Buckingham had been effected in 1627, which the favourite's levity soon broke; and he kept up a close connexion with the treasurer Weston. Always jealous of a rival, he contracted a dislike for sir John Eliot, and might suspect that he was likely to be anticipated by that more dis-

* *Strafford's Letters*, i. 33, &c. The letters of Wentworth in this period of his life show a good deal of ambition and resentment, but no great portion of public spirit. This collection of the Strafford letters forms a very important portion of our historical documents. Hume had looked at them very superficially, and quotes them but twice. They furnished materials to Harris and Macaulay; but the first is little read at present, and the second not at all. In a recent and deservedly popular publication, *Macdiarmid's Lives of British Statesmen*, the work of a young man of letters, who did

not live to struggle through the distresses of that profession, the character of Strafford is drawn from the best authorities, and with abundant, perhaps excessive candour. Mr. Brodie has well pointed out that he has obtained more credit for the early period of his parliamentary life than he deserves, by being confounded with Mr. Wentworth, member for Oxford, vol. ii. p. 249. Rushworth has even ascribed to sir Thomas Wentworth the speeches of this Mr. Wentworth in the second parliament of Charles, from which it is notorious that the former had been excluded.

tinguished patriot in royal favours.* The hour of Wentworth's glory was when Charles assented to the petition of right, in obtaining which, and in overcoming the king's chicane and the hesitation of the lords, he had been pre-eminently conspicuous. From this moment he started aside from the path of true honour; and being suddenly elevated to the peerage and a great post, the presidency of the council of the North, commenced a splendid but baleful career, that terminated at the scaffold.† After this fatal apostasy he not only lost all solicitude about those liberties which the petition of right had been designed to secure, but became their deadliest and most shameless enemy.

The council of the North was erected by Henry VIII. after the suppression of the great insurrection of 1536. It had a criminal jurisdiction in Yorkshire and the four more northern counties, as to riots, conspiracies, and acts of violence. It had also, by its original commission, a jurisdiction in civil suits, where either of the parties were too poor to bear the expenses of a process at common law; in which case the council might determine, as it seems, in a summary manner, and according to equity. But this latter authority had been held illegal by the judges under Elizabeth.‡ In fact, the lawfulness of this tribunal in any respect was, to say the least, highly problematical. It was regulated by instructions issued from time to time under the great seal. Wentworth spared no pains to enlarge the jurisdiction of his court. A commission issued in 1632, empowering the council of the

* Hacket tells us, in his elegant style, that "sir John Eliot of the west, and sir Thomas Wentworth of the north, both in the prime of their age and wits, both conspicuous for able speakers, clashed so often in the house, and cudgelled one another with such strong contradictions, that it grew from an emulation between them to an enmity. The lord-treasurer Weston picked out the northern cock, sir Thomas, to make him the king's creature, and set him upon the first step of his rising; which was wormwood in the taste of Eliot, who revenged himself upon the king in the bill of tonnage, and then fell upon the treasurer, and declaimed against him, that he was the author of all the evils under which the

kingdom was oppressed." He proceeds to inform us, that bishop Williams offered to bring Eliot over, for which Wentworth never forgave him. *Life of Williams*, p. 82. The magnanimous fortitude of Eliot forbids us to give credit to any surmise unfavourable to his glory, upon such indifferent authority; but several passages in Wentworth's letters to Laud show his malice towards one who had perished in the great cause which he had so basely forsaken.

† Wentworth was brought over before the assassination of Buckingham. His patent in Rymer bears date 22d July, 1628, a month previous to that event.

‡ Fourth Inst. c. 49. See also 13 Reports, 31.

North to hear and determine all offences, misdemeanors, suits, debates, controversies, demands, causes, things, and matters whatsoever therein contained, within certain precincts, namely, from the Humber to the Scots frontier. They were specially appointed to hear and determine divers offences, according to the course of the star-chamber, whether provided for by act of parliament or not; to hear complaints according to the rules of the court of chancery, and stay proceedings at common law by injunction; to attach persons by their serjeant in any part of the realm.*

These inordinate powers, the soliciting and procuring of which, especially by a person so well versed in the laws and constitution, appears to be of itself a sufficient ground for impeachment, were abused by Strafford to gratify his own pride, as well as to intimidate the opposers of arbitrary measures. Proofs of this occur in the prosecution of sir David Foulis, in that of Mr. Bellasis, in that of Mr. Maleverer, for the circumstances of which I refer the reader to more detailed history.†

Without resigning his presidency of the northern council, Wentworth was transplanted in 1633 to a still more extensive sphere, as lord-deputy of Ireland. This was the great scene on which he played his part; it was here that he found abundant scope for his commanding energy and imperious passions. The Richelieu of that island, he made it wealthier in the midst of exactions, and, one might almost say, happier in the midst of oppressions. He curbed subordinate tyranny; but his own left a sting behind it that soon spread a deadly poison over Ireland. But of his merits and his injustice towards that nation I shall find a better occasion to speak. Two well-known instances of his despotic conduct in respect to single persons may just be mentioned; the deprivation

* Rymer, xix. 9. Rushworth, ii. 127.

† Rushworth. Strafford's Trial, &c. Brodie, ii. 319. Straff. Letters, i. 145. In a letter to lord Doncaster, pressing for a severe sentence on Foulis, who had been guilty of some disrespect to himself as president of the North, Wentworth shows his abhorrence of liberty with all the bitterness of a renegado; and urges the "seasonable correcting an humour

and liberty I find reign in these parts, of observing a superior command no farther than they like themselves, and of questioning any profit of the crown, called upon by his majesty's ministers, which might enable it to subsist of itself, without being necessitated to accept of such conditions, as others might easily think to impose upon it." Sept. 1632. Somers Tracts, iv. 198.

and imprisonment of the lord chancellor Loftus for not obeying an order of the privy council to make such a settlement as they prescribed on his son's marriage—a stretch of interference with private concerns which was aggravated by the suspected familiarity of the lord-deputy with the lady who was to reap advantage from it* ; and, secondly, the sentence of death passed by a council of war on lord Mountnorris, in Strafford's presence, and evidently at his instigation, on account of some very slight expressions which he had used in private society. Though it was never the deputy's intention to execute this judgment of his slaves, but to humiliate and trample upon Mountnorris, the violence and indecency of his conduct in it, his long persecution of the unfortunate prisoner after the sentence, and his glorying in the act at all times, and even on his own trial, are irrefragable proofs of such vindictive bitterness as ought, if there were nothing else, to prevent any good man from honouring his memory.†

The haughty and impetuous primate found a congenial spirit in the lord-deputy. They unbosom to each other, in their private letters, their ardent thirst to promote the king's service by measures of more energy than they were permitted to exercise. Do we think the administration of Charles during the interval of parlia-

Correspondence between Laud and Strafford.

* Rushworth, Abr. iii. 85. Clarendon, i. 390. (1826). The original editors left out some words, which brought this home to Strafford. And if the case was as there seems every reason to believe, I would ask those who talk of this man's innocence, whether in any civilised country a more outrageous piece of tyranny has been committed by a governor than to compel a nobleman of the highest station to change the disposition of his private estate, because that governor carried on an adulterous intercourse with the daughter-in-law of the person whom he treated thus imperiously?

† Clarendon Papers, i. 449. 543. 594. Rushworth, Abridg. iii. 43. Clar. Hist. i. 386. (1826). Strafford Letters, i. 497. et post. This proceeding against lord Mountnorris excited much dissatisfaction in England; those of the council who disliked Strafford making it a pretext to inveigh against his arrogance. But the

king, invariably on the severe and arbitrary side, justified the measure, which silenced the courtiers: p. 512. Be it added that the virtuous Charles took a bribe of 6000*l.* for bestowing Mountnorris's office on sir Adam Loftus, not out of distress through the parsimony of parliament, but to purchase an estate in Scotland. Id. 511.

Hume, in extenuating the conduct of Strafford, as to Mountnorris's trial, says, that, "*sensible of the iniquity of the sentence*, he procured his majesty's free pardon to Mountnorris." There is not the slightest evidence to warrant the words in italics; on the contrary, he always justified the sentence, and had most manifestly procured it. The king, in return to a moving petition of lady Mountnorris, permitted his release from confinement, "on making such a submission as my lord-deputy shall approve."

ments rash and violent? They tell us it was over-cautious and slow. Do we revolt from the severities of the star-chamber? To Laud and Strafford they seemed the feebleness of excessive lenity. Do we cast on the crown lawyers the reproach of having betrayed their country's liberties? We may find that, with their utmost servility, they fell far behind the expectations of the court, and their scruples were reckoned the chief shackles on the half-emancipated prerogative.

The system which Laud was longing to pursue in England, and which Strafford approved, is frequently hinted at by the word *Thorough*. "For the state," says he, "indeed, my lord, I am for *Thorough*; for I see that both thick and thin stays somebody, where I conceive it should not, and it is impossible to go thorough alone."* "I am very glad" (in another letter) "to read your lordship so resolute, and more to hear you affirm that the footing of them that go thorough for our master's service is not upon fee, as it hath been. But you are withal upon so many *ifs*, that by their help you may preserve any man upon ice, be it never so slippery. As first, if the common lawyers may be contained within their ancient and sober bounds; if the word *Thorough* be not left out, as I am certain it is; if we grow not faint; if we ourselves be not in fault; if we come not to a peccatum ex te Israel; if others will do their parts as thoroughly as you promise for yourself, and justly conceive of me. Now I pray, with so many and such *ifs* as these, what may not be done, and in a brave and noble way? But can you tell when these *ifs* will meet, or be brought together? Howsoever I am resolved to go on steadily in the way which you have formerly seen me go; so that (to put in one *if* too) if any thing fail of my hearty desires for the king and the church's service, the fault shall not be mine."† "As for my marginal note" (he writes in another place), "I see you deciphered it well" (they frequently corresponded in cipher), "and I see you make use of it too; do so still, thorough and thorough. Oh that I were where I might go so too! but I am shackled between delays and uncertainties; you have a great deal of

* Strafford Letters, i. 111.

† P. 155.

honour here for your proceedings; go on a God's name." "I have done," he says some years afterwards, "with expecting of Thorough on this side."*

It is evident that the remissness of those with whom he was joined in the administration, in not adopting or enforcing sufficiently energetic measures, is the subject of the archbishop's complaint. Neither he nor Strafford loved the treasurer Weston, nor lord Cottington, both of whom had a considerable weight in the council. But it is more difficult to perceive in what respects the Thorough system was disregarded. He cannot allude to the church, which he absolutely governed through the high-commission court. The inadequate punishments, as he thought them, imposed on the refractory, formed a part, but not the whole, of his grievance. It appears to me that the great aim of these two persons was to effect the subjugation of the common lawyers. Some sort of tenderness for those constitutional privileges, so indissolubly interwoven with the laws they administered, adhered to the judges, even while they made great sacrifices of their integrity at the instigation of the crown. In the case of habeas corpus, in that of ship-money, we find many of them display a kind of half-compliance, a reservation, a distinction, an anxiety to rest on precedents, which, though it did not save their credit with the public, impaired it at court. On some more fortunate occasions, as we have seen, they even manifested a good deal of firmness in resisting what was urged on them. Chiefly, however, in matter of prohibitions issuing from the ecclesiastical courts, they were uniformly tenacious of their jurisdiction. Nothing could expose them more to Laud's ill-will. I should not deem it improbable that he had formed, or rather adopted from the canonists, a plan, not only of rendering the spiritual jurisdiction independent, but of extending it to all civil causes, unless perhaps in questions of freehold.†

* Strafford Letters, p. 329. In other letters they complain of what they call the lady Mora, which seems to be a cant word for the inefficient system of the rest of the council, unless it is a personal nickname for Weston.

† The bishops, before the Reforma-

tion, issued process from their courts in their own names. By the statute of 1 Edw. VI. c. 2. all ecclesiastical jurisdiction is declared to be immediately from the crown; and it is directed that persons exercising it shall use the king's arms in their seal, and no other. This

The presumption of common lawyers, and the difficulties they threw in the way of the church and crown, are frequent themes with the two correspondents. "The church," says Laud, "is so bound up in the forms of the common law, that it is not possible for me or for any man to do that good which he would, or is bound to do. For your lordship sees, no man clearer, that they which have gotten so much power in and over the church will not let go their hold; they have indeed fangs with a witness, whatsoever I was once said in a passion to have."* Strafford replies: "I know no reason but you may as well rule the common lawyers in England as I, poor beagle, do here; and yet that I do, and will do, in all that concerns my master, at the peril of my head. I am confident that the king, being pleased to set himself in the business, is able, by his wisdom and ministers, to carry any just and honourable action through all imaginary opposition, for real there can be none; that to start aside for such panic fears, fantastic apparitions as a Prynne or an Eliot shall set

was repealed under Mary; but her act is itself repealed by 1 Jac. I. c. 25. § 48. This seems to revive the act of Edward. The spiritual courts, however, continued to issue process in the bishop's name, and with his seal. On some difficulty being made concerning this, it was referred by the star-chamber to the twelve judges, who gave it under their hands that the statute of Edward was repealed, and that the practice of the ecclesiastical courts in this respect was agreeable to law. Neal, 589. Kennet, 92. Rush. Abr. iii. 340. Whitelock says, p. 22., that the bishops all denied that they held their jurisdiction from the king, for which they were liable to heavy penalties. This question is of little consequence; for it is still true that ecclesiastical jurisdiction, according to the law, emanates from the crown; nor does any thing turn on the issuing of process in the bishop's name, any more than on the holding courts-baron in the name of the lord. In Ireland, unless I am mistaken, the king's name is used in ecclesiastical proceedings. Laud, in his famous speech in the star-chamber, 1637, and again on his trial, asserts episcopal jurisdiction (except what is called in *foro contentioso*) to be of divine right; a doctrine not easily recon-

cilable with the crown's supremacy over all causes under the statute of Elizabeth; since any spiritual censure may be annulled by a lay tribunal, the commission of delegates; and how this can be compatible with a divine authority in the bishop to pronounce it, seems not easy to prove. Laud, I have no doubt, would have put an end to this badge of subordination to the crown. The judges in Cawdrey's case, 5 Reports, held a very different language; nor would Elizabeth have borne this assumption of the prelates as tamely as Charles, in his poor-spirited bigotry, seems to have done. Stillingfleet, though he disputes at great length the doctrine of lord Coke, in his fifth Report, as to the extent of the royal supremacy before the first of Elizabeth, fully admits that since the statute of that year, the authority for keeping courts, in whose name soever they may be held, is derived from the king. Vol. iii. 768. 778.

This arrogant contempt of the lawyers manifested by Laud and his faction of priests led to the ruin of the great churchmen and of the church itself—by the hands, chiefly, of that powerful body they had insulted, as Clarendon has justly remarked.

* P. 111.

up, were the meanest folly in the whole world; that the debts of the crown being taken off, you may govern as you please; and most resolute I am that work may be done without borrowing any help forth of the king's lodgings, and that it is as downright a peccatum ex te Israel as ever was, if all this be not effected with speed and ease."* —Strafford's indignation at the lawyers breaks out on other occasions. In writing to lord Cottington, he complains of a judge of assize who had refused to receive the king's instructions to the council of the North in evidence, and beseeches that he may be charged with this great misdemeanour before the council-board. "I confess," he says, "I disdain to see the gownmen in this sort hang their noses over the flowers of the crown."† It was his endeavour in Ireland, as well as in Yorkshire, to obtain the right of determining civil suits. "I find," he says, "that my lord Falkland was restrained by proclamation not to meddle in any cause between party and party, which did certainly lessen his power extremely: I know very well the common lawyers will be passionately against it, who are wont to put such a prejudice upon all other professions, as if none were to be trusted or capable to administer justice but themselves; yet how well this suits with monarchy, when they monopolize all to be governed by their year books, you in England have a costly experience; and I am sure his majesty's absolute power is not weaker in this kingdom, where hitherto the deputy and council-board have had a stroke with them."‡ The king indulged him in this, with a restriction as to matters of inheritance.

The cruelties exercised on Prynne and his associates have generally been reckoned among the great reproaches of the primate. It has sometimes been insinuated that they were rather the act of other counsellors than his own. But his letters, as too often occurs, belie this charitable excuse. He expresses in them no sort of humane sentiment towards these unfortunate men, but the utmost indignation at the oscitancy of those in power, which connived at the public demonstrations of sympathy. "A little more quickness," he says, "in the government would cure this itch of libelling.

* P. 173.

† P. 129.

‡ P. 201. See also p. 223.

But what can you think of Thorough when there shall be such slips in business of consequence? What say you to it, that Prynne and his fellows should be suffered to talk what they pleased while they stood in the pillory, and win acclamations from the people, &c.? By that which I have above written, your lordship will see that the Triumviri will be far enough from being kept dark. It is true that, when this business is spoken of, some men speak as your lordship writes, that it concerns the king and government more than me. But when any thing comes to be acted against them, be it but the execution of a sentence, in which lies the honour and safety of all justice, yet there is little or nothing done, nor shall I ever live to see it otherwise.*

The lord-deputy fully concurred in this theory of vigorous government. They reasoned on such subjects as cardinal Granville and the duke of Alva had reasoned before them. "A prince," he says in answer, "that loseth the force and example of his punishments, loseth withal the greatest part of his dominion. If the eyes of the Triumviri be not sealed so close as they ought, they may perchance spy us out a shrewd turn, when we least expect it. I fear we are hugely mistaken, and misapply our charity thus pitying of them, where we should indeed much rather pity ourselves. It is strange indeed," he observes in another place, "to see the frenzy which possesseth the vulgar now-a-days, and that the just displeasure and chastisement of a state should produce greater estimation, nay reverence, to persons of no consideration either for life or learning, than the greatest and highest trust and employments shall be able to procure for others of unspotted conversation, of most eminent virtues and deepest knowledge: a grievous and overspreading leprosy! but where you mention a remedy, sure it is not fitted for the hand of every physician; the cure under God must be wrought by one Æsculapius alone, and that in my weak judgment to be effected rather by corrosives than lenitives: less than Thorough will not overcome it; there is a cancerous malignity in it, which must be cut forth, which long since rejected all other means, and therefore to God and him I leave it."†

* Vol. ii. p. 100.

† Vol. ii. 136.

The honourable reputation that Strafford had earned before his apostasy stood principally on two grounds; his refusal to comply with a requisition of money without consent of parliament, and his exertions in the petition of right which declared every such exaction to be contrary to law. If any therefore be inclined to palliate his arbitrary proceedings and principles in the executive administration, his virtue will be brought to a test in the business of ship-money. If he shall be found to have given countenance and support to that measure, there must be an end of all pretence to integrity or patriotism. But of this there are decisive proofs. He not only made every exertion to enforce its payment in Yorkshire during the years 1639 and 1640, for which the peculiar dangers of that time might furnish some apology, but long before, in his correspondence with Laud, speaks thus of Mr. Hampden, deploring, it seems, the supineness that had permitted him to dispute the crown's claim with impunity. "Mr. Hampden is a great brother [i. e. a puritan], and the very genius of that people leads them always to oppose, as well civilly as ecclesiastically, all that ever authority ordains for them; but in good faith, were they right served, they should be whipt home into their right wits, and much beholden they should be to any one that would thoroughly take pains with them in that kind." * "In truth I still wish, and take it also to be a very charitable one, Mr. H. and others to his likeness were well whipt into their right senses; if that the rod be so used as that it smarts not, I am the more sorry." †

Hutton, one of the judges who had been against the crown in this case, having some small favour to ask of Strafford, takes occasion in his letter to enter on the subject of ship-money, mentioning his own opinion in such a manner as to give the least possible offence, and with all qualifications in favour of the crown; commending even lord Finch's argument on the other side. ‡ * The lord-deputy, answering his letter after much delay, says, "I must confess, in a business of so mighty importance, I shall the less regard the forms of pleading, and do conceive, as it seems my

* P. 138.

† P. 158.
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‡ P. 178.

lord Finch pressed, that the power of levies of forces at sea and land for the very, not feigned, relief and safety of the public, is a property of sovereignty, as, were the crown willing, it could not divest it thereof: *Salus populi suprema lex*; nay, in cases of extremity, even above acts of parliament," &c.

It cannot be forgotten that the loan of 1626, for refusing which Wentworth had suffered imprisonment, had been demanded in a season of incomparably greater difficulty than that when ship-money was levied: at the one time war had been declared against both France and Spain, at the other the public tranquillity was hardly interrupted by some bickerings with Holland. In avowing therefore the king's right to levy money in cases of exigency, and to be the sole judge of that exigency, he uttered a shameless condemnation of his former virtues. But lest any doubt should remain of his perfect alienation from all principles of limited monarchy, I shall produce still more conclusive proofs. He was strongly and wisely against the war with Spain, into which Charles's resentment at finding himself the dupe of that power in the business of the Palatinate nearly hurried him in 1637. At this time Strafford laid before the king a paper of considerations dissuading him from this course, and pointing out particularly his want of regular troops.* "It is plain, indeed," he says, "that the opinion delivered by the judges, declaring the lawfulness of the assessment for the shipping, is the greatest service that profession hath done the crown in my time. But unless his majesty hath the like power declared to raise a land army upon the same exigent of state, the crown seems to me to stand but upon one leg at home, to be considerable but by halves to foreign powers. Yet this sure methinks convinces a power for the sovereign to raise payments for land forces, and consequently submits to his wisdom and ordinance the transporting of the money or men into foreign states. Seeing then that this piece well fortified for ever vindicates the royalty at home from under the conditions and restraints of subjects, renders us also abroad even to the greatest kings the most considerable monarchy in Christen-

* P. 60.

dom; seeing again, this is a business to be attempted and won from the subject in time of peace only, and the people first accustomed to these levies, when they may be called upon, as by way of prevention for our future safety, and keep his majesty thereby also moderator of the peace of Christendom, rather than upon the bleeding evil of an instant and active war; I beseech you, what piety to alliances is there, that should divert a great and wise king forth of a path, which leads so manifestly, so directly, to the establishing his own throne, and the secure and independent seating of himself and posterity in wealth, strength, and glory, far above any their progenitors, verily in such a condition as there were no more hereafter to be wished them in this world but that they would be very exact in their care for the just and moderate government of their people, which might minister back to them again the plenties and comforts of life, that they would be most searching and severe in punishing the oppressions and wrongs of their subjects, as well in the case of the public magistrate as of private persons, and lastly to be utterly resolved to exercise this power only for public and necessary uses; to spare them as much and often as were possible; and that they never be wantonly vitiated or misapplied to any private pleasure or person whatsoever? This being indeed the very only means to preserve, as may be said, the chastity of these levies, and to recommend their beauty so far forth to the subject, as being thus disposed, it is to be justly hoped, they will never grudge the parting with their monies.

“Perhaps it may be asked, where shall so great a sum be had? My answer is, procure it from the subjects of England, and profitably for them too. By this means preventing the raising upon them a land army for defence of the kingdom, which would be by many degrees more chargeable; and hereby also insensibly gain a precedent, and settle an authority and right in the crown to levies of that nature, which thread draws after it many huge and great advantages, more proper to be thought on at some other seasons than now.”

It is, however, remarkable that, with all Strafford's endeavours to render the king absolute, he did not intend to

abolish the use of parliaments. This was apparently the aim of Charles ; but, whether from remains of attachment to the ancient forms of liberty surviving amidst his hatred of the real essence, or from the knowledge that a well-governed parliament is the best engine for extracting money from the people, this able minister entertained very different views. He urged accordingly the convocation of one in Ireland, pledging himself for the experiment's success. And in a letter to a friend, after praising all that had been done in it, "Happy it were," he proceeds, "if we might live to see the like in England, every thing in its season ; but in some cases it is as necessary there be a time to forget, as in others to learn ; and howbeit the peccant (if I may without offence so term it) humour be not yet wholly purged forth, yet do I conceive it in the way, and that once rightly corrected and prepared, we may hope for a parliament of a sound constitution indeed ; but this must be the work of time, and of his majesty's excellent wisdom ; and this time it becomes us all to pray for and wait for, and when God sends it, to make the right use of it."*

These sentiments appear honourable and constitutional. But let it not be hastily conceived that Strafford was a friend to the necessary and ancient privileges of those assemblies to which he owed his rise. A parliament was looked upon by him as a mere instrument of the prerogative. Hence he was strongly against permitting any mutual understanding among its members, by which they might form themselves into parties, and acquire strength and confidence by previous concert. "As for restraining any private meetings either before or during parliament, saving only publicly in the house, I fully rest in the same opinion, and shall be very watchful and attentive therein, as a means which may rid us of a great trouble, and prevent many stones of offence, which otherwise might by malignant spirits be cast in among us."† And acting on this principle, he kept a watch on the Irish parliament, to prevent those intrigues which his experience in England had taught him to be the indispensable means of obtaining a control over the crown. Thus fettered and kept

* Vol. i. p. 420.

† Strafford, p. 246. ; see also p. 370.

in awe, no one presuming to take a lead in debate from uncertainty of support, parliaments would have become such mockeries of their venerable name as the joint contempt of the court and nation must soon have annihilated. Yet so difficult is it to preserve this dominion over any representative body, that the king judged far more discreetly than Strafford in desiring to dispense entirely with their attendance.

The passages which I have thus largely quoted will, I trust, leave no doubt in any reader's mind that the earl of Strafford was party in a conspiracy to subvert the fundamental laws and liberties of his country. For here are not, as on his trial, accusations of words spoken in heat, uncertain as to proof, and of ambiguous interpretation; nor of actions variously reported, and capable of some explanation; but the sincere unbosoming of the heart in letters never designed to come to light. And if we reflect upon this man's cool-blooded apostasy on the first lure to his ambition, and on his splendid abilities, which enhanced the guilt of that desertion, we must feel some indignation at those who have palliated all his iniquities, and even ennobled his memory with the attributes of patriot heroism. Great he surely was, since that epithet can never be denied without paradox to so much comprehension of mind, such ardour and energy, such courage and eloquence; those commanding qualities of soul, which, impressed upon his dark and stern countenance, struck his contemporaries with mingled awe and hate, and still live in the unfading colours of Vandyke.* But it may be reckoned as a sufficient ground for distrusting any one's attachment to the English constitution, that he reveres the name of the earl of Strafford.

It was perfectly consonant to Laud's temper and principles of government to extirpate, as far as in him lay, the lurking seeds of disaffection to the Anglican church. But the course he followed could in nature have no other tendency than to give them nourishment. His prede-

Conduct of
Laud in the
church pro-
secution of
puritans.

* The unfavourable physiognomy of Strafford is noticed by writers of that time. Somers Tracts, iv. 231. It did not prevent him from being admired by the fair sex, especially at his trial,

where, May says, they were all on his side. The portraits by Vandyke at Wentworth and Petworth are well known; the latter appears eminently characteristic.

cessor Abbot had perhaps connived to a limited extent at some irregularities of discipline in the puritanical clergy, judging not absurdly that their scruples at a few ceremonies, which had been aggravated by a vexatious rigour, would die away by degrees, and yield to that centripetal force, that moral attraction towards uniformity and obedience to custom, which Providence has rendered one of the great preservatives of political society. His hatred to popery and zeal for Calvinism, which undoubtedly were narrow and intolerant, as well as his avowed disapprobation of those churchmen who preached up arbitrary power, gained for this prelate the favour of the party denominated puritan. In all these respects, no man could be more opposed to Abbot than his successor. Besides reviving the prosecutions for non-conformity in their utmost strictness, wherein many of the other bishops vied with their primate, he most injudiciously, not to say wickedly, endeavoured, by innovations of his own, and by exciting alarms in the susceptible consciences of pious men, to raise up new victims whom he might oppress. Those who made any difficulty about his novel ceremonies, or even who preached on the Calvinistic side, were harassed by the high commission court as if they had been actual schismatics.* The most obnoxious, if not the most indefensible, of these prosecutions were for refusing to read what was called the Book of Sports; namely, a proclamation, or rather a renewal of that issued in the late reign, that certain feasts or wakes might be kept, and a great variety of pastimes used, on Sundays after evening service.† This was reckoned, as I have already observed,

* See the cases of Workman, Peter Smart, &c. in the common histories: Rushworth, Rapin, Neal, Macaulay, Brodie, and even Hume, on one side; and for what can be said on the other, Collier, and Laud's own defence on his trial. A number of persons, doubtless inclining to the puritan side, had raised a sum of money to buy up impropriations, which they vested in trustees for the purpose of supporting lecturers; a class of ministers to whom Laud was very averse. He caused the parties to be summoned before the star-chamber, where their association was dissolved, and the impropriations already purchased were confis-

cated to the crown. Rushworth, Abr. ii. 17. Neal, i. 556.

† This originated in an order made at the Somerset assizes by chief justice Richardson, at the request of the justices of peace, for suppressing these feasts, which had led to much disorder and profaneness. Laud made the privy council reprove the judge, and direct him to revoke the order. Kennet, p. 71. Rushw. Abr. ii. 166. Heylin says, the gentlemen of the county were against Richardson's order, which is one of his habitual falsehoods. See Rushw. Abr. ii. 167. I must add, however, that the proclamation was perfectly legal, and ac-

one of the tests of puritanism. But whatever superstition there might be in that party's judaical observance of the day they called the sabbath, it was in itself preposterous, and tyrannical in its intention, to enforce the reading in churches of this licence, or rather recommendation, of festivity. The precise clergy refused in general to comply with the requisition, and were suspended or deprived in consequence. Thirty of them were excommunicated in the single diocese of Norwich; but as that part of England was rather conspicuously puritanical, and the bishop, one Wren, was the worst on the bench, it is highly probable that the general average fell short of this.*

Besides the advantage of detecting a latent bias in the clergy, it is probable that the high church prelates had a politic end in the Book of Sports. The morose gloomy spirit of puritanism was naturally odious to the young and to men of joyous tempers. The comedies of that age are full of sneers at its formality. It was natural to think that, by enlisting the common propensities of mankind to amusement on the side of the established church, they might raise a diversion against that fanatical spirit which can hardly long continue to be the prevailing temperament of a nation. The church of Rome, from which no ecclesiastical statesman would disdain to take a lesson, had for many ages perceived, and acted upon the principle, that it is the policy of governments to encourage a love of pastime and recreation in the people; both because it keeps them from speculating on religious and political matters, and because it renders them more cheerful, and less sensible to the evils of their condition; and it may be remarked by the way, that the opposite system, so long pursued in this country, whether from a puritanical spirit, or from the wantonness of petty authority, has no such grounds of policy to recommend it. Thus much at least is certain, that when the puritan party employed their authority in pro-

ording to the spirit of the late act, 1 Car. I. c. 1. for the observance of the Lord's day. It has been rather misrepresented by those who have not attended to its limitations, as Neal and Mr. Brodie. Dr. Lingard, ix. 422., has stated the matter rightly.

* Neal, 569. Rushworth, Abr. ii. 166. Collier, 758. Heylin's Life of Laud, 241. 290. The last writer extenuates the persecution by Wren; but it is evident by his own account that no suspension or censure was taken off till the party conformed and read the declaration.

scribing all diversions, in enforcing all the Jewish rigour about the sabbath, and gave that repulsive air of austerity to the face of England of which so many singular illustrations are recorded, they rendered their own yoke intolerable to the youthful and gay; nor did any other cause perhaps so materially contribute to bring about the Restoration. But mankind love sport as little as prayer by compulsion; and the immediate effect of the king's declaration was to produce a far more scrupulous abstinence from diversions on Sundays than had been practised before.

The resolution so evidently taken by the court, to admit of no half conformity in religion, especially after Laud had obtained an unlimited sway over the king's mind, convinced the puritans that England could no longer afford them an asylum. The state of Europe was not such as to encourage their emigration, though many were well received in Holland. But, turning their eyes to the newly-discovered regions beyond the Atlantic Ocean, they saw a secure place of refuge from present tyranny, and a boundless prospect for future hope. They obtained from the crown the charter of Massachusetts Bay in 1629. About three hundred and fifty persons, chiefly or wholly of the independent sect, sailed with the first fleet. So many followed in the subsequent years, that these New England settlements have been supposed to have drawn near half a million of money from the mother country before the civil wars.* Men of a higher rank than the first colonists, and now become hopeless alike of the civil and religious liberties of England, men of capacious and commanding minds, formed to be the legislators and generals of an infant republic, the wise and cautious lord Say, the acknowledged chief of the independent sect, the brave, open, and enthusiastic lord Brook, sir Arthur Haslerig, Hampden, ashamed of a country for whose rights he had fought alone, Cromwell, panting with energies that he could neither control nor explain, and whose unconquerable fire was still wrapt in smoke to every eye but that of his kinsman Hampden, were preparing to embark for America, when Laud, for his own and his master's curse, procured an order of council to stop

* Neal, p. 546. I do not know how he makes his computation.

their departure.* Besides the reflections which such an instance of destructive infatuation must suggest, there are two things not unworthy to be remarked: first, that these chiefs of the puritan sect, far from entertaining those schemes of overturning the government at home that had been imputed to them, looked only in 1638 to escape from imminent tyranny; and, secondly, that the views of the archbishop were not so much to render the church and crown secure from the attempts of disaffected men, as to gratify a malignant humour by persecuting them.

These severe proceedings of the court and hierarchy became more odious on account of their suspected leaning, or at least notorious indulgence, towards popery.

With some fluctuations, according to circumstances or changes of influence in the council, the policy

of Charles was to wink at the domestic exercise of the catholic religion, and to admit its professors to pay compositions for recusancy which were not regularly enforced.† The catholics willingly submitted to this mitigated rigour, in the sanguine expectation of far more prosperous days. I shall, of course, not censure this part of his administration.

Nor can we say that the connivance at the resort of catholics to the queen's chapel in Somerset House, though they used it with much ostentation, and so as to give excessive scandal, was any more than a just sense of toleration

Favour shown to catholics.—Tendency to their religion.

Expectations entertained by them.

* A proclamation, dated May 1. 1638, reciting that the king was informed that many persons went yearly to New England in order to be out of the reach of ecclesiastical authority, commands that no one shall pass without a licence, and a testimonial of conformity from the minister of his parish. Rymer, xx. 223. Laud, in a letter to Strafford, ii. 169., complains of men running to New England, when there was a want of them in Ireland. And why did they so, but that any trackless wilderness seemed better than his own or his friend's tyranny? In this letter he laments that he is left alone in the envious and thorny part of the work, and has no encouragement.

† In thirteen years, ending with 1640, but 4080*l.* was levied on recusants by process from the exchequer, according to Commons' Journals, 1 Dec. 1640. But

it cannot be denied that they paid considerable sums by way of composition, though less probably than in former times. Lingard, ix. 424. &c. note G. Weston is said by Clarendon to have offended the catholics by enforcing penalties to raise the revenue. One priest only was executed for religion, before the meeting of the long parliament. Butler, iv. 97. And though, for the sake of appearance, proclamations for arresting priests and recusants sometimes came forth, they were always discharged in a short time. The number pardoned in the first sixteen years of the king is said to have amounted, in twenty-nine counties only, to 11,970. Neal, 604.—Clarendon, i. 261., confirms the systematic indulgence shown to catholics, which Dr. Lingard seems, reluctantly and by silence, to admit.

would have dictated.* Unfortunately, the prosecution of other sectaries renders it difficult to ascribe such a liberal principle to the council of Charles the First. It was evidently true, what the nation saw with alarm, that a proneness to favour the professors of this religion, and to a considerable degree the religion itself, was at the bottom of a conduct so inconsistent with their system of government. The king had been persuaded, in 1635, through the influence of the queen, and probably of Laud†, to receive privately, as an accredited agent from the court of Rome, a secular priest, named Panzani, whose ostensible instructions were to effect a reconciliation of some violent differences that had long subsisted between the secular and regular clergy of his communion. The chief motive however of Charles was, as I believe, so far to conciliate the pope as to induce him to withdraw his opposition to the oath of allegiance, which had long placed the catholic laity in a very invidious condition, and widened a breach which his majesty had some hopes of closing. For this purpose he offered any reasonable explanation which might leave the oath free from the slightest appearance of infringing the papal supremacy. But it was not the policy of Rome to make any concession, or even enter into any treaty, that might tend to impair her temporal authority. It was better for her pride and ambition that the English catholics should continue to hew wood and draw water, their bodies the law's slaves, and their souls her own, than, by becoming the willing subjects of a protestant sovereign, that they should lose that sense of dependency and habitual deference to her commands in all worldly matters, which states wherein their faith stood established had ceased to display. She gave therefore no encouragement to the proposed explanations of the oath of allegiance, and even instructed her nuncio Con, who succeeded Panzani, to check

* Strafford Letters, i. 505. 524. ii. 2. 57.

† Heylin, 286. The very day of Abbot's death, an offer of a cardinal's hat was made to Laud, as he tells us in his Diary, "by one that avowed ability to perform it." This was repeated some days afterwards; Aug. 4th and 17th, 1633. It seems very questionable whether

this came from authority. The new primate made a strange answer to the first application, which might well encourage a second; certainly not what might have been expected from a steady protestant. If we did not read this in his own Diary, we should not believe it. The offer at least proves that he was supposed capable of acceding to it.

the precipitance of the English catholics in contributing men and money towards the army raised against Scotland, in 1639.* There might indeed be some reasonable suspicion that the court did not play quite fairly with this body, and was more eager to extort what it could from their hopes than to make any substantial return.

The favour of the administration, as well as the antipathy that every parliament had displayed towards them, not unnaturally rendered the catholics, for the most part, asserters of the king's arbitrary power.† This again increased the popular prejudice. But nothing excited so much alarm as the perpetual conversions to their faith. These had not been quite unusual in any age since the Reformation, though the balance had been very much inclined to the opposite side. They became however under Charles the news of every day; protestant clergymen in several instances, but especially women of rank, becoming proselytes to a religion so seductive to the timid reason and susceptible imagination of that sex. They whose minds have never strayed into the wilderness of doubt, vainly deride such as sought out the beaten path their fathers had trodden in old times; they whose temperament gives little play to the fancy and sentiment, want power to comprehend the charm of superstitious illusions, the satisfaction of the conscience in the performance of positive

* Clarendon State Papers, ii. 44. It is always important to distinguish dates. By the year 1639, the court of Rome had seen the fallacy of those hopes she had previously been led to entertain, that the king and church of England would return to her fold. This might exasperate her against him, as it certainly did against Laud; besides which, I should suspect the influence of Spain in the conclave.

† Proofs of this abound in the first volume of the collection just quoted, as well as in other books. The catholics were not indeed unanimous in the view they took of the king's prerogative, which became of importance in the controversy as to the oath of allegiance; one party maintaining that the king had a right to put his own explanation on that oath, which was more to be regarded than the sense of parliament; while another denied that they could conscientiously admit the

king's interpretation against what they knew to have been the intention of the legislature who imposed it. A Mr. Courtney, who had written on the latter side, was imprisoned in the Tower, on pretext of recusancy, but really for having promulgated so obnoxious an opinion. P. 258. et alibi. *Memoirs of Panzani*, p. 140. The jesuits were much against the oath, and from whatever cause, threw all the obstacles they could in the way of a good understanding between the king and the pope. One reason was their apprehension that an article of the treaty would be the appointment of a catholic bishop in England; a matter about which the members of that church have been quarrelling ever since the reign of Elizabeth, but too trifling for our notice in this place. More than half Panzani's *Memoirs* relate to it.

rites, especially with privation or suffering, the victorious self-gratulation of faith in its triumph over reason, the romantic tenderness that loves to rely on female protection, the graceful associations of devotion with all that the sense or the imagination can require,—the splendid vestment, the fragrant censer, the sweet sounds of choral harmony, and the sculptured form that an intense piety half endows with life. These springs were touched, as the variety of human character might require, by the skilful hands of Romish priests, chiefly jesuits, whose numbers in England were about 250*, concealed under a lay garb, and combining the courteous manners of gentlemen with a refined experience of mankind, and a logic in whose labyrinths the most practical reasoner was perplexed. Against these fascinating wiles the puritans opposed other weapons from the same armoury of human nature; they awakened the pride of reason, the stern obstinacy of dispute, the names, so soothing to the ear, of free inquiry and private judgment. They inspired an abhorrence of the adverse party that served as a barrier against insidious approaches. But far different principles actuated the prevailing party in the church of England. A change had for some years been wrought in its tenets, and still more in its sentiments, which, while it brought the whole body into a sort of approximation to Rome, made many individuals shoot as it were from their own sphere, on coming within the stronger attraction of another.

The charge of inclining towards popery, brought by one of our religious parties against Laud and his colleagues with invidious exaggeration, has been too indignantly denied by another. Much indeed will depend on the definition of that obnoxious word; which one may restrain to an acknowledgment of the supremacy in faith and discipline of the Roman see; while another comprehends in it all those tenets which were rejected as corruptions of Christianity at the Reformation; and a third may extend it to the ceremonies and ecclesiastical observances which were set aside at the same time. In this last and most enlarged sense, which the

* Memoirs of Panzani, p. 207. This is a statement by father Leander; in another place, p. 140., they are reckoned at 360. There were about 180 other regulars, and five or six hundred secular priests.

vulgar naturally adopted, it is notorious that all the innovations of the school of Laud were so many approaches, in the exterior worship of the church, to the Roman model. Pictures were set up or repaired; the communion-table took the name of an altar; it was sometimes made of stone; obeisances were made to it; the crucifix was sometimes placed upon it; the dress of the officiating priests became more gaudy; churches were consecrated with strange and mystical pageantry.* These petty superstitions, which would of themselves have disgusted a nation accustomed to despise as well as abhor the pompous rites of the catholics, became more alarming from the evident bias of some leading churchmen to parts of the Romish theology. The doctrine of a real presence, distinguishable only by vagueness of definition from that of the church of Rome, was generally held.† Montagu, bishop of Chichester, already so conspicuous, and justly reckoned the chief of the Romanising faction, went a

* Kennet, 73. Harris's *Life of Charles*, 220. Collier, 772. Brodie, ii. 224. note. Neal, p. 572, &c. Laud, in his defence at his trial, denies or extenuates some of the charges. There is, however, full proof of all that I have said in my text. The famous consecration of St. Catharine's Creed church in 1631 is mentioned by Rushworth, Welwood, and others. Laud said in his defence, that he borrowed the ceremonies from Andrews, who had found them in some old liturgy.

† In bishop Andrews's answer to Bel-larmine, he says: *Præsentiam credimus non minus quam vos veram; de modo præsentiae nil temere definimus.* And soon afterwards: *Nobis vobiscum de objecto convenit, de modo lis omnis est. De hoc est, fide firmâ tenemus quod sit, de hoc modo est, ut sit Per, sive In, sive Cum, sive Sub, sive Trans, nullum inibi verbum est.* I quote from Casaubon's *Epistles*, p. 393. This is, reduced to plain terms: We fully agree with you that Christ's body is actually present in the sacramental elements, in the same sense as you use the word; but we see no cause for determining the precise mode, whether by transubstantiation or otherwise.

The doctrine of the church of England, as evidenced by its leading ecclesiastics,

underwent a change in the reign of James, through Andrews, Casaubon, and others, who deferred wholly to antiquity. In fact, as I have elsewhere observed, there can be but two opinions, neglecting subordinate differences, on this famous controversy. It is clear to those who have attended to the subject, that the Anglican reformers did not hold a local presence of Christ's human body in the consecrated bread itself, independent of the communicant, or, as the technical phrase was, *extra usum*: and it is also clear, that the divines of the latter school did so. This question is rendered intricate at first sight, partly by the strong figurative language which the early reformers employed in order to avoid shocking the prejudices of the people; and partly by the incautious and even absurd use of the word *real presence* to mean *real absence*; which is common with modern theologians.

[The phrase "real presence" is never, I believe, used by our writers of the 16th age, but as synonymous with *corporal*, and consequently is condemned by them. Cranmer calls it, "that error of the real presence," i. lxxv. Jewel challenges his adversary to produce any authority for those words from the fathers. I do not know when it came into use; probably under James, or, it may be, rather earlier.]

considerable length towards admitting the invocation of saints; prayers for the dead, which lead naturally to the tenet of purgatory, were vindicated by many; in fact, there was hardly any distinctive opinion of the church of Rome which had not its abettors among the bishops, or those who wrote under their patronage. The practice of auricular confession, which an aspiring clergy must so deeply regret, was frequently inculcated as a duty. And Laud gave just offence by a public declaration, that in the disposal of benefices he should, in equal degrees of merit, prefer single before married priests.* They incurred scarcely less odium by their dislike of the Calvinistic system, and by what ardent men construed into a dereliction of the protestant cause, a more reasonable and less dangerous theory on the nature and reward of human virtue, than that which the fanatical and presumptuous spirit of Luther had held forth as the most fundamental principle of his Reformation.

It must be confessed that these English theologians were less favourable to the papal supremacy than to most other distinguishing tenets of the catholic church. Yet even this they were inclined to admit in a considerable degree, as a matter of positive, though not divine institution; content to make the doctrine and discipline of the fifth century the rule of their bastard reform. An extreme reverence for what they called the primitive church had been the source of their errors. The first reformers had paid little regard to that authority. But as learning, by which was then meant an acquaintance with ecclesiastical antiquity, grew more general in the church, it gradually inspired more respect for itself; and men's judgment in matters of religion came to be measured by the quantity of their erudition.† The sentence of

* Heylin's *Life of Laud*, p. 212. He probably imbibed this, like many other of his prejudices, from bishop Andrews, whose epitaph in the church of St. Saviour's in Southwark speaks of him as having received a superior reward in heaven on account of his celibacy; *cœlebs migravit ad aureolam cœlestem*. *Biog. Britannica*. Aureola, a word of no classical authority, means, in the style of popish divinity, which the author of this

epitaph thought fit to employ, the crown of virginity. See Du Cange in *voc*.

† See *Life of Hammond*, in *Wordsworth's Eccles. Biography*, vol. v. 343. It had been usual to study divinity in compendiums, chiefly drawn up in the sixteenth century. King James was a great favourer of antiquity, and prescribed the study of the fathers in his Instructions to the Universities, in 1616.

the early writers, including the fifth and perhaps sixth centuries, if it did not pass for infallible, was of prodigious weight in controversy. No one in the English church seems to have contributed so much towards this relapse into superstition as Andrews, bishop of Winchester, a man of eminent learning in this kind, who may be reckoned the founder of the school wherein Laud was the most prominent disciple.*

A characteristic tenet of this party was, as I have already observed, that episcopal government was indispensably requisite to a Christian church.† Hence they treated the presbyterians with insolence abroad, and severity at home. A brief to be read in churches for the sufferers in the Palatinate having been prepared, wherein they were said to profess the same religion as ourselves, Laud insisted on this being struck out.‡ The Dutch and Walloon churches in England, which had subsisted since the Reformation, and which various motives of policy had led Elizabeth to protect, were harassed by the primate and other bishops for their want of conformity to the Anglican ritual.§ The English ambassador, instead of frequenting the Hugonot church at Charenton, as had been the former practice, was instructed to disclaim all fraternity with their sect, and set up in his own chapel the obnoxious altar and the other innovations of the hierarchy.|| These impolitic and insolent proceedings

* Andrews gave scandal in the queen's reign by preaching at court, "that contrition, without confession and absolution, and deeds worthy of repentance, was not sufficient; that the ministers had the two keys of power and knowledge delivered unto them; that whose sins soever they remitted upon earth, should be remitted in heaven.—The court is full of it, for such doctrine was not usually taught there." Sidney Letters, ii. 185. Harrington also censures him for an attempt to bring in auricular confession. *Nugæ Antiquæ*, ii. 192. In his own writings against Perron, he throws away a great part of what have always been considered the protestant doctrines.

† Hall, bishop of Exeter, a very considerable person, wrote a treatise on the Divine Institution of Episcopacy, which, according to an analysis given by Heylin

and others of its leading positions, is so much in the teeth of Hooker's Ecclesiastical Polity, that it might pass for an answer to it. Yet it did not quite come up to the primate's standard, who made him alter some passages which looked too like concessions. Heylin's *Life of Laud*, 374. Collier, 789. One of his offences was the asserting the pope to be Antichrist, which displeased the king as well as primate, though it had been orthodox under James.

‡ Collier, 764. Neal, 582. Heylin, 288.

§ Collier, 753. Heylin, 260.

|| Clarendon, iii. 366. *State Papers*, i. 338. "Lord Seudamore, the English ambassador, set up an altar, &c. in the Laudean style. His successor, lord Leicester, spoke to the archbishop about going to Charenton; and telling him lord

gave the foreign protestants a hatred of Charles, which they retained through all his misfortunes.

This alienation from the foreign churches of the reformed persuasion had scarcely so important an effect in begetting a predilection for that of Rome, as the language frequently held about the Anglican separation. It became usual for our churchmen to lament the precipitancy with which the Reformation had been conducted, and to inveigh against its principal instruments. The catholic writers had long descanted on the lust and violence of Henry, the pretended licentiousness of Anne Boleyn, the rapacity of Cromwell, the pliancy of Cranmer; sometimes with great truth, but with much of invidious misrepresentation. These topics, which have no kind of operation on men accustomed to sound reasoning, produce an unfailing effect on ordinary minds. Nothing incurred more censure than the dissolution of the monastic orders, or at least the alienation of their endowments; acts accompanied, as we must all admit, with great rapacity and injustice, but which the new school branded with the name of sacrilege. Spelman, an antiquary of eminent learning, was led by bigotry or subserviency to compose a wretched tract called the *History of Sacrilege*, with a view to confirm the vulgar superstition that the possession of estates alienated from the church entailed a sure curse on the usurper's posterity. There is some reason to suspect that

Seudamore did never go thither, Laud answered, 'He is the wiser.' Leicester requested his advice what he should do, in order to sift his disposition, being himself resolved how to behave in that matter. But the other would only say that he left it to his discretion. Leicester says, he had many reasons to think that for his going to Charenton the archbishop did him all the ill offices he could to the king, representing him as a puritan, and consequently in his method an enemy to monarchical government, though he had not been very kind before. The said archbishop, he adds, would not countenance Blondel's book against the usurped power of the pope." *Blencowe's Sidney Papers*, 261.

"To think well of the reformed religion," says Northumberland, in 1640, "is enough to make the archbishop an

enemy; and though he cannot for shame do it in public, yet in private he will do Leicester all the mischief he can." *Collins's Sidney Papers*, ii. 623.

Such was the opinion entertained of Laud, by those who could not reasonably be called puritans, except by such as made that word a synonym for protestant. It would be easy to add other proofs. The prosecution in the star-chamber against Sherfield, recorder of Salisbury for destroying some superstitious pictures in a church, led to a display of the aversion many of the council entertained for popery, and their jealousy of the archbishop's bias. They were with difficulty brought to condemn Sherfield, and passed a sentence at last very unlike those to which they were accustomed. *Rushworth. State Trials*. Hume misrepresents the case.

the king entertained a project of restoring all impropriated hereditaments to the church.

It is alleged by one who had much access to Laud, that his object in these accommodations was to draw over the more moderate Romanists to the English church, by extenuating the differences of her faith, and rendering her worship more palatable to their prejudices.* There was, however, good reason to suspect, from the same writer's account, that some leading ecclesiastics entertained schemes of a complete re-union†; and later discoveries have abundantly confirmed this suspicion. Such schemes have doubtless been in the minds of men not inclined to offer every sacrifice; and during this very period Grotius was exerting his talents (whether judiciously or otherwise we need not enquire) to make some sort of reconciliation and compromise appear practicable.‡ But we now know that the views of a party in the English church were much more extensive, and went almost to an entire dereliction of the protestant doctrine.

The catholics did not fail to anticipate the most favourable consequences from this turn in the church. The Clarendon State Papers, and many other documents, contain remarkable proofs of their sanguine and not unreasonable hopes. Weston the lord treasurer, and Cottington, were already in secret of their persuasion; though the former did not take much pains to promote their interests. No one, however, showed them such decided favour as secretary Windebank, through whose hands a correspondence was carried on with the court of Rome by some of its agents.§ They exult in the peaceful and flourishing state of their religion in England as compared with former times. The recusants, they write,

* Heylin's Life of Laud, 390.

† Id. 388. The passage is very remarkable, but too long to be extracted in a work not directly ecclesiastical. It is rather ambiguous; but the Memoirs of Panzani afford the key.

‡ [I should now think less favourably of Grotius, and suspect that he would ultimately have made every sacrifice. See Hist. of Literature of 15th, 16th, and 17th centuries, vol. iii. p. 58. (first edition). 1845.]

§ The Spanish ambassador applies to

Windebank, 1633, to have a case of books restored, that had been carried from the custom-house to archbishop Abbot.—“Now he is dead, I make this demand upon his effects and library, that they may be restored to me; as his majesty's order at that time was ineffectual, as well as its appearing that there was nothing contraband or prohibited.” A list of these books follows, and is curious. They consisted of English popish tracts by wholesale, intended, of course, for circulation. Clar. State Papers, 66.

were not molested; and if their compositions were enforced, it was rather from the king's want of money than any desire to injure their religion. Their rites were freely exercised in the queen's chapel and those of ambassadors, and, more privately, in the houses of the rich. The church of England was no longer exasperated against them; if there was ever any prosecution, it was to screen the king from the reproach of the puritans. They drew a flattering picture of the resipiscence of the Anglican party; who are come to acknowledge the truth in some articles, and differ in others rather verbally than in substance, or in points not fundamental; who hold all other protestants to be schismatical, and confess the primacy of the holy see, regretting the separation already made, and wishing for re-union; who profess to pay implicit respect to the fathers, and can best be assailed on that side.*

These letters contain, no doubt, a partial representation; that is, they impute to the Anglican clergy in general, what was only true of a certain number. Their aim was to inspire the court of Rome with more favourable views of that of England, and thus to pave the way for a permission of the oath of allegiance, at least with some modification of its terms. Such flattering tales naturally excited the hopes of the Vatican, and contributed to the mission of Panzani, who was instructed to feel the pulse of the nation, and communicate more unbiassed information to his court than could be expected from the English priests. He confirmed, by his letters, the general truth of the former statements, as to the tendency of the Anglican church, and the favourable dispositions of the court. The king received him secretly, but with much courtesy; the queen and the catholic ministers, Cottington and Windebank, with unreserved confidence. It required all the adroitness of an Italian emissary from the subtlest of courts to meet their demonstrations of friendship without too much committing his employers. Nor did Panzani altogether satisfy the pope, or at least his minister, cardinal Barberini, in this respect.†

* Clarendon State Papers, 197, &c.

† Id. 249. The Memoirs of Panzani, after furnishing some materials to Dodd's Church History, were published by Mr. Berington, in 1794. They are, however, become scarce, and

have not been much quoted. It is plain that they were not his own work, but written by some dependant, or person in his confidence. Their truth, as well as authenticity, appears to me quite beyond controversy; they coincide, in a

During the residence of Panzani in England, an extraordinary negotiation was commenced for the reconciliation of the church of England with that of Rome; and, as this fact, though unquestionable, is very little known, I may not be thought to digress in taking particular notice of it. Windebank and lord Cottington were the first movers in that business; both calling themselves to Panzani catholics, as in fact they were, but claiming all those concessions from the see of Rome, which had been sometimes held out in the preceding

remarkable manner, with all our other information; the names and local details are particularly accurate for the work of a foreigner; in short, they contain no one fact of any consequence which there is reason to distrust. Some account of them may be found in Butler's Engl. Cath. vol. iv.

A small tract, entitled "The Pope's Nuncio," printed in 1643, and said to be founded on the information of the Venetian ambassador, is, as I conceive, derived in some direct or indirect manner from these Memoirs. It is republished in the Somers Tracts, vol. iv.

Mr. Butler has published, for the first time, a long and important extract from Panzani's own report to the pope concerning the state of the catholic religion in England. Mem. of Catholics, iv. 55. He reckons them at 150,000; many of them, however, continuing so outwardly to live as not to be known for such, among whom are many of the first nobility. From them the neighbouring catholics have no means of hearing mass or going to the sacraments. Others, more bold, give opportunity, more or less, to their poorer neighbours to practise their duty. Besides these, there are others, who, apprehensive of losing their property or places, live in appearance as protestants, take the oaths of supremacy and allegiance, frequent the churches, and speak occasionally against catholics; yet in their hearts are such, and sometimes keep priests in their houses, that they may not be without help, if necessary. Among them he includes some of the first nobility, secular and ecclesiastical, and many of every rank. While he was in London, almost all the nobility who died, though reputed protestants, died catholics. The bishops are protestants, except four, Durham, Salisbury, Roches-

ter, and Oxford, who are puritans. The latter are most numerous among the people, and are more hated by moderate protestants than are the catholics. A great change is apparent in books and sermons compared with former times; auricular confession praised, images well spoken of, and altars. The pope is owned as patriarch of the West; and wishes are expressed for re-union. The queen has a public chapel besides her private one, where service is celebrated with much pomp; also the ambassadors; and there are others in London. The laws against recusants are much relaxed; though sometimes the king, being in want of money, takes one third of their incomes by way of composition. The catholics are yet molested by the pursuivants, who enter their houses in search of priests, or sacred vessels; and though this evil was not much felt while he was in London, they might be set at work at any time. He determined therefore to obtain, if possible, a general order from the king to restrain the pursuivants; and the business was put into the hands of some counselors, but not settled at his departure. The oath of allegiance divided the ecclesiastics, the major part refusing to take it. After a good deal about the appointment of a catholic bishop in England, he mentions father Davenport or Sancta Clara's book, entitled *Deus, Natura, Gratia*, with which the king, he says, had been pleased, and was therefore disappointed at finding it put in the *Index Expurgatorius* at Rome.—This book, which made much noise at the time, was an attempt to show the compatibility of the Anglican doctrines with those of the catholic church; the usual trick of popish intriguers. See an abstract of it in *Stillingfleet's Works*, vol. v. p. 176.

century. Bishop Montagu soon made himself a party, and had several interviews with Panzani. He professed the strongest desire for a union, and added, that he was satisfied both the archbishops, the bishop of London, and several others of that order, besides many of the inferior clergy, were prepared to acknowledge the spiritual supremacy of the holy see; there being no method of ending controversies but by recurring to some centre of ecclesiastical unity. For himself, he knew no tenet of the Roman church to which he would not subscribe, unless it were that of transubstantiation, though he had some scruples as to communion in one kind. But a congress of moderate and learned men, chosen on each side, might reduce the disputed points into small compass, and confer upon them.

This overture being communicated to Rome by its agent, was, of course, too tempting to be disregarded, though too ambiguous to be snatched at. The re-union of England to the catholic church, in itself a most important advantage, might, at that particular juncture, during the dubious struggle of the protestant religion in Germany, and its still more precarious condition in France, very probably reduce its adherents throughout Europe to a proscribed and persecuted sect. Panzani was therefore instructed to flatter Montagu's vanity, to manifest a great desire for reconciliation, but not to favour any discussion of controverted points, which had always proved fruitless, and which could not be admitted till the supreme authority of the holy see was recognised. As to all usages founded on positive law, which might be disagreeable to the English nation, they should receive as much mitigation as the case would bear. This, of course, alluded to the three great points of discipline, or ecclesiastical institution—the celibacy of the clergy, the exclusion of the laity from the eucharistical cup, and the Latin liturgy.

In the course of the bishop's subsequent interviews, he again mentioned his willingness to acknowledge the pope's supremacy; and assured Panzani that the archbishop was entirely of his mind, but with a great mixture of fear and caution.* Three bishops only, Morton, Hall, and Davenant,

* If we may believe Heylin, the queen prevailed on Laud to use his influence with the king that Panzani might come

to London, promising to be his friend. Life of Laud, 286.

were obstinately bent against the church of Rome; the rest might be counted moderate.* The agent, however, took care to obtain from another quarter a more particular account of each bishop's disposition, and transmitted to Rome a report, which does not appear. Montagu displayed a most unguarded warmth in all this treaty; notwithstanding which, Panzani suspected him of still entertaining some notions incompatible with the catholic doctrine. He behaved with much greater discretion than the bishop; justly, I suppose, distrusting the influence of a man who showed so little capacity for a business of the utmost delicacy. It appears almost certain that Montagu made too free with the name of the archbishop, and probably of many others; and it is well worthy of remark, that the popish party did not entertain any sanguine hopes of the king's conversion. They expected doubtless that, by gaining over the hierarchy, they should induce him to follow; but he had evidently given no reason to imagine that he would precede. A few casual words, not perhaps exactly reported, might sometimes elate their hopes, but cannot excite in us, who are better able to judge than his contemporaries, any reasonable suspicion of his constancy. Yet it is not impossible that he might at one time conceive a union to be more practicable than it really was. †

* P. 246. It may seem extraordinary that he did not mention Williams; but I presume he took that political bishop's zeal to be insincere. Williams had been, while in power, a great favourer of the toleration of papists. If, indeed, a story told of him, on Endymion Porter's authority, in a late work, be true, he was at that time sufficiently inclined to have accepted a cardinal's hat, and made interest for it. Blencowe's Sidney Papers, p. 262. One bishop, Goodman of Gloucester, was undoubtedly a Roman catholic, and died in that communion. He refused, for a long time, to subscribe the canons of 1640, on account of one that contained a renunciation of popery; but yielded at length for fear of suspension, and charged Montagu with having instigated his refusal, though he subscribed himself. Nalson, i. 371. Rushw. Abr. iii. 168. Collier, 793. Laud's defence on his trial.

† Henrietta Maria, in her communication to Madame de Motteville, has the

following passage, which is not undeserving of notice, though she may have been deceived:—"Le Roi Jacques . . . composa deux livres pour la défense de la fausse religion d'Angleterre, et fit réponse à ceux que le cardinal du Perron écrivit contre lui. En défendant le mensonge, il conçut de l'amour pour la vérité, et souhaita de se retirer de l'erreur. Ce fut en voulant accorder les deux religions, la nôtre et la sienne; mais il mourut avant que d'exécuter ce louable dessein. Le Roi Charles Stuard, son fils, quand il vint à la couronne, se trouva presque dans les mêmes sentimens. Il avoit auprès de lui l'archevêque de Cantorberi, qui, dans son cœur étant très-bon catholique, inspira au roi son maître un grand désir de rétablir la liturgie, croyant que s'il pouvoit arriver à ce point, il y auroit si peu de différence de la foi orthodoxe à la leur, qu'il seroit aisé peu à peu d'y conduire le roi. Pour travailler à ce grand ouvrage, que ne

The court of Rome, however, omitted no token of civility or good will to conciliate our king's favour. Besides expressions of paternal kindness which Urban lavished on him, cardinal Barberini gratified his well-known taste by a present of pictures. Charles showed a due sense of these courtesies. The prosecutions of recusants were absolutely stopped, by cashiering the pursuivants who had been employed in the odious office of detecting them. It was arranged that reciprocal diplomatic relations should be established, and consequently that an English agent should constantly reside at the court of Rome, by the nominal appointment of the queen, but empowered to conduct the various negotiations in hand. Through the first person who held this station, a gentleman of the name of Hamilton, the king made an overture on a matter very near to his heart, the restitution of the Palatinate. I have no doubt that the whole of his imprudent tampering with Rome had been considerably influenced by this chimerical hope. But it was apparent to every man of less unsound judgment than Charles, that except the young elector would renounce the protestant faith, he could expect nothing from the intercession of the pope.

After the first preliminaries, which she could not refuse to enter upon, the court of Rome displayed no eagerness for a treaty which it found, on more exact information, to be embarrassed with greater difficulties than its new allies had confessed.* Whether this subject continued to be discussed during the mission of Con, who succeeded Panzani, is hard to

paroissoit au roi d'Angleterre que le rétablissement parfait de la liturgie, et qui est le seul dessein qui ait été dans le cœur de ce prince, l'archevêque de Cantorberi lui conseilla de commencer par l'Ecosse, comme plus éloignée du cœur du royaume; lui disant, que leur remuement seroit moins à craindre. Le roi, avant que de partir, voulant envoyer cette liturgie en l'Ecosse, l'apporta un soir dans la chambre de la reine, et la pria de lire ce livre, lui disant, qu'il seroit bien aise qu'elle le vit, afin qu'elle sût combien ils approchoient de créance." *Mém. de Motteville*, i. 242. A well-informed writer, however, says Charles was a protestant, and never liked the catholic religion. P. Orleans, Révolut.

d'Anglet. iii. 35. He says the same of Laud, but refers to Vittorio Siri for an opposite story.

* Cardinal Barberini wrote word to Panzani, that the proposal of Windesbank, that the church of Rome should sacrifice communion in one kind, the celibacy of the clergy, &c. would never please; that the English ought to look back on the breach they had made, and their motives for it, and that the whole world was against them on the first-mentioned points, p. 173. This is exactly what any one might predict, who knew the long discussions on the subject with Austria and France at the time of the council of Trent.

determine ; because the latter's memoirs, our unquestionable authority for what has been above related, cease to afford us light. But as Con was a very active intriguer for his court, it is by no means unlikely that he proceeded in the same kind of parley with Montagu and Windebank. Yet whatever might pass between them was intended rather with a view to the general interests of the Roman church, than to promote a reconciliation with that of England, as a separate contracting party. The former has displayed so systematic a policy to make no concession to the reformers, either in matters of belief, wherein, since the council of Trent, she could in fact do nothing, or even, as far as possible, in points of discipline, as to which she judged, perhaps rightly, that her authority would be impaired by the precedent of concession without any proportionate advantage : so unvarying in all cases has been her determination to yield nothing except through absolute force, and to elude force itself by every subtlety, that it is astonishing how honest men on the opposite side (men, that is, who seriously intended to preserve any portion of their avowed tenets,) could ever contemplate the possibility of reconciliation. Upon the present occasion, she manifested some alarm at the boasted approximation of the Anglicans. The attraction of bodies is reciprocal ; and the English catholics might, with so much temporal interest in the scale, be impelled more rapidly towards the established church than that church towards them. " Advise the clergy," say the instructions to the nuncio in 1639, " to desist from that foolish, nay rather illiterate and childish, custom of distinction in the protestant and puritan doctrine ; and especially this error is so much the greater, when they undertake to prove that protestantism is a degree nearer to the catholic faith than the other. For since both of them be without the verge of the church, it is needless hypocrisy to speak of it, yea, it begets more malice than it is worth."*

This exceeding boldness of the catholic party, and their success in conversions, which were, in fact, less remarkable for their number than for the condition of the persons, roused the primate himself to some apprehension. He preferred a

* " Begets more malice " is obscure — perhaps it means " irritates the puritans more." Clar. Papers, ii. 44.

formal complaint to the king in council against the resort of papists to the queen's chapel, and the insolence of some active zealots about the court.* Henrietta, who had courted his friendship, and probably relied on his connivance, if not support, seems never to have forgiven this unexpected attack. Laud gave another testimony of his unabated hostility to popery by republishing with additions his celebrated conference with the jesuit Fisher, a work reckoned the great monument of his learning and controversial acumen. This conference had taken place many years before, at the desire and in the presence of the countess of Buckingham, the duke's mother. Those who are conversant with literary and ecclesiastical anecdote must be aware, that nothing was more usual in the seventeenth century than such single combats under the eye of some fair lady, whose religious faith was to depend upon the victory. The wily and polished jesuits had great advantages in these duels, which almost always, I believe, ended in their favour. After fatiguing their gentle arbitress for a time with the tedious fencing of text and citation, till she felt her own inability to award the palm, they came, with her prejudices already engaged, to the necessity of an infallible judge; and as their adversaries of the English church had generally left themselves vulnerable on this side, there was little difficulty in obtaining success. Like Hector in the spoils of Patroclus, our clergy had assumed to themselves the celestial armour of authority; but found that, however it

* Heylin, p. 338. Laud's Diary, Oct. 1637. Strafford Letters, i. 426. Garrard, a dependent friend whom Strafford retained, as was usual with great men, to communicate the news of the court, frequently descants on the excessive boldness of the papists. "Laud," he says, vol. ii. p. 74., "does all he can to beat down the general fear conceived of bringing on popery." So in p. 165. and many other places.

It is manifest, by a letter of Laud to Strafford in 1638, that he was not satisfied with the systematic connivance at recusancy. Id. 171. The explanation of the archbishop's conduct with respect to the Roman catholics seems to be, that, with a view of gaining them over to his

own half-way protestantism, and also of ingratiating himself with the queen, he had for a time gone along with the tide, till he found there was a real danger of being carried farther than he intended. This accounts for the well-known story told by Evelyn, that the jesuits at Rome spoke of him as their bitterest enemy. He is reported to have said, that they and the puritans were the chief obstacles to a re-union of the churches. There is an obscure story of a plot carried on by the pope's legate Con and the English jesuits against Laud, and detected in 1640 by one Andrew Habernfield, which some have treated as a mere fiction. Rushworth, iii. 232.

might intimidate the multitude, it fitted them too ill to repel the spear that had been wrought in the same furnace. A writer of this school in the age of Charles the First, and incomparably superior to any of the churchmen belonging to it, in the brightness and originality of his genius, sir Thomas Browne, whose varied talents wanted nothing but the controlling supremacy of good sense to place him in the highest rank of our literature, will furnish a better instance of the prevailing bias than merely theological writings. He united a most acute and sceptical understanding with strong devotional sensibility, the temperament so conspicuous in Pascal and Johnson, and which has a peculiar tendency to seek the repose of implicit faith. "Where the Scripture is silent," says Browne in his *Religio Medici*, "the church is my text; where it speaks, 'tis but my comment." That jesuit must have been a disgrace to his order, who would have asked more than such a concession to secure a proselyte—the right of interpreting whatever was written, and of supplying whatever was not.

At this time, however, appeared one man in the field of religious debate, who struck out from that insidious tract, of which his own experience had shown him Chillingworth. the perils. Chillingworth, on whom nature had bestowed something like the same constitutional temperament as that to which I have just adverted, except that the reasoning power having a greater mastery, his religious sensibility rather gave earnestness to his love of truth than tenacity to his prejudices, had been induced, like so many others, to pass over to the Roman church. The act of transition, it may be observed, from a system of tenets wherein men had been educated, was in itself a vigorous exercise of free speculation, and might be termed the suicide of private judgment. But in Chillingworth's restless mind there was an inextinguishable scepticism that no opiates could subdue; yet a scepticism of that species which belongs to a vigorous, not that which denotes a feeble understanding. Dissatisfied with his new opinions, of which he had never been really convinced, he panted to breathe the freer air of protestantism, and after a long and anxious investigation returned to the English church. He well redeemed any censure that might have been thrown

on him, by his great work in answer to the jesuit Knott, entitled *The Religion of Protestants a Safe Way to Salvation*. In the course of his reflections he had perceived the insecurity of resting the reformation on any but its original basis, the independency of private opinion. This, too, he asserted with a fearlessness and consistency hitherto little known, even within the protestant pale; combining it with another principle, which the zeal of the early reformers had rendered them unable to perceive, and for want of which the adversary had perpetually discomfited them, namely, that the errors of conscientious men do not forfeit the favour of God. This endeavour to mitigate the dread of forming mistaken judgments in religion runs through the whole work of Chillingworth, and marks him as the founder, in this country, of what has been called the latitudinarian school of theology. In this view, which has practically been the most important one of the controversy, it may pass for an anticipated reply to the most brilliant performance on the opposite side, the *History of the Variations of Protestant Churches*; and those who, from a delight in the display of human intellect, or from more serious motives of inquiry, are led to these two masterpieces, will have seen, perhaps, the utmost strength that either party, in the great schism of Christendom, has been able to put forth.

This celebrated work, which gained its author the epithet of immortal, is now, I suspect, little studied even by the clergy. It is, no doubt, somewhat tedious, when read continuously, from the frequent recurrence of the same strain of reasoning, and from his method of following, sentence by sentence, the steps of his opponent; a method which, while it presents an immediate advantage to controversial writers, as it heightens their reputation at the expense of their adversary, is apt to render them very tiresome to posterity. But the closeness and precision of his logic, which this mode of incessant grappling with his antagonist served to display, are so admirable, perhaps, indeed, hardly rivalled in any book beyond the limits of strict science, that the study of Chillingworth might tend to chastise the verbose and indefinite declamation so characteristic of the present day. His style, though by no means elegant or imaginative,

has much of a nervous energy that rises into eloquence. He is chiefly, however, valuable for a true liberality and tolerance; far removed from indifference, as may well be thought of one whose life was consumed in searching for truth, but diametrically adverse to those pretensions which seem of late years to have been regaining ground among the Anglican divines.

The latitudinarian principles of Chillingworth appear to have been confirmed by his intercourse with a man, of whose capacity his contemporaries entertained so ^{Hales.} high an admiration, that he acquired the distinctive appellation of the Ever-memorable John Hales. This testimony of so many enlightened men is not to be disregarded, even if we should be of opinion that the writings of Hales, though abounding with marks of an unshackled mind, do not quite come up to the promise of his name. He had, as well as Chillingworth, borrowed from Leyden, perhaps a little from Racow, a tone of thinking upon some doctrinal points as yet nearly unknown, and therefore highly obnoxious in England. More hardy than his friend, he wrote a short treatise on schism, which tended, in pretty blunt and unlimited language, to overthrow the scheme of authoritative decisions in any church, pointing at the imposition of unnecessary ceremonies and articles of faith, as at once the cause and the apology of separation. This having been circulated in manuscript, came to the knowledge of Laud, who sent for Hales to Lambeth, and questioned him as to his opinions on that matter. Hales, though willing to promise that he would not publish the tract, receded not a jot from his free notions of ecclesiastical power; which he again advisedly maintained in a letter to the archbishop, now printed among his works. The result was equally honourable to both parties; Laud bestowing a canonry of Windsor on Hales, which, after so bold an avowal of his opinion, he might accept without the slightest reproach. A behaviour so liberal forms a singular contrast to the rest of this prelate's history. It is a proof, no doubt, that he knew how to set such a value on great abilities and learning, as to forgive much that wounded his pride. But besides that Hales had not made public this treatise on schism, for which I think he could not have

escaped the high commission court, he was known by Laud to stand far aloof from the Calvinistic sectaries, having long since embraced in their full extent the principles of Episcopius, and to mix no alloy of political faction with the philosophical hardiness of his speculations.*

These two remarkable ornaments of the English church, who dwelt apart like stars, to use the fine expression of a living poet, from the vulgar bigots of both her factions, were accustomed to meet, in the society of some other eminent persons, at the house of lord Falkland, near Burford. One of those, who, then in a ripe and learned youth, became afterwards so conspicuous a name in our annals and our literature, Mr. Hyde, the chosen bosom-friend of his host, has dwelt with affectionate remembrance on the conversations of that mansion. His marvellous talent of delineating character, a talent, I think, unrivalled by any writer, (since, combining the bold outline of the ancient historians with the analytical minuteness of De Retz and St. Simon, it produces a higher effect than either,) is never more beautifully displayed than in that part of the memoirs of his life, where Falkland, Hales, Chillingworth, and the rest of his early friends, pass over the scene.

For almost thirty ensuing years, Hyde himself becomes the companion of our historical reading. Seven folio volumes contain his History of the Rebellion, his Life, and the Letters, of which a large portion are his own. We contract an intimacy with an author who has poured out to us so much of his heart. Though lord Clarendon's chief work seems to me not quite accurately styled a history, belonging rather to the class of memoirs †,

* Heylin, in his Life of Laud, p. 340., tells this story, as if Hales had recanted his opinions, and owned Laud's superiority over him in argument. This is ludicrous, considering the relative abilities of the two men. And Hales's letter to the archbishop, which is full as bold as his treatise on schism, proves that Heylin's narrative is one of his many wilful falsehoods; for, by making himself a witness to the pretended circumstances, he has precluded the excuse of error.

† It appears by the late edition at Oxford (1826) that lord Clarendon twice

altered his intention as to the nature of his work, having originally designed to write the history of his time, which he changed to memorials of his own life, and again returned to his first plan. The consequence has been, that there are two manuscripts of the History and of the Life, which in a great degree are transcripts one from the other, or contain the same general fact with variations. That part of the Life, previous to 1660, which is not inserted in the History of the Rebellion, is by no means extensive.

The genuine text of the History has

yet the very reasons of this distinction, the long circumstantial narrative of events wherein he was engaged, and the slight notice of those which he only learned from others, render it more interesting, if not more authentic. Conformably to human feelings, though against the rules of historical composition, it bears the continual impress of an intense concern about what he relates. This depth of personal interest, united frequently with an eloquence of the heart and imagination that struggles through an involved, incorrect, and artificial diction, makes it, one would imagine, hardly possible for those most alien from his sentiments to read his writings without some portion of sympathy. But they are on this account not a little dangerous to the soundness of our historical conclusions; the prejudices of Clarendon, and his negligence as to truth, being full as striking as his excellencies, and leading him not only into many erroneous judgments, but into frequent inconsistencies.

These inconsistencies are nowhere so apparent as in the first or introductory book of his history, which pro-

only been published in 1826. A story, as is well known, obtained circulation within thirty years after its first appearance, that the manuscript had been materially altered or interpolated. This was positively denied, and supposed to be wholly disproved. It turns out however that, like many other anecdotes, it had a considerable basis of truth, though with various erroneous additions, and probably wilful misrepresentations. It is nevertheless surprising that the worthy editor of the original manuscript should say, "that the genuineness of the work has rashly, and for party purposes, been called in question," when no one, I believe, has ever disputed its genuineness; and the anecdote to which I have alluded, and to which, no doubt, he alludes, has been by his own industry (and many thanks we owe him for it) perfectly confirmed in substance. For though he endeavours, not quite necessarily, to excuse or justify the original editors (who seem to have been Sprat and Aldrich, with the sanction probably of lords Clarendon and Rochester, the historian's sons,) for what they did, and even singularly asserts, that "the present collation satisfactorily proves that they have in no one instance

added, suppressed, or altered any historical fact;" (Advert. to edit. 1826, p. v.) yet it is certain that, besides the perpetual impertinence of mending the style, there are several hundred variations which affect the sense, introduced from one motive or another, and directly contrary to the laws of literary integrity. The long passages inserted in the appendixes to several volumes of this edition contain surely historical facts that had been suppressed. And, even with respect to subordinate alterations, made for the purpose of softening traits of the author's angry temper, or correcting his mistakes, the general effect of taking such liberties with a work is to give it an undue credit in the eyes of the public, and to induce men to believe matters upon the writer's testimony, which they would not have done so readily, if his errors had been fairly laid before them. Clarendon indeed is so strangely loose in expression as well as incorrect in statement, that it would have been impossible to remove his faults of this kind without writing again half the history; but it is certain that great trouble was very unduly taken to lighten their impression upon the world.

Animal ver-
sions on
Clarendon's
account of
this period.

fesses to give a general view of the state of affairs before the meeting of the long parliament. It is certainly the most defective part of his work. A strange mixture of honesty and disingenuousness pervades all he has written of the early years of the king's reign; retracting, at least in spirit, in almost every page what has been said in the last, from a constant fear that he may have admitted so much against the government as to make his readers impute too little blame to those who opposed it. Thus, after freely censuring the exactions of the crown, whether on the score of obsolete prerogative or without any just pretext at all, especially that of ship-money, and confessing that "those foundations of right, by which men valued their security, were never, to the apprehension and understanding of wise men, in more danger of being destroyed," he turns to dwell on the prosperous state of the kingdom during this period, "enjoying the greatest calm and the fullest measure of felicity that any people in any age for so long time together have been blessed with," till he works himself up to a strange paradox, that "many wise men thought it a time wherein those two adjuncts, which Nerva was deified for uniting, Imperium et Libertas, were as well reconciled as is possible."

Such wisdom was not, it seems, the attribute of the nation. "These blessings," he says, "could but enable, not compel, us to be happy; we wanted that sense, acknowledgment, and value of our own happiness which all but we had, and took pains to make, when we could not find, ourselves miserable. There was, in truth, a strange absence of understanding in most, and a strange perverseness of understanding in the rest; the court full of excess, idleness, and luxury; the country full of pride, mutiny, and discontent; every man more troubled and perplexed at that they called the violation of the law, than delighted or pleased with the observation of all the rest of the charter; never imputing the increase of their receipts, revenue, and plenty, to the wisdom, virtue, and merit of the crown, but objecting every small imposition to the exorbitancy and tyranny of the government.

This strange passage is as inconsistent with other parts of the same chapter, and with Hyde's own conduct at the begin-

ning of the parliament, as it is with all reasonable notions of government.* For if kings and ministers may plead in excuse for violating one law, that they have not transgressed the rest (though it would be difficult to name any violation of law that Charles had not committed); if this were enough to reconcile their subjects, and to make dissatisfaction pass for a want or perversion of understanding, they must be in a very different predicament from all others who live within the pale of civil society, whose obligation to obey its discipline is held to be entire and universal. By this great writer's own admissions, the decision in the case of ship-money had shaken every man's security for the enjoyment of his private inheritance. Though as yet not weighty enough to be actually very oppressive, it might, and, according to the experience of Europe, undoubtedly would, become such by length of time and peaceable submission.

We may acknowledge without hesitation, that the kingdom

* May thus answers, by a sort of prophetic anticipation, this passage of Clarendon: — "Another sort of men," he says, "and especially lords and gentlemen, by whom the pressures of the government were not much felt, who enjoyed their own plentiful fortunes, with little or insensible detriment, looking no farther than their present safety and prosperity, and the yet undisturbed peace of the nation, whilst other kingdoms were embroiled in calamities, and Germany sadly wasted by a sharp war, did nothing but applaud the happiness of England, and called those ungrateful factious spirits, who complained of the breach of laws and liberties; that the kingdom abounded with wealth, plenty, and all kinds of elegancies, more than ever; that it was for the honour of a people, that the monarch should live splendidly, and not be curbed at all in his prerogative, which would bring him into greater esteem with other princes, and more enable him to prevail in treaties; that what they suffered by monopolies was insensible, and not grievous, if compared with other states; that the duke of Tuscany sat heavier upon his people in that very kind; that the French king had made himself an absolute lord, and quite depressed the power of parliaments, which had been there as great as in any king-

dom, and yet that France flourished, and the gentry lived well; that the Austrian princes, especially in Spain, laid heavy burdens upon their subjects. Thus did many of the English gentry, by way of comparison, in ordinary discourse, plead for their own servitude.

"The courtiers would begin to dispute against parliaments, in their ordinary discourse, that they were cruel to those whom the king favoured, and too injurious to his prerogative; that the late parliament stood upon too high terms with the king, and that they hoped the king should never need any more parliaments. Some of the greatest statesmen and privy-counsellors would ordinarily laugh at the ancient language of England, when the word liberty of the subject was named. But these gentlemen, who seemed so forward in taking up their own yoke, were but a small part of the nation (though a number considerable enough to make a reformation hard) compared with those gentlemen who were sensible of their birth-rights and the true interests of the kingdom; on which side the common people in the generality, and the country freeholders stood, who would rationally argue of their own rights, and those oppressions that were laid upon them." *Hist. of Parliament*, p. 12. (edit. 1812.)

had grown during this period into remarkable prosperity and affluence. The rents of land were very considerably increased, and large tracts reduced into cultivation. The manufacturing towns, the sea-ports, became more populous and flourishing. The metropolis increased in size with a rapidity that repeated proclamations against new buildings could not restrain. The country houses of the superior gentry throughout England were built on a scale which their descendants, even in days of more redundant affluence, have seldom ventured to emulate. The kingdom was indebted for this prosperity to the spirit and industry of the people, to the laws which secure the commons from oppression, and which, as between man and man, were still fairly administered, to the opening of fresh channels of trade in the eastern and western worlds (rivulets, indeed, as they seem to us, who float in the full tide of modern commerce, yet at that time no slight contributions to the stream of public wealth); but above all, to the long tranquillity of the kingdom, ignorant of the sufferings of domestic, and seldom much affected by the privations of foreign, war. It was the natural course of things, that wealth should be progressive in such a land. Extreme tyranny, such as that of Spain in the Netherlands, might, no doubt, have turned back the current. A less violent, but long-continued despotism, such as has existed in several European monarchies, would, by the corruption and incapacity which absolute governments engender, have retarded its advance. The administration of Charles was certainly not of the former description. Yet it would have been an excess of loyal stupidity in the nation to have attributed their riches to the wisdom or virtue of the court, which had injured the freedom of trade by monopolies and arbitrary proclamations, and driven away industrious manufacturers by persecution.

If we were to draw our knowledge from no other book than lord Clarendon's History, it would still be impossible to avoid the inference, that misconduct on the part of the crown, and more especially of the church, was the chief, if not the sole, cause of these prevailing discontents. At the time when Laud unhappily became archbishop of Canterbury, "the general temper and humour of the kingdom," he tells us, "was little inclined to the papist, and less to the puritan. There

were some late taxes and impositions introduced, which rather angered than grieved the people, who were more than repaired by the quiet peace and prosperity they enjoyed; and the murmurs and discontent that was, appeared to be against the excess of power exercised by the crown, and supported by the judges in Westminster-hall. The church was not repined at, nor the least inclination to alter the government and discipline thereof, or to change the doctrine. Nor was there at that time any considerable number of persons of any valuable condition throughout the kingdom, who did wish either; and the cause of so prodigious a change in so few years after was too visible from the effects." This cause, he is compelled to admit, in a passage too diffuse to be extracted, was the passionate and imprudent behaviour of the primate. Can there be a stronger proof of the personal prepossessions which for ever distort the judgment of this author, than that he should blame the remissness of Abbot, who left things in so happy a condition; and assert that Laud executed the trust of solely managing ecclesiastical affairs, "infinitely to the service and benefit" of that church which he brought to destruction? Were it altogether true, what is doubtless much exaggerated, that in 1633 very little discontent at the measures of the court had begun to prevail, it would be utterly inconsistent with experience and observation of mankind to ascribe the almost universal murmurs of 1639 to any other cause than bad government. But Hyde, attached to Laud and devoted to the king, shrunk from the conclusion that his own language would afford; and his piety made him seek in some mysterious influences of Heaven, and in a judicial infatuation of the people, for the causes of those troubles which the fixed and uniform dispensations of Providence were sufficient to explain.*

* It is curious to contrast the inconsistent and feeble apologies for the prerogative we read in Clarendon's History, with his speech before the lords, on impeaching the judges for their decision in the case of ship-money. In this he speaks very strongly as to the illegality of the proceedings of the judges in Rolls and Vassal's cases, though in his History he endeavours to insinuate that the king had

a right to tonnage and poundage; he inveighs also against the decision in Bates's case, which he vindicates in his History. Somers Tracts, iv. 302. Indeed the whole speech is irreconcilable with the picture he afterwards drew of the prosperity of England, and of the unreasonableness of discontent.

The fact is, that when he sat down in Jersey to begin his History, irritated,

It is difficult to pronounce how much longer the nation's signal forbearance would have held out, if the Scots had not precipitated themselves into rebellion. There was still a confident hope that parliament must soon or late be assembled; and it seemed equally impolitic and unconstitutional to seek redress by any violent means. The patriots, too, had just cause to lament the ambition of some whom the court's favour subdued, and the levity of many more whom its vanities allured. But the unexpected success of the tumultuous rising at Edinburgh against the service-book revealed the impotence of the English government. Destitute of money, and neither daring to ask it from a parliament nor to extort it by any fresh demand from the people, they hesitated whether to employ force or to submit to the insurgents. In the exchequer, as lord Northumberland wrote to Strafford, there was but the sum of 200*l.*; with all the means that could be devised, not above 110,000*l.* could be raised; the magazines were all unfurnished, and the people were so discontented by reason of the multitude of projects daily imposed upon them, that he saw reason to fear a great part of them would be readier to join with the Scots than to draw their swords in the king's service.* "The discontents at home," he observes some months afterwards, "do rather increase than lessen, there being no course taken to give any kind of satisfaction. The king's coffers were

disappointed, afflicted at all that had passed in the last five years, he could not bring his mind back to the state in which it had been at the meeting of the long parliament; and believed himself to have partaken far less in the sense of abuses and desire of redress than he had really done. There may, however, be reason to suspect that he had, in some respects, gone farther in the first draught of his History than appears at present; that is, I conceive, that he erased himself some passages or phrases unfavourable to the court. Let the reader judge from the following sentence in a letter to Nicholas relating to his work, dated Feb. 12. 1647: — "I will offer no excuse for the entertaining of Con, who came after Panzani, and was succeeded by Rosetti; which was a business of so much folly, or worse, that I have mentioned it in

my prolegomena (of those distempers and exorbitances in government which prepared the people to submit to the fury of this parliament), as an offence and scandal to religion, in the same degree that ship-money was to liberty and property." State Papers, ii. 336. But when we turn to the passage in the History of the Rebellion, p. 268., where this is mentioned, we do not find a single expression reflecting on the court, though the catholics themselves are censured for imprudence. This may serve to account for several of Clarendon's inconsistencies, for nothing renders an author so inconsistent with himself, as corrections made in a different temper of mind from that which actuated him in the first composition.

* Strafford Letters, ii. 186.

Scots troubles, and distress of the government.

never emptier than at this time; and to us that have the honour to be near about him, no way is yet known how he will find means either to maintain or begin a war without the help of his people.* Strafford himself dissuaded a war in such circumstances, though hardly knowing what other course to advise.† He had now awaked from the dreams of infatuated arrogance, to stand appalled at the perils of his sovereign, and his own. In the letters that passed between him and Laud after the Scots troubles had broken out, we read their hardly concealed dismay, and glimpses of “the two-handed engine at the door.” Yet pride forbade them to perceive or confess the real causes of this portentous state of affairs. They fondly laid the miscarriage of the business of Scotland on failure in the execution, and an “over-great desire to do all quietly.”‡

In this imminent necessity, the king had recourse to those who had least cause to repine at his administration. The catholic gentry, at the powerful interference of their queen, made large contributions towards the campaign of 1639. Many of them volunteered their personal service. There was, indeed, a further project, so secret that it is not mentioned, I believe, till very lately, by any historical writer. This was to procure 10,000 regular troops from Flanders, in exchange for so many recruits to be levied for Spain in England and Ireland. These troops were to be for six months in the king’s pay. Colonel Gage, a catholic, and the negotiator of this treaty, hints that the pope would probably contribute money, if he had hopes of seeing the penal laws repealed; and observes, that with such an army the king might both subdue the Scots, and at the same time keep his parliament in check, so as to make them come to

* Strafford Letters, 267.

† Id. 191.

‡ Strafford Letters, ii. 250. “It was ever clear in my judgment,” says Strafford, “that the business of Scotland, so well laid, so pleasing to God and man, had it been effected, was miserably lost in the execution; yet could never have so fatally miscarried, if there had not been a failure likewise in this direction, occasioned either by over-great desires to do all quietly without noise, by the state of

the business misrepresented, by opportunities and seasons slipped, or by some such like.” Laud answers in the same strain:—“Indeed, my lord, the business of Scotland, I can be bold to say without vanity, was well laid, and was a great service to the crown as well as to God himself. And that it should so fatally fail in the execution is a great blow as well to the power as honour of the king,” &c. He lays the blame in a great degree on lord Traquair. P. 264.

his conditions.* The treaty, however, was never concluded. Spain was far more inclined to revenge herself for the bad faith she imputed to Charles, than to lend him any assistance. Hence, when, in the next year, he offered to declare war against Holland, as soon as he should have subdued the Scots, for a loan of 1,200,000 crowns, the Spanish ambassador haughtily rejected the proposition.†

The pacification, as it was termed, of Berwick in the summer of 1639 has been represented by several historians as a measure equally ruinous and unaccountable. That it was so far ruinous, as it formed one link in the chain that dragged the king to destruction, is most evident; but it was both inevitable and easy of explanation. The treasury, whatever Clarendon and Hume may have said, was perfectly bankrupt.‡ The citizens of London, on being urged by the council for a loan, had used as much evasion as they dared.§ The writs for ship-money were executed with greater difficulty, several sheriffs willingly acquiesced in the excuses made by their counties.|| Sir Francis Seymour, brother to the earl of Hertford, and a man, like his brother, of very moderate principles, absolutely refused to pay it, though warned by the council to beware how he disputed its legality.¶ Many of

* Clarendon State Papers, ii. 19.

† Id. 84., and Appendix, xxvi.

‡ Hume says that Charles had an accumulated treasure of 200,000*l.* at this time. I know not his authority for the particular sum: but Clarendon pretends that "the revenue had been so well improved, and so wisely managed, that there was money in the exchequer proportionable for the undertaking any noble enterprise." This is, at the best, strangely hyperbolic; but, in fact, there was an absolute want of every thing. Ship-money would have been a still more crying sin than it was, if the produce had gone beyond the demands of the state; nor was this ever imputed to the court. This is one of lord Clarendon's capital mistakes; for it leads him to speak of the treaty of Berwick as a measure that might have been avoided, and even, in one place, to ascribe it to the king's excessive lenity and aversion to shedding blood; wherein a herd of superficial writers have followed him.

§ Clarendon State Papers, ii. 46. 54.

Lest it should seem extraordinary that I sometimes contradict lord Clarendon on the authority of his own collection of papers, it may be necessary to apprise the reader, that none of these, anterior to the civil war, had come in his possession till he had written this part of his History.

|| The grand jury of Northampton presented ship-money as a grievance. But the privy-council wrote to the sheriff, that they would not admit his affected excuses; and if he neglected to execute the writ, a quick and exemplary reparation would be required of him. Rushw. Abr. iii. 93.

¶ Rushw. Abr. iii. 47. The king writes in the margin of Windebank's letter, informing him of Seymour's refusal. — "You must needs make him an example, not only by distress, but, if it be possible, an information in some court, as Mr. Attorney shall advise."

the Yorkshire gentry, headed by sir Marmaduke Langdale, combined to refuse its payment.* It was impossible to rely again on catholic subscriptions, which the court of Rome, as I have mentioned above, instigated perhaps by that of Madrid, had already tried to restrain. The Scots were enthusiastic, nearly unanimous, and entire masters of their country. The English nobility, in general, detested the archbishop, to whose passion they ascribed the whole mischief, and feared to see the king become despotic in Scotland. If the terms of Charles's treaty with his revolted subjects were unsatisfactory and indefinite, enormous in concession, and yet affording a pretext for new encroachments, this is no more than the common lot of the weaker side.

There was one possible, though not under all the circumstances very likely, method of obtaining the sinews of war; the convocation of parliament. This many, at least, of the king's advisers appear to have long desired, could they but have vanquished his obstinate reluctance. This is an important observation: Charles, and he perhaps alone, unless we reckon the queen, seems to have taken a resolution of superseding absolutely and for ever the legal constitution of England. The judges, the peers, lord Strafford, nay, if we believe his dying speech, the primate himself, retained enough of respect for the ancient laws, to desire that parliaments should be summoned, whenever they might be expected to second the views of the monarch. They felt that the new scheme of governing by proclamations and writs of ship-money could not, and ought not to be permanent in England. The king reasoned more royally, and indeed much better. He well perceived that it was vain to hope for another parliament so constituted as those under the Tudors. He was ashamed (and that pernicious woman at his side would not fail to encourage the sentiment) that his brothers of France and Spain should have achieved a work, which the sovereign of England, though called an absolute king by his courtiers, had scarcely begun. All mention therefore of calling parliament grated on his ear. The declaration published at the dissolution of the last, that he should account it presumption

* Strafford Letters, ii. 308.

for any to prescribe a time to him for calling parliaments, was meant to extend even to his own counsellors. He rated severely lord-keeper Coventry for a suggestion of this kind.* He came with much reluctance into Wentworth's proposal of summoning one in Ireland, though the superior control of the crown over parliaments in that kingdom was pointed out to him. "The king," says Cottington, "at the end of 1638, will not hear of a parliament; and he is told by a committee of learned men, that there is no other way."† This repugnance to meet his people, and his inability to carry on the war by any other methods, produced the ignominious pacification at Berwick. But, as the Scots, grown bolder by success, had after this treaty almost thrown off all subjection, and the renewal of the war, or loss of the sovereignty over that kingdom, appeared necessary alternatives, overpowered by the concurrent advice of his council, and especially of Strafford, he issued writs for that which met in April, 1640.‡ They told him that, making trial once more of the ancient and ordinary way, he would leave his people without excuse, if that should fail; and have wherewithal to justify himself to God and the world, if he should be forced contrary to his inclinations to use extraordinary means, rather than through the peevishness of some factious spirit to suffer his state and government to be lost. §

It has been universally admitted that the parliament which met on the 13th of April, 1640, was as favourably disposed towards the king's service, and as little influenced by their many wrongs, as any man of ordinary judgment could expect. || But though cautiously abstaining from

* "The king hath so rattled my lord-keeper, that he is now the most pliable man in England, and all thoughts of parliaments are quite out of his pate." Cottington to Strafford, 29th Oct. 1633. vol. i. p. 141.

† Vol. ii. p. 246. "So by this time," says a powerful writer, "all thoughts of ever having a parliament again was quite banished; so many oppressions had been set on foot, so many illegal actions done, that the only way to justify the mischiefs already done was to do that one greater; to take away the means which were ordained to redress them, the lawful go-

vernment of England by parliaments." May, History of Parliament, p. 11.

‡ Sidney Papers, ii. 623. Clarendon Papers, ii. 81.

§ Id. Ibid. The attentive reader will not fail to observe, that this is the identical language of the famous advice imputed to Strafford, though used on another occasion.

|| May. Clarendon. The latter says, upon the dissolution of this parliament:—"It could never be hoped that so many sober and dispassionate men would ever meet again in that place, or fewer who brought ill purposes with them."

any intemperance, so much as to reprove a member for calling ship-money an abomination (no very outrageous expression), they sufficiently manifested a determination not to leave their grievances unredressed. Petitions against the manifold abuses in church and state covered their table; Pym, Rudyard, Waller, lord Digby, and others more conspicuous afterwards, excited them by vigorous speeches; they appointed a committee to confer with the lords, according to some precedents of the last reign, on a long list of grievances, divided into ecclesiastical innovations, infringements of the propriety of goods, and breaches of the privilege of parliament. They voted a request of the peers, who, Clarendon says, were more entirely at the king's disposal, that they would begin with the business of supply, and not proceed to debate on grievances till afterwards, to be a high breach of privilege.* There is not the smallest reason to doubt that they would have insisted on redress in all those particulars, with at least as much zeal as any former parliament, and that the king, after obtaining his subsidies, would have put an end to their remonstrances, as he had done before.† In order to obtain the supply he demanded, namely, twelve subsidies to be paid in

This, like so many other passages in the noble historian, is calculated rather to mislead the reader. All the principal men who headed the popular party in the long parliament were members of this; and the whole body, so far as their subsequent conduct shows, was not at all constituted of different elements from the rest; for I find, by comparison of the list of this parliament, in Nalson's Collections, with that of the long parliament, in the Parliamentary History, that eighty, at most, who had not sat in the former, took the covenant; and that seventy-three, in the same circumstances, sat in the king's convention at Oxford. The difference, therefore, was not so much in the men, as in the times; the bad administration and had success of 1640, as well as the dissolution of the short parliament, having greatly aggravated the public discontents.

The court had never augured well of this parliament. "The elections," as lord Northumberland writes to lord Leicester at Paris, (Sidney Papers, ii. 641.)

"that are generally made of knights and burgesses in this kingdom, give us cause to fear that the parliament will not sit long; for such as have dependence upon the court are in divers places refused, and the most refractory persons chosen."

There are some strange things said by Clarendon of the ignorance of the commons as to the value of twelve subsidies, which Hume, who loves to depreciate the knowledge of former times, implicitly copies. But they cannot be true of that enlightened body, whatever blunders one or two individuals might commit. The rate at which every man's estate was assessed to a subsidy was perfectly notorious; and the burden of twelve subsidies to be paid in three years, was more than the charge of ship-money they had been enduring.

* Journals. Parl. Hist. Nalson. Clarendon.

† The king had long before said, that "parliaments are like cats: they grow curst with age."

three years, which, though unusual, was certainly not beyond his exigencies, he offered to release his claim to ship-money, in any manner they should point out. But this the commons indignantly repelled. They deemed ship-money the great crime of his administration, and the judgment against Mr. Hampden, the infamy of those who pronounced it. Till that judgment should be annulled, and those judges punished, the national liberties must be as precarious as ever. Even if they could hear of a compromise with so flagrant a breach of the constitution, and of purchasing their undoubted rights, the doctrine asserted in Mr. Hampden's case by the crown lawyers, and adopted by some of the judges, rendered all stipulations nugatory. The right of taxation had been claimed as an absolute prerogative so inherent in the crown, that no act of parliament could take it away. All former statutes, down to the petition of right, had been prostrated at the foot of the throne; by what new compact were the present parliament to give a sanctity more inviolable to their own? *

It will be in the recollection of my readers, that while the commons were deliberating whether to promise any supply before the redress of grievances, and in what measure, sir Henry Vane, the secretary, told them, that the king would accept nothing less than the twelve subsidies he had required; in consequence of which the parliament was dissolved next day. Clarendon, followed by several others, has imputed treachery in this to Vane, and told us that the king regretted so much what he had done, that he wished, had it been practicable, to recall the parliament after its dissolution. This is confirmed, as to Vane, by the queen herself, in that interesting narrative which she communicated to Madame de Motteville.† Were it not for such authorities, seemingly inde-

* See Mr. Waller's speech on Crawley's impeachment. Nalson, ii. 358.

† Mem. de Motteville, i. 238—278. P. Orleans, *Rév. de l'Angleterre*, tome iii., says the same of Vane; but his testimony may resolve itself into the former. It is to be observed, that ship-money which the king offered to relinquish, brought in 200,000*l.* a year, and that the proposed twelve subsidies would have amounted, at most, to 840,000*l.*, to

be paid in three years. Is it surprising that, when the house displayed an intention not to grant the whole of this, as appears by Clarendon's own story, the king and his advisers should have thought it better to break off altogether? I see no reason for imputing treachery to Vane, even if he did not act merely by the king's direction. Clarendon says, he and Herbert persuaded the king that the house "would pass such a vote against

pendent of each other, yet entirely tallying, I should have deemed it more probable that Vane, with whom the solicitor-general Herbert had concurred, acted solely by the king's command. Charles, who feared and hated all parliaments, had not acquiesced in the scheme of calling the present, till there was no other alternative; an insufficient supply would have left him in a more difficult situation than before, as to the use of those extraordinary means, as they were called, which his disposition led him to prefer: the intention to assail parts of his administration more dear to him than ship-money, and especially the ecclesiastical novelties, was apparent. Nor can we easily give him credit for this alleged regret at the step he had taken, when we read the declaration he put forth, charging the commons with entering on examination of his government in an insolent and audacious manner, traducing his administration of justice, rendering odious his officers and ministers of state, and introducing a way of bargaining and contracting with the king, as if nothing ought to be given him by them but what he should purchase, either by quitting somewhat of his royal prerogative, or by diminishing and lessening his revenue.* The unconstitutional practice of committing to prison some of the most prominent members, and searching their houses for papers, was renewed. And having broken loose again from the restraints of law, the king's sanguine temper looked to

ship-money as would blast that revenue and other branches of the receipt; which others believed they would not have the confidence to have attempted, and very few that they would have had the credit to have compassed." P. 245. The word *they* is as inaccurate, as is commonly the case with this writer's language. But does he mean that the house would not have passed a vote against ship-money? They had already entered on the subject, and sent for records; and he admits himself, that they were resolute against granting subsidies as a consideration for the abandonment of that grievance. Besides, Hyde himself not only inveighs most severely in his History against ship-money, but was himself one of the managers of the impeachment against six judges for their conduct in regard to it; and his speech before the house of lords

on that occasion is extant. Rushw. Abr. ii. 477. But this is merely one instance of his eternal inconsistency.

"It seems that the lord-lieutenant of Ireland wished from the beginning that matters should thus be driven to the utmost. For he wished the king to insist on a grant of money, before any progress should be made in the removal of the abuses which had grown up, a proceeding at variance with that of the preceding parliament. No less did he vote for the violent measure of demanding twelve subsidies, only five at the utmost having been previously granted. He either entertained the view of thus gaining consideration with the king, or of moving him to an alliance with the Spaniards, in whose confidence he is." Montreuil's dispatches, in Raumer, ii. 308.

* Parl. Hist. Rushworth. Nalson.

such a triumph over the Scots in the coming campaign, as no prudent man could think probable.

This dissolution of parliament in May, 1640, appears to have been a very fatal crisis for the king's popularity. Those who, with the loyalty natural to Englishmen, had willingly ascribed his previous misgovernment to evil counsels, could not any longer avoid perceiving his mortal antipathy to any parliament that should not be as subservient as the cortes of Castile. The necessity of some great change became the common theme. "It is impossible," says lord Northumberland, at that time a courtier, "that things can long continue in the condition they are now in; so general a defection in this kingdom hath not been known in the memory of any!"* Several of those who thought most deeply on public affairs now entered into a private communication with the Scots insurgents. It seems probable from the well-known story of lord Saville's forged letter, that there had been very little connexion of this kind until the present summer.† And we may conjecture that during this ominous interval, those great projects, which were displayed in the next session, acquired consistence and ripeness by secret discussions in the houses of the earl of Bedford and lord Say. The king meanwhile experienced aggravated misfortune and ignominy in his military operations. Ship-money indeed was enforced with greater rigour than before, several sheriffs and the lord mayor of London being prosecuted in the star-chamber for neglecting to levy it. Some citizens were imprisoned for refusing a loan. A new imposition was laid on the counties, under the name of coat-and-conduct-money, for clothing and defraying the travelling charges of the new levies.‡ A state of actual invasion, the Scots having passed the Tweed, might excuse some of these irregularities, if it could have been forgotten that the war itself was produced by the king's im-

* June 4. 1640. Sidney Papers, ii. 654.

† A late writer has spoken of this celebrated letter, as resting on very questionable authority. Lingard, x. 43. It is, however, mentioned as a known fact by several contemporary writers, and particularly by the earl of Manchester, in

his unpublished Memorials, from which Nalson has made extracts; and who could neither be mistaken, nor have any apparent motive, in this private narrative, to deceive. Nalson, ii. 427.

‡ Rymer, xx. 432. Rushworth, Abr. iii. 163, &c. Nalson, i. 389, &c. Raumer, ii. 318.

policy, and if the nation had not been prone to see friends and deliverers rather than enemies in the Scottish army. They were, at the best indeed, troublesome and expensive guests to the northern counties which they occupied; but the cost of their visit was justly laid at the king's door. Various arbitrary resources having been suggested in the council, and abandoned as inefficient and impracticable, such as the seizing the merchants' bullion in the mint, or issuing a debased coin; the unhappy king adopted the hopeless scheme of convening a great council of all the peers at York, as the only alternative of a parliament.* It was fore-
Council of York.
 seen that this assembly would only advise the king to meet his people in a legal way. The public voice could no longer be suppressed. The citizens of London presented a petition to the king, complaining of grievances, and asking for a parliament. This was speedily followed by one signed by twelve peers of popular character.† The lords assembled at York almost unanimously concurred in the same advice, to which the king, after some hesi-
Convocation of the long parliament.
 tation, gave his assent. They had more difficulty in bringing about a settlement with the Scots: the English army, disaffected and undisciplined, had already made an inglorious retreat; and even Strafford, though passionately against a treaty, did not venture to advise an engagement.‡ The majority of the peers however over-ruled all opposition; and

* Lord Clarendon seems not to have well understood the secret of this Great Council, and supposes it to have been suggested by those who wished for a parliament; whereas the Hardwicke Papers show the contrary. P. 116. & 118. His notions about the facility of composing the public discontent are strangely mistaken.—“Without doubt,” he says, “that fire at that time, which did shortly after burn the whole kingdom, might have been covered under a bushel.” But the whole of this introductory book of his History abounds with proofs that he had partly forgotten, partly never known, the state of England before the opening of the long parliament. In fact the disaffection, or at least discontent, had proceeded so far in 1640, that no human skill could have averted a great part of

the consequences. But Clarendon's partiality to the king, and to some of his advisers, leads him to see in every event particular causes, or an over-ruling destiny, rather than the sure operation of impolicy and misgovernment.

† These were Hertford, Bedford, Essex, Warwick, Paget, Wharton, Say, Brook, Kimbolton, Saville, Mulgrave, Bolingbroke. Nalson, 436, 437.

‡ This appears from the minutes of the council (Hardwicke Papers), and contradicts the common opinion. Lord Conway's disaster at Newburn was by no means surprising; the English troops, who had been lately pressed into service, were perfectly mutinous; some regiments had risen and even murdered their officers on the road. Rymer, 414. 425.

in the alarming posture of his affairs, Charles had no resource but the dishonourable pacification of Ripon.* Anticipating the desertion of some who had partaken in his councils, and conscious that others would more stand in need of his support than be capable of affording any, he awaited in fearful suspense the meeting of parliament.

* The Hardwicke State Papers, ii. 168, &c., contain much interesting information about the council of York. See also the Clarendon Collection for some curious letters, with marginal notes by the king. In one of these he says:—“The mayor now, with the city, are to be flattered, not threatened.” P. 123. Windebank writes to him in another, (Oct. 16. 1640,) that the clerk of the lower house of parliament had come to demand the journal book of the last assembly and some petitions, which, by the king's command, he (Windebank) had taken into his custody, and requests to know if they should be given up. Charles writes on the margin:—“Ay, by all means.” P. 132.

CHAPTER IX.

FROM THE MEETING OF THE LONG PARLIAMENT TO THE
BEGINNING OF THE CIVIL WAR.

Character of Long Parliament — Its salutary Measures — Triennial Bill — Other beneficial Laws — Observations — Impeachment of Strafford — Discussion of its Justice — Act against Dissolution of Parliament without its Consent — Innovations meditated in the Church — Schism in the Constitutional Party — Remonstrance of November 1641 — Suspicions of the King's Sincerity — Question of the Militia — Historical Sketch of Military Force in England — Incroachments of the Parliament — Nineteen Propositions — Discussion of the respective Claims of the two Parties to Support — Faults of both.

WE are now arrived at that momentous period in our history, which no Englishman ever regards without interest, and few without prejudice; the period, from which the factions of modern times trace their divergence; which, after the lapse of almost two centuries, still calls forth the warm emotions of party-spirit, and affords a test of political principles; at that famous parliament, the theme of so much eulogy and of so much reproach; that synod of inflexible patriots with some, that conclave of traitorous rebels with others; that assembly, we may more truly say, of unequal virtue and chequered fame, which, after having acquired a higher claim to our gratitude, and effected more for our liberties, than any that had gone before or that has followed, ended by subverting the constitution it had strengthened, and by sinking in its decrepitude, and amidst public contempt, beneath a usurper it had blindly elevated to power. It seems agreeable to our plan, first to bring together those admirable provisions by which this parliament restored and consolidated the shattered fabric of our constitution, before we advert to its measures of more equivocal benefit, or its fatal errors; an arrangement not very remote from that of mere chronology, since the former were chiefly

Character of
the long par-
liament.

Its salutary
measures.

completed within the first nine months of its session, before the king's journey to Scotland in the summer of 1641.

It must, I think, be admitted by every one who concurs in the representation given in this work, and especially in the last chapter, of the practical state of our government, that some new securities of a more powerful efficacy than any which the existing laws held forth were absolutely indispensable for the preservation of English liberties and privileges. These, however sacred in name, however venerable by prescription, had been so repeatedly transgressed, that to obtain their confirmation, as had been done in the petition of right, and that as the price of large subsidies, would but expose the commons to the secret derision of the court. The king, by levying ship-money in contravention of his assent to that petition, and by other marks of insincerity, had given too just cause for suspicion that, though very conscientious in his way, he had a fund of casuistry at command that would always release him from any obligation to respect the laws. Again, to punish delinquent ministers was a necessary piece of justice; but who could expect that any such retribution would deter ambitious and intrepid men from the splendid lures of power? Whoever, therefore, came to the parliament of November 1640, with serious and steady purposes for the public weal, and most, I believe, except mere courtiers, entertained such purposes according to the measure of their capacities and energies, must have looked to some essential change in the balance of government, some important limitations of royal authority, as the primary object of his attendance.

Nothing could be more obvious than that the excesses of the late unhappy times had chiefly originated in the long intermission of parliaments. No lawyer would have dared to suggest ship-money with the terrors of a house of commons before his eyes. But the king's known resolution to govern without parliaments gave bad men more confidence of impunity. This resolution was not likely to be shaken by the unpalatable chastisement of his servants and redress of abuses, on which the present parliament was about to enter. A statute as old as the reign of Edward III. had already provided, that parliaments should be held "every year, or

oftener, if need be." * But this enactment had in no age been respected. It was certain that in the present temper of the administration, a law simply enacting that the interval between parliaments should never exceed three years, would prove wholly ineffectual. In the famous act therefore for triennial parliaments, the first fruits of the commons' laudable zeal for reformation, such provisions were introduced as grated harshly on the ears of those who valued the royal prerogative above the liberties of the subject, but without which the act itself might have been dispensed with. Every parliament was to be ipso facto dissolved at the expiration of three years from the first day of its session, unless actually sitting at the time, and, in that case, at its first adjournment or prorogation. The chancellor or keeper of the great seal was to be sworn to issue writs for a new parliament within three years from the dissolution of the last, under pain of disability to hold his office, and further punishment; in case of his failure to comply with this provision, the peers were enabled and enjoined to meet at Westminster, and to issue writs to the sheriffs; the sheriffs themselves, should the peers not fulfil this duty, were to cause elections to be duly made; and, in their default, at a prescribed time the electors themselves were to proceed to choose their representatives. No future parliament was to be dissolved or adjourned without its own consent, in less than fifty days from the opening of its session. It is more reasonable to doubt whether even these provisions would have afforded an adequate security for the periodical assembling of parliament, whether the supine and courtier-like character of the peers, the want of concert and energy in the electors themselves, would not have enabled the government to set the statute at nought, than to censure them as derogatory to the reasonable prerogative and dignity of the crown. To this important bill the king, with some apparent unwillingness, gave his assent.† It effected, indeed, a strange revolution in the system of his government. The nation set a due value on this admirable statute, the passing

* 4 E. 3. c. 14. It appears by the Journals, 30th Dec. 1640, that the Triennial Bill was originally for the yearly holding of parliaments. It seems to have been altered in the committee; at least we find the title changed, Jan. 19.

† Parl. Hist. 702. 717. Stat. 16 Car. 1. c. 1.

of which they welcomed with bonfires and every mark of joy.

After laying this solid foundation for the maintenance of such laws as they might deem necessary, the ^{Beneficial laws.} house of commons proceeded to cut away the more flagrant and recent usurpations of the crown. They passed a bill declaring ship-money illegal, and annulling the judgment of the exchequer chamber against Mr. Hampden.* They put an end to another contested prerogative, which, though incapable of vindication on any legal authority, had more support from a usage of fourscore years, the levying of customs on merchandize. In an act granting the king tonnage and poundage, it is "declared and enacted that it is, and hath been, the ancient right of the subjects of this realm, that no subsidy, custom, impost, or other charge whatsoever, ought, or may be laid or imposed upon any merchandize exported or imported by subjects, denizens or aliens, without common consent in parliament."† This is the last statute that has been found necessary to restrain the crown from arbitrary taxation, and may be deemed the complement of those numerous provisions which the virtue of ancient times had extorted from the first and third Edwards.

Yet these acts were hardly so indispensable, nor wrought ^{Observations.} so essential a change in the character of our monarchy, as that which abolished the star-chamber. Though it was evident how little the statute of Henry VII. could bear out that overweening power it had since arrogated, though the statute-book and parliamentary records of the best ages were irrefragable testimonies against its usurpations; yet the course of precedents under the Tudor and Stuart families was so invariable that nothing more was at first intended than a bill to regulate that tribunal. A suggestion, thrown out, as Clarendon informs us, by one not at all connected with the more ardent reformers, led to the

* C. 14.

† C. 8. The king had professed, in lord-keeper Finch's speech on opening the parliament of April, 1640, that he had only taken tonnage and poundage de facto, without claiming it as a right, and had caused a bill to be prepared, granting it

to him from the commencement of his reign. Parl. Hist. 533. See preface to Hargrave's Collection of Law Tracts, p. 195., and Rymer, xx. 118., for what Charles did with respect to impositions on merchandize. The long parliament called the farmers to account.

substitution of a bill for taking it altogether away.* This abrogates all exercise of jurisdiction, properly so called, whether of a civil or criminal nature, by the privy-council, as well as the star-chamber. The power of examining and committing persons charged with offences is by no means taken away; but, with a retrospect to the language held by the judges and crown lawyers in some cases that have been mentioned, it is enacted, that every person committed by the council or any of them, or by the king's special command, may have his writ of habeas corpus; in the return to which, the officer in whose custody he is shall certify the true cause of his commitment, which the court, from whence the writ has issued, shall within three days examine, in order to see whether the cause thus certified appear to be just and legal or not, and do justice accordingly by delivering, bailing, or remanding the party. Thus fell the great court of star-chamber; and with it the whole irregular and arbitrary practice of government, that had for several centuries so thwarted the operation and obscured the light of our free constitution, that many have been prone to deny the existence of those liberties which they found so often infringed, and to mistake the violations of law for its standard.

With the court of star-chamber perished that of the high-commission, a younger birth of tyranny, but perhaps even more hateful, from the peculiar irritation of the times. It had stretched its authority beyond the tenor of the act of Elizabeth, whereby it had been created, and which limits its competence to the correction of ecclesiastical offences according to the known boundaries of ecclesiastical jurisdiction, assuming a right, not only to imprison, but to fine the laity, which was generally reckoned illegal.† The statute repealing

* 16 Car. 1. c. 10. The abolition of the star-chamber was first moved, March 5th, 1641, by lord Andover, in the house of lords, to which he had been called by writ. Both he and his father, the earl of Berkshire, were zealous royalists during the subsequent war. Parl. Hist. 722. But he is not, I presume, the person to whom Clarendon alludes. This author insinuates that the act for taking away the star-chamber passed both houses without sufficient deliberation, and that the

peers did not venture to make any opposition; whereas there were two conferences between the houses on the subject, and several amendments and provisos made by the lords, and agreed to by the commons. Scarce any bill, during this session, received so much attention. The king made some difficulty about assenting to the bills taking away the star-chamber and high-commission courts, but soon gave way. Parl. Hist. 853.

† Coke has strongly argued the illegal-

that of Elizabeth, under which the high-commission existed, proceeds to take away from the ecclesiastical courts all power of inflicting temporal penalties, in terms so large, and doubtless not inadvertently employed, as to render their jurisdiction nugatory. This part of the act was repealed after the restoration; and like the other measures of that time, with little care to prevent the recurrence of those abuses which had provoked its enactments.*

A single clause in the act that abolished the star-chamber was sufficient to annihilate the arbitrary jurisdiction of several other irregular tribunals, grown out of the despotic temper of the Tudor dynasty:—the court of the president and council of the North, long obnoxious to the common lawyers, and lately the sphere of Strafford's tyrannical arrogance†; the court of the president and council of Wales and the Welsh marches, which had pretended, as before mentioned, to a jurisdiction over the adjacent counties of Salop, Worcester, Hereford, and Gloucester; with those of the duchy of Lancaster and county palatine of Chester. These, under various pretexts, had usurped so extensive a cognizance as to deprive one third of England of the privileges of the common law. The jurisdiction, however, of the two latter courts in matters touching the king's private estate has not been taken away by the statute. Another act afforded remedy for some abuses in the stannary courts of Cornwall and Devon.‡ Others retrenched the vexatious prerogative of purveyance, and took away that of compulsory knighthood.§ And one of greater importance put an end to a fruitful source of oppression and complaint, by determining for ever the extent of royal forests, according to their boundaries in the twentieth year of James, annulling all

ity of fining and imprisoning by the high commission; 4th Inst. 324. And he omitted this power in a commission he drew, "leaving us," says bishop Williams, "nothing but the old rusty sword of the church, excommunication." Cabala, p. 103. Care was taken to restore this authority in the reign of Charles.

* 16 Car. 1. c. 11.

† Hyde distinguished himself as chairman of the committee which brought in the bill for abolishing the court of York.

In his speech on presenting this to the lords, he alludes to the tyranny of Strafford, not rudely, but in a style hardly consistent with that of his History. Parl. Hist. 766. The editors of this, however, softened a little what he did say in one or two places; as where he uses the word *tyranny*, in speaking of lord Mountnorris's case.

‡ C. 15.

§ C. 19, 20.

the perambulations and inquests by which they had subsequently been enlarged.*

I must here reckon, among the beneficial acts of this parliament, one that passed some months afterwards, after the king's return from Scotland, and perhaps the only measure of that second period on which we can bestow unmixed commendation. The delays and uncertainties of raising troops by voluntary enlistment, to which the temper of the English nation, pacific though intrepid, and impatient of the strict control of martial law, gave small encouragement, had led to the usage of pressing soldiers for service, whether in Ireland, or on foreign expeditions. This prerogative seeming dangerous and oppressive, as well as of dubious legality, it is recited in the preamble of an act empowering the king to levy troops by this compulsory method for the special exigency of the Irish rebellion, that "by the laws of this realm, none of his majesty's subjects ought to be impressed or compelled to go out of his country to serve as a soldier in the wars, except in case of necessity of the sudden coming in of strange enemies into the kingdom, or except they be otherwise bound by the tenure of their lands or possessions."† The king, in a speech from the throne, adverted to this bill while passing through the houses, as an invasion of his prerogative. This notice of a parliamentary proceeding the commons resented as a breach of their privilege; and having obtained the consent of the lords to a joint remonstrance, the king, who was in no state to maintain his objection, gave his assent to the bill. In the reigns of Elizabeth and James, we have seen frequent instances of the crown's interference as to matters debated in parliament. But from the time of the long parliament, the law of privilege, in this respect, has stood on an unshaken basis.‡

These are the principal statutes which we owe to this parliament. They give occasion to two remarks of no slight importance. In the first place, it will appear, on comparing them with our ancient laws and history, that they made scarce

* C. 16.

† C. 28.

‡ Journals, 16th Dec. Parl. Hist. 968. Nalson, 750. It is remarkable that Clarendon, who is sufficiently jealous of all

that he thought encroachment in the commons, does not censure their explicit assertion of this privilege. He lays the blame of the king's interference on St. John's advice; which is very improbable.

any material change in our constitution such as it had been established and recognised under the house of Plantagenet : the law for triennial parliaments even receded from those unrepealed provisions of the reign of Edward III., that they should be assembled annually. The court of Star-chamber, if it could be said to have a legal jurisdiction at all, which by that name it had not, traced it only to the Tudor period ; its recent excesses were diametrically opposed to the existing laws, and the protestations of ancient parliaments. The court of ecclesiastical commission was an off-set of the royal supremacy, established at the Reformation. The impositions on merchandize were both plainly illegal, and of no long usage. That of ship-money was flagrantly, and by universal confession, a strain of arbitrary power without pretext of right. Thus, in by far the greater part of the enactments of 1641, the monarchy lost nothing that it had anciently possessed ; and the balance of our constitution might seem rather to have been restored to its former equipoise, than to have undergone any fresh change.

But those common liberties of England which our forefathers had, with such commendable perseverance, extorted from the grasp of power, though by no means so merely theoretical and nugatory in effect as some would insinuate, were yet very precarious in the best periods, neither well defined, nor exempt from anomalous exceptions, or from occasional infringements. Some of them, such as the statute for annual sessions of parliament, had gone into disuse, Those that were most evident could not be enforced ; and the new tribunals that, whether by law or usurpation, had reared their heads over the people, had made almost all public and personal rights dependent on their arbitrary will. It was necessary, therefore, to infuse new blood into the languid frame, and so to renovate our ancient constitution that the present era should seem almost a new birth of liberty. Such was the aim, especially, of those provisions which placed the return of parliaments at fixed intervals, beyond the power of the crown to elude. It was hoped that by their means, so long as a sense of public spirit should exist in the nation (and beyond that time it is vain to think of liberty), no prince, however able and ambitious, could be free from restraint for

more than three years ; an interval too short for the completion of arbitrary projects, and which few ministers would venture to employ in such a manner as might expose them to the wrath of parliament.

It is to be observed, in the second place, that by these salutary restrictions and some new retrenchments of pernicious or abused prerogative, the long parliament formed our constitution such nearly as it now exists. Laws of great importance were doubtless enacted in subsequent times, particularly at the Revolution ; but none of them, perhaps, were strictly necessary for the preservation of our civil and political privileges ; and it is rather from 1641 than any other epoch, that we may date their full legal establishment. That single statute which abolished the star-chamber, gave every man a security, which no other enactments could have afforded, and which no government could essentially impair. Though the reigns of the two latter Stuarts, accordingly, are justly obnoxious, and were marked by several illegal measures, yet, whether we consider the number and magnitude of their transgressions of law, or the practical oppression of their government, these princes fell very short of the despotism that had been exercised, either under the Tudors, or the two first of their own family.

From this survey of the good works of the long parliament, we must turn our eyes with equal indifference to the opposite picture of its errors and offences ; faults which, though the mischiefs they produced were chiefly temporary, have yet served to obliterate from the recollection of too many the permanent blessings we have inherited through its exertions. In reflecting on the events which so soon clouded a scene of glory, we ought to learn the dangers that attend all revolutionary crises, however justifiable or necessary ; and that, even when posterity may have cause to rejoice in the ultimate result, the existing generation are seldom compensated for their present loss of tranquillity. The very enemies of this parliament confess, that they met in November 1640 with almost unmingled zeal for the public good, and with loyal attachment to the crown. They were the chosen representatives of the commons of England, in an age more eminent for steady and scrupulous conscientiousness in private life,

than any, perhaps, that had gone before or has followed; not the demagogues or adventurers of transient popularity, but men well-born and wealthy, than whom there could perhaps never be assembled five hundred more adequate to redress the grievances, or to fix the laws of a great nation. But they were misled by the excess of two passions, both just and natural in the circumstances wherein they found themselves, resentment and distrust; passions eminently contagious, and irresistible when they seize on the zeal and credulity of a popular assembly. The one betrayed them into a measure certainly severe and sanguinary, and in the eyes of posterity exposed to greater reproach than it deserved, the attainder of lord Strafford, and some other proceedings of too much violence; the other gave a colour to all their resolutions, and aggravated their differences with the king till there remained no other arbitrator but the sword.

Those who know the conduct and character of the earl of Impeachment of Strafford. Strafford, his abuse of power in the North, his far more outrageous transgressions in Ireland, his dangerous influence over the king's counsels, cannot hesitate to admit, if indeed they profess any regard to the constitution of this kingdom, that to bring so great a delinquent to justice according to the known process of law was among the primary duties of the new parliament. It was that which all, with scarce an exception but among his own creatures (for most of the court were openly or in secret his enemies*), ardently desired; yet which the king's favour and his own commanding genius must have rendered a doubtful enterprise. He came to London, not unconscious of the danger, by his master's direct injunctions. The first days of the session were critical; and any vacillation or delay in the commons might probably have given time for some strong exer-

* "A greater and more universal hatred," says Northumberland in a letter to Leicester, Nov. 13. 1640. (Sidney Papers, ii. 663.) "was never contracted by any person than he has drawn upon himself. He is not at all dejected, but believes confidently to clear himself in the opinion of all equal and indifferent-minded hearers, when he shall come to make his defence. The king is in such a

straight that I do not know how he will possibly avoid, without endangering the loss of the whole kingdom, the giving way to the remove of divers persons, as well as other things that will be demanded by the parliament. After they have done questioning some of the great ones, they intend to endeavour the displacing of Jermyn, Newcastle, and Walter Montague."

tion of power to frustrate their designs. We must therefore consider the bold suggestion of Pym, to carry up to the lords an impeachment for high treason against Strafford, not only as a master-stroke of that policy which is fittest for revolutions, but as justifiable by the circumstances wherein they stood. Nothing short of a commitment to the Tower would have broken the spell that so many years of arbitrary dominion had been working. It was dissipated in the instant that the people saw him in the hands of the usher of the black rod; and with his power fell also that of his master; so that Charles, from the very hour of Strafford's impeachment, never once ventured to resume the high tone of command congenial to his disposition, or to speak to the commons but as one complaining of a superior force.*

* Clarendon, i. 305. No one opposed the resolution to impeach the lord lieutenant, save that Falkland suggested the appointment of a committee, as more suitable to the gravity of their proceedings. But Pym frankly answered that this would ruin all; since Strafford would doubtless obtain a dissolution of the parliament, unless they could shut him out from access to the king.

The Letters of Robert Baillie, Principal of the University of Glasgow, (two vols. Edinburgh, 1775,) abound with curious information as to this period, and for several subsequent years. Baillie was one of the Scots commissioners deputed to London at the end of 1640, and took an active share in promoting the destruction of episcopacy. His correspondence breathes all the narrow and exclusive bigotry of the presbyterian school. The following passage is so interesting that, notwithstanding its length, it may find a place here:—

“The lieutenant of Ireland came but on Monday to town late, on Tuesday rested, on Wednesday came to parliament, but ere night he was caged. Intolerable pride and oppression cries to Heaven for a vengeance. The lower house closed their doors; the speaker kept the keys till his accusation was concluded. Thereafter Mr. Pym went up, with a number at his back, to the higher house; and, in a pretty short speech, d'd, in the name of the lower house, and in the name of the commons of all England, accuse Thomas

earl of Strafford, lord lieutenant of Ireland, of high treason; and required his person to be arrested till probation might be heard; so Mr. Pym and his back were removed. The lords began to consult on that strange and unexpected motion. The word goes in haste to the lord lieutenant, where he was with the king; with speed he comes to the house; he calls rudely at the door; James Maxwell, keeper of the black rod, opens: his lordship, with a proud glooming countenance, makes towards his place at the board head: but at once many bid him void the house; so he is forced, in confusion, to go to the door till he was called. After consultation, being called in, he stands, but is commanded to kneel, and on his knees to hear the sentence. Being on his knees, he is delivered to the keeper of the black rod, to be prisoner till he was cleared of these crimes the house of commons had charged him with. He offered to speak, but was commanded to be gone without a word. In the outer room, James Maxwell required him, as prisoner, to deliver his sword. When he had got it, he cries with a loud voice, for his man to carry my lord lieutenant's sword. This done, he makes through a number of people towards his coach; all gazing, no man capping to him, before whom, that morning, the greatest of England would have stood discovered, all crying, ‘What is the matter?’ He said, ‘A small matter, I warrant you.’ They replied, ‘Yes, indeed, high treason is a small matter.’

The articles of Strafford's impeachment relate principally to his conduct in Ireland. For though he had begun to act with violence in the court of York, as lord-president of the North, and was charged with having procured a commission investing him with exorbitant power, yet he had too soon left that sphere of dominion for the lieutenancy of Ireland, to give any wide scope for prosecution. But in Ireland it was sufficiently proved that he had arrogated an authority beyond what the crown had ever lawfully enjoyed, and even beyond the example of former viceroys of that island, where the disordered state of society, the frequency of rebellions, and the distance from all control, had given rise to such a series of arbitrary precedents, as would have almost excused any ordinary stretch of power.* Notwithstanding this, however, when the managers came to state and substantiate their articles of accusation, though some were satisfied that there was enough to warrant the severest judgment, yet it appeared to many dispassionate men that, even supposing the evidence as to all of them to be legally convincing, they could not, except through a dangerous latitude of construction, be aggravated into treason. The law of England is

Coming to the place where he expected his coach, it was not there; so he behoved to return that same way, through a world of gazing people. When at last he had found his coach, and was entering, James Maxwell told him, 'Your lordship is my prisoner, and must go in my coach;' and so he behoved to do." P. 217.

* The trial of Strafford is best to be read in Rushworth or Nalson. The account in the new edition of the State Trials, I know not whence taken, is curious, as coming from an eye-witness, though very partial to the prisoner; but it can hardly be so accurate as the others. His famous peroration was printed at the time in a loose sheet. It is in the Somers Tracts. Many of the charges seem to have been sufficiently proved, and would undoubtedly justify a severe sentence on an impeachment for misdemeanors. It was not pretended by the managers that more than two or three of them amounted to treason; but it is the unquestionable right of the commons to blend offences of a different degree in an impeachment.

It has been usually said that the commons had recourse to the bill of attainder, because they found it impossible to support the impeachment for treason. But St. John positively denies that it was intended to avoid the judicial mode of proceeding. Nalson, ii. 162. And, what is stronger, the lords themselves voted upon the articles judicially, and not as if they were enacting a legislative measure. As to the famous proviso in the bill of attainder, that the judges should determine nothing to be treason, by virtue of this bill, which they would not have determined to be treason otherwise, (on which Hume and many others have relied, to show the consciousness of parliament that the measure was not warranted by the existing law,) it seems to have been introduced in order to quiet the apprehensions of some among the peers, who had gone great lengths with the late government, and were astonished to find that their obedience to the king could be turned into treason against him.

silent as to conspiracies against itself. St. John and Maynard struggled in vain to prove that a scheme to overturn the fundamental laws and to govern by a standing army, though as infamous as any treason, could be brought within the words of the statute of Edward III., as a compassing of the king's death. Nor, in fact, was there any conclusive evidence against Strafford of such a design. The famous words imputed to him by sir Henry Vane, though there can be little reason to question that some such were spoken, seem too imperfectly reported*, as well as uttered too much in the heat of passion, to furnish a substantive accusation; and I should rather find my conviction of Strafford's systematic hostility to our fundamental laws on his correspondence since brought to light, as well as on his general conduct in administration, than on any overt acts proved on his impeachment. The presumption of history, to whose mirror the scattered rays of moral evidence converge, may be irresistible, when the legal inference from insulated actions is not only technically, but substantially, inconclusive. Yet we are not to suppose that the charges against this minister appeared so evidently to fall short of high treason, according to the apprehension of that age, as in later times has usually been taken for granted. Accustomed to the unjust verdicts obtained in cases of treason by the court, the statute of Edward having been perpetually stretched by constructive interpretations, neither the people nor the lawyers annexed a definite sense to that crime. The judges themselves, on a solemn reference by the house of lords for their opinion, whether some of the articles charged against Strafford amounted to treason, answered unanimously, that upon all which their lordships had voted to be proved, it was their opinion the earl of Strafford

* They were confirmed, in a considerable degree, by the evidence of Northumberland and Bristol, and even of Usher and Juxon. Rushw. Abr. iv. 455. 559. 586. Baillie, 284. But are they not also exactly according to the principles always avowed and acted upon by that minister, and by the whole phalanx of courtiers, that a king of England does very well to ask his people's consent in the first instance, but, if that is frowardly refused,

he has a paramount right to maintain his government by any means?

It may be remarked, that Clarendon says: "the law was clear that less than two witnesses ought not to be received in a case of treason." Yet I doubt whether any one had been allowed the benefit of that law; and the contrary had been asserted repeatedly by the judges.

did deserve to undergo the pains and penalties of high treason by law.* And, as an apology, at least, for this judicial opinion, it may be remarked that the fifteenth article of the impeachment, charging him with raising money by his own authority, and quartering troops on the people of Ireland, in order to compel their obedience to his unlawful requisitions (upon which, and one other article, not on the whole matter, the peers voted him guilty), does in fact approach very nearly, if we may not say more, to a substantive treason within the statute of Edward III., as a levying war against the king, even without reference to some Irish acts of parliament upon which the managers of the impeachment relied. It cannot be extravagant to assert, that if the colonel of a regiment were to issue an order commanding the inhabitants of the district where it is quartered to contribute certain sums of money, and were to compel the payment by quartering troops on the houses of those who refused, in a general and systematic manner, he would, according to a warrantable construction of the statutes, be guilty of the treason called levying war on the king; and that, if we could imagine him to do this by an order from the privy-council or the war-office, the case would not be at all altered. On the other hand, a single act of such violence might be (in technical language) trespass, misdemeanour, or felony, according to circumstances; but would want the generality, which, as the statute has been construed, determines its character to be treason. It is however manifest that Strafford's actual enforcement of his order, by quartering soldiers, was not by any means proved to be so frequently done as to bring it within the line of treason; and the evidence is also open to every sort of legal objection. But in that age, the rules of evidence, so scrupulously defined since, were either very im-

* Lords' Journals, May 6. Parl. Hist. 757. This opinion of the judges, which is not mentioned by Clarendon, Hume, and other common historians, seems to have cost Strafford his life. It was relied on by some bishops, especially Usher, whom Charles consulted whether he should pass the bill of attainder, though Clarendon puts much worse casuistry into the mouth of Williams. Parr's

Life of Usher, p. 45. Hacket's Life of Williams, p. 160. Juxon is said to have stood alone among five bishops, in advising the king to follow his conscience. Clarendon, indeed, does not mention this; though he glances at Usher with some reproach, p. 451.; but the story is as old as the Icon Basilike, in which it is alluded to.

perfectly recognised, or continually transgressed. If then Strafford could be brought within the letter of the law, and was also deserving of death for his misdeeds towards the commonwealth, it might be thought enough to justify his condemnation, although he had not offended against what seemed to be the spirit and intention of the statute. This should, at least, restrain us from passing an unqualified censure on those who voted against him, comprehending undoubtedly the far more respectable portion of the commons, though only twenty-six peers against nineteen formed the feeble majority on the bill of attainder.* It may be observed that the house of commons acted in one respect with a generosity which the crown had never shown in any case of treason, by immediately passing a bill to relieve his children from the penalties of forfeiture and corruption of blood.

It is undoubtedly a very important problem in political ethics, whether great offences against the commonwealth

* The names of the fifty-nine members of the commons, who voted against the bill of attainder, and which were placarded as Straffordians, may be found in the Parliamentary History, and several other books. It is remarkable that few of them are distinguished persons; none so much so as Selden, whose whole parliamentary career, notwithstanding the timidity not very fairly imputed to him, was eminently honourable and independent. But we look in vain for Hyde, Falkland, Colepepper, or Palmer. The first, probably did not vote; the others may have been in the majority of 204, by whom the bill was passed; indeed, I have seen a MS. account of the debate, where Falkland and Colepepper appear to have both spoken for it. As to the lords, we have, so far as I know, no list of the nineteen who acquitted Strafford. It does not comprehend Hertford, Bristol, or Holland, who were absent (Nelson, 316.), nor any of the popish lords, whether through fear or any private influence. Lord Clare, his brother-in-law, and lord Saville, a man of the most changeable character, were his prominent advocates during the trial; though Bristol, Hertford, and even Say, desired to have had his life spared (Baillie, 243. 247. 271. 292.); and the earl of Bedford, according to Clarendon, would

have come into this. But the sudden and ill-timed death of that eminent peer put an end to the negotiation for bringing the parliamentary leaders into office, wherein it was a main object with the king to save the life of Strafford; entirely, as I am inclined to believe, from motives of conscience and honour, without any views of ever again restoring him to power. Charles had no personal attachment to Strafford; and the queen's dislike of him, (according to Clarendon and Burnet, though it must be owned that Madame de Motteville does not confirm this,) or at least his general unpopularity at court, would have determined the king to lay him aside.

It is said by Burnet that the queen prevailed on Charles to put that strange postscript to his letter to the lords, in behalf of Strafford, "If he must die, it were charity to reprieve him till Saturday;" by which he manifestly surrendered him up, and gave cause to suspect his own sincerity. Doubts have been thrown out by Carte as to the genuineness of Strafford's celebrated letter, requesting the king to pass the bill of attainder. They do not appear to be founded on much evidence; but it is certain, by the manner in which he received the news, that he did not expect to be sacrificed by his master.

may not justly incur the penalty of death by a retrospective act of the legislature, which a tribunal restrained by known laws is not competent to inflict. Bills of attainder had been by no means uncommon in England, especially under Henry VIII. ; but generally when the crime charged might have been equally punished by law. They are less dangerous than to stretch the boundaries of a statute by arbitrary construction. Nor do they seem to differ at all in principle from those bills of pains and penalties, which, in times of comparative moderation and tranquillity, have sometimes been thought necessary to visit some unforeseen and anomalous transgression beyond the reach of our penal code. There are many, indeed, whose system absolutely rejects all such retrospective punishment, either from the danger of giving too much scope to vindictive passion, or on some more abstract principle of justice. Those who may incline to admit that the moral competence of the sovereign power to secure itself by the punishment of a heinous offender, even without the previous warning of law, is not to be denied, except by reasoning which would shake the foundation of its right to inflict punishment in ordinary cases, will still be sensible of the mischief which any departure from stable rules, under the influence of the most public-spirited zeal, is likely to produce. The attainder of Strafford could not be justifiable, unless it were necessary ; nor necessary, if a lighter penalty would have been sufficient for the public security.

This therefore becomes a preliminary question, upon which the whole mainly turns. It is one which does not seem to admit of a demonstrative answer ; but with which we can perhaps deal better than those who lived at that time. Their distrust of the king, their apprehension that nothing less than the delinquent minister's death could ensure them from his return to power, rendered the leaders of parliament obstinate against any proposition of a mitigated penalty. Nor can it be denied that there are several instances in history, where the favourites of monarchs, after a transient exile or imprisonment, have returned, on some fresh wave of fortune, to mock or avenge themselves upon their adversaries. Yet the prosperous condition of the popular party, which nothing but intemperate passion was likely to impair,

rendered this contingency by no means probable; and it is against probable dangers that nations should take precautions, without aiming at more complete security than the baffling uncertainties of events will permit. Such was Strafford's unpopularity, that he could never have gained any sympathy, but by the harshness of his condemnation and the magnanimity it enabled him to display. These have half redeemed his forfeit fame, and misled a generous posterity. It was agreed on all hands that any punishment which the law could award to the highest misdemeanours, duly proved on impeachment, must be justly inflicted. "I am still the same," said lord Digby, in his famous speech against the bill of attainder, "in my opinions and affections, as unto the earl of Strafford; I confidently believe him to be the most dangerous minister, the most insupportable to free subjects, that can be charactered. I believe him to be still that grand apostate to the commonwealth, who must not expect to be pardoned in this world till he be despatched to the other. And yet let me tell you, Mr. Speaker, my hand must not be to that despatch."* These sentiments, whatever we may think of the sincerity of him who uttered them, were common to many of those who desired most ardently to see that uniform course of known law, which neither the court's lust of power nor the clamorous indignation of a popular assembly might turn aside. The king, whose conscience was so deeply wounded by his acquiescence in this minister's death, would gladly have assented to a bill inflicting the penalty of perpetual banishment; and this, accompanied, as it ought to have been, by degradation from the rank for which he had sold his integrity, would surely have exhibited to Europe an example sufficiently conspicuous of just retribution. Though nothing perhaps could have restored a tolerable degree of confidence between Charles and the parliament, it is certain that his resentment and aversion were much aggravated by the painful compulsion they had put on him, and that the schism among the constitutional party began from this, among other causes, to grow more sensible, till it terminated in civil war. †

* Parliamentary History, ii. 750.

by May, p. 64., who generally shows a

† See some judicious remarks on this good deal of impartiality at this period

But, if we pay such regard to the principles of clemency and moderation, and of adherence to the fixed rules of law, as to pass some censure on this deviation from them in the attainder of lord Strafford, we must not yield to the clamorous invectives of his admirers, or treat the prosecution as a scandalous and flagitious excess of party vengeance. Look round the nations of the globe, and say in what age or country would such a man have fallen into the hands of his enemies, without paying the forfeit of his offences against the commonwealth with his life. They who grasp at arbitrary power, they who make their fellow-citizens tremble before them, they who gratify a selfish pride by the humiliation and servitude of mankind, have always played a deep stake; and the more invidious and intolerable has been their pre-eminence, their fall has been more destructive, and their punishment more exemplary. Something beyond the retirement or the dismissal of such ministers has seemed necessary to "absolve the gods," and furnish history with an awful lesson of retribution. The spontaneous instinct of nature has called for the axe and the gibbet against such capital delinquents. If then we blame, in some measure, the sentence against Strafford, it is not for his sake, but for that of the laws on which he trampled, and of the liberty which he betrayed. He died justly before God and man, though we may deem the precedent dangerous, and the better course of a magnanimous lenity unwisely rejected; and in condemning the bill of attainder, we cannot look upon it as a crime.

The same distrustful temper, blamable in nothing but its

of history. The violence of individuals, especially when of considerable note, deserves to be remarked, as characteristic of the temper that influenced the house, and as accounting for the disgust of moderate men. "Why should he have law himself?" said St. John, in arguing the bill of attainder before the peers, "who would not that others should have any? We indeed give laws to hares and deer, because they are beasts of chase; but we give none to wolves and foxes, but knock them on the head wherever they are found, because they are beasts of prey."

Nor was this a mere burst of passionate declamation, but urged as a serious argument for taking away Strafford's life without sufficient grounds of law or testimony. Rushworth, *Abr.* iv. 61. Clarendon, i. 407. Strode told the house that, as they had charged Strafford with high treason, it concerned them to charge as conspirators in the same treason all who had before, or should hereafter, plead in that cause. Baillie, 252. This monstrous proposal seems to please the presbyterian bigot. "If this hold," he observes, "Strafford's council will be rare."

excess, drew the house of commons into a measure more unconstitutional than the attainder of Strafford, the bill enacting that they should not be dissolved without their own consent. Whether or not this had been previously meditated by the leaders is uncertain; but the circumstances under which it was adopted display all the blind precipitancy of fear. A scheme for bringing up the army from the north of England to overawe parliament had been discoursed of, or rather in a great measure concerted, by some young courtiers and military men. The imperfection and indefiniteness of the evidence obtained respecting this plot increased, as often happens, the apprehensions of the commons. Yet, difficult as it might be to fix its proper character between a loose project and a deliberate conspiracy, this at least was hardly to be denied, that the king had listened to and approved a proposal of appealing from the representatives of his people to a military force.* Their

Act against
dissolution of
parliament
without its
consent.

* Clarendon and Hume of course treat this as a very trifling affair, exaggerated for factious purposes. But those who judge from the evidence of persons unwilling to accuse themselves or the king, and from the natural probabilities of the case, will suspect, or rather be wholly convinced, that it had gone much farther than these writers admit. See the accounts of this plot in Rushworth and Nalson, or in the Parliamentary History, also what is said by Montreuil in Raumer, p. 324. The strongest evidence, however, is furnished by Henrietta, whose relation of the circumstances to Madame de Motteville proves that the king and herself had the strongest hopes from the influence of Goring and Wilmot over the army, by means of which they aimed at saving Strafford's life; though the jealousy of those ambitious intriguers, who could not both enjoy the place to which each aspired, broke the whole plot. *Mem. de Motteville*, i. 253. Compare with this passage, Percy's letter, and Goring's deposition (Nalson, ii. 286. 294.), for what is said of the king's privity by men who did not lose his favour by their evidence. Mr. Brodie has commented in a long note (iii. 189.) on Clarendon's apparent misrepresentations of this business. But what has escaped the acuteness of this writer is, that the petition to the king and parliament drawn up for the

army's subscription, and asserted by Clarendon to have been the only step taken by those engaged in the supposed conspiracy, (though not, as Mr. Brodie too rashly conjectures, a fabrication of his own,) is most carelessly referred by him to that period, or to the agency of Wilmot and his coadjutors; having been, in fact, prepared about the July following, at the instigation of Daniel O'Neale, and some others of the royalist party. This is manifest, not only from the allusions it contains to events that had not occurred in the months of March and April, when the plot of Wilmot and Goring was on foot, especially the bill for triennial parliaments, but from evidence given before the house of commons in October, 1641, and which Mr. Brodie has published in the appendix to his third volume, though, with an inadvertence of which he is seldom guilty, overlooking its date and purport. This, however, is of itself sufficient to display the inaccurate character of Clarendon's history; for I can scarcely ascribe the present incorrectness to design. There are, indeed, so many mistakes as to dates and other matters in Clarendon's account of this plot, that, setting aside his manifest disposition to suppress the truth, we can place not the least reliance on his memory as to those points which we may not be well able to bring to a test.

greatest danger was a sudden dissolution. The triennial bill afforded indeed a valuable security for the future. Yet if the present parliament had been broken with any circumstances of violence, it might justly seem very hazardous to confide in the right of spontaneous election reserved to the people by that statute, which the crown would have three years to defeat. A rapid impulse, rather than any concerted resolution, appears to have dictated this hardy encroachment on the prerogative. The bill against the dissolution of the present parliament without its own consent was resolved in a committee on the fifth of May, brought in the next day, and sent to the lords on the seventh. The upper house, in a conference the same day, urged a very wise and constitutional amendment, limiting its duration to the term of two years. But the commons adhering to their original provisions, the bill was passed by both houses on the eighth.* Thus, in the space of three days from the first suggestion, an alteration was made in the frame of our polity, which rendered the house of commons equally independent of their sovereign and their constituents; and, if it could be supposed capable of being maintained in more tranquil times, would, in the theory at least of speculative politics, have gradually converted the government into something like a Dutch aristocracy. The ostensible pretext was, that money could not be borrowed on the authority of resolutions of parliament, until some security was furnished to the creditors, that those whom they were to trust should have a permanent existence. This argument would have gone a great way, and was capable of an answer; since the money might have been borrowed on the authority of the whole legislature. But the chief motive, unquestionably, was a just apprehension of the king's intention to overthrow the parliament, and of personal danger to those who had stood most forward from his resentment after a dissolution. His ready acquiescence in this bill, far more

* Journals. Parliamentary Hist. 784. May, 67. Clarendon. According to Mrs. Hutchinson, p. 97., this bill originated with Mr. Pierpoint. If we should draw any inference from the Journals, sir John Colepepper seems to have been the most prominent of its supporters. Mr. Hyde and lord Falkland were also managers of

the conference with the lords. But in sir Ralph Verney's manuscript notes, I find Mr. Whitelock mentioned as being ordered by the house to prepare the bill; which seems to imply that he had moved it, or at least been very forward in it. Yet all these were moderate men.

dangerous than any of those at which he demurred, can only be ascribed to his own shame and the queen's consternation at the discovery of the late plot; and thus we trace again the calamities of Charles to their two great sources; his want of judgment in affairs, and of good faith towards his people.

The parliament had met with as ardent and just an indignation against ecclesiastical as temporal grievances. The tyranny, the folly and rashness of Charles's bishops were still greater than his own. It was evidently an indispensable duty to reduce the overbearing ascendancy of that order, which had rendered the nation, in regard to spiritual dominion, a great loser by the Reformation. They had been so blindly infatuated, as even in the year 1640, amidst all the perils of the times, to fill up the measure of public wrath by enacting a series of canons in convocation. These enjoined, or at least recommended, some of the modern innovations, which, though many excellent men had been persecuted for want of compliance with them, had not got the sanction of authority. They imposed an oath on the clergy, commonly called the *et cætera* oath, binding them to attempt no alteration "in the government of the church by bishops, deans, archdeacons, &c." This oath was by the same authority enjoined to such of the laity as held ecclesiastical offices.* The king, however, on the petition of the council of peers at York, directed it not to be taken. The house of commons rescinded these canons with some degree of excess on the other side; not only denying the right of convocation to bind the clergy, which had certainly been exercised in all periods, but actually impeaching the bishops for a high misdemeanour on that account.† The lords, in the month of March, appointed a committee of ten earls, ten bishops, and ten barons, to report upon the innovations lately brought into the church. Of this committee Williams was chairman. But the spirit which now possessed the commons was not to be exorcised by the sacrifice of Laud and Wren, or

Innovations
meditated in
the church.

* Neal, p. 632., has printed these canons imperfectly. They may be found at length in Nalson, i. 542.

† Clarendon. Parl. Hist. 678. 896.

Neal, 647. 720. These votes as to the canons, however, were carried, *nem. con.* Journals, 16th Dec. 1640.

even by such inconsiderable alterations as the moderate bishops were ready to suggest.*

There had always existed a party, though by no means co-extensive with that bearing the general name of puritan, who retained an insuperable aversion to the whole scheme of episcopal discipline, as inconsistent with the ecclesiastical parity they believed to be enjoined by the apostles. It is not easy to determine what proportion these bore to the community. They were certainly at the opening of the parliament by far the less numerous, though an active and increasing party. Few of the house of commons, according to Clarendon and the best contemporary writers, looked to a destruction of the existing hierarchy.† The more plausible scheme was one which had the sanction of Usher's learned judgment, and which Williams was said to favour, for what was called a moderate episcopacy; wherein the bishop, reduced to a sort of president of his college of presbyters, and differing from them only in rank, not in order (*gradu, non ordine*), should act, whether in ordination or jurisdiction, by their concurrence.‡ This intermediate form of church-government would probably have contented the popular leaders of the commons, except two or three, and have proved acceptable to the nation. But it was hardly less offensive to the Scotch presbyterians, intolerant of the smallest deviation from their own model, than to the high-church episcopalians; and the necessity of humouring that proud and prejudiced race of people, who began already to show that an alteration in the church of England would be their stipulated condition for any assistance they might afford to the popular party, led the majority of the house of commons to give more countenance than they sincerely intended to a bill, preferred by what was then

* Neal, 709. Laud and Wren were both impeached Dec. 18. : the latter entirely for introducing superstitions. Parl. Hist. 861. He lay in the Tower till 1659.

† Neal says that the major part of the parliamentarians at the beginning of the war were for moderated episcopacy (ii. 4.), and asserts the same in another place (i. 715.) of the puritans, in contradiction of Rapin. "How this will go," says Baillie, in April, 1641, "the Lord knows; all are for the creating of a kind of presbytery,

and for bringing down the bishops in all things spiritual and temporal, so low as can be with any subsistence; but their utter abolition, which is the only aim of the most godly, is the knot of the question." i. 245.

‡ Neal, 666. 672. 713. Collier, 805. Baxter's Life, p. 62. The ministers' petition, as it was called, presented Jan. 23. 1641, with the signatures of 700 beneficed clergymen, went to this extent of reformation. Neal, 679.

called the root and branch party, for the entire abolition of episcopacy. This party, composed chiefly of presbyterians, but with no small admixture of other sectaries, predominated in the city of London. At the instigation of the Scots commissioners, a petition against episcopal government with 15,000 signatures was presented early in the session (Dec. 11. 1640), and received so favourably as to startle those who bore a good affection to the church.* This gave rise to the first difference that was expressed in parliament: Digby speaking warmly against the reference of this petition to a committee, and Falkland, though strenuous for reducing the prelates' authority, showing much reluctance to abolish their order.† A bill was however brought in by sir Edward Dering, an honest but not very enlightened or consistent man, for the utter extirpation of episcopacy, and its second reading carried on a division by 139 to 108.‡ This, no doubt, seems to show the anti-episcopal party to have been stronger than Clarendon admits. Yet I suspect that the greater part of those who voted for it did not intend more than to intimidate the bishops. Petitions very numerous signed, for the maintenance of episcopal government, were presented from several counties§; nor is it, I think,

* Parl. Hist. 673. Clarendon, i. 356. Baillie's Letter, 218, &c. Though sanguine as to the progress of his sect, he admits that it was very difficult to pluck up episcopacy by the roots; for this reason they did not wish the house to give a speedy answer to the city petition, p. 241. It was carried by 36 or 37 voices, he says, to refer it to the committee of religion, p. 245. No division appears on the Journals.

The whole influence of the Scots commissioners was directed to this object; as not only Baillie's Letters, but those of Johnstone of Wariston (Dalrymple's Memorials of James and Charles I., ii. 114. &c.) show. Besides their extreme bigotry, which was the predominant motive, they had a better apology for interfering with church-government in England, with which the archbishop had furnished them; it was the only sure means of preserving their own.

† Rushworth. Nalson.

‡ Parl. Hist. 814. 822. 828. Clarendon tells us, that being chairman of the com-

mittee to whom this bill was referred, he gave it so much interruption, that no progress could be made before the adjournment. The house came, however, to a resolution, that the taking away the offices of archbishops, bishops, chancellors, and commissaries out of this church and kingdom, should be one clause of the bill. June 12. Commons' Journals.

§ Lord Hertford presented one to the lords, from Somersetshire, signed by 14,350 freeholders and inhabitants. Nalson, ii. 727. The Cheshire petition, for preserving the Common Prayer, was signed by near 10,000 hands. Id. 758. I have a collection of those petitions now before me, printed in 1642, from thirteen English and five Welsh counties, and all very numerous signed. In almost every instance, I observe, they thank the parliament for putting a check to innovations and abuses, while they deprecate the abolition of episcopacy and the liturgy. Thus it seems that the presbyterians were very far from having the nation on their side. The following extract from the Somerset-

possible to doubt that the nation sought only the abridgement of that coercive jurisdiction and temporal power, by which the bishops had forfeited the reverence due to their function, as well as that absolute authority over presbyters, which could not be reconciled to the customs of the primitive church.* This was the object both of the act abolishing the high-commission, which, by the largeness of its expressions, seemed to take away all coercive jurisdiction from the ecclesiastical courts, and of that for depriving the bishops of their suffrages among the peers; which, after being once rejected by a large majority of the lords in June, 1641, passed into a law in the month of February following, and was the latest concession that the king made before his final appeal to arms.†

shire petition is a good sample of the general tone: "For the present government of the church we are most thankful to God, believing it in our hearts to be the most pious and the wisest that any people or kingdom upon earth hath been withal since the apostles' days; though we may not deny but, through the frailty of men, and corruption of times, some things of ill consequence, and other needless, are stolen or thrust into it; which we heartily wish may be reformed, and the church restored to its former purity. And, to the end it may be the better preserved from present and future innovation, we wish the wittingly and maliciously guilty, of what condition soever they be, whether bishops or inferior clergy, may receive condign punishment. But, for the miscarriage of governors, to destroy the government, we trust it shall never enter into the hearts of this wise and honourable assembly."

* The house came to a vote on July 17., according to Whitelock, p. 46., in favour of Usher's scheme, that each county should be a diocese, and that there should be a governing college or presbytery, consisting of twelve, under the presidency of a bishop: sir E. Dering spoke in favour of this, though his own bill went much farther. Nalson, ii. 294. Neal, 703. I cannot find the vote in the journals; it passed, therefore, I suppose in the committee, and was not reported to the house.

† Parl. Hist. 774. 794. 817. 910. 1087. The lords had previously come to resolutions, that bishops should sit in

the house of lords, but not in the privy council, nor be in any commission of the peace. Id. 814.

The king was very unwilling to give his consent to the bill excluding the bishops from parliament, and was, of course, dissuaded by Hyde from doing so. He was then at Newmarket, on his way to the north, and had nothing but war in his head. The queen, however, and sir John Colepepper, prevailed on him to consent. Clarendon, History, ii. 247. (1826), Life, 51. The queen could not be expected to have much tenderness for a protestant episcopacy; and it is to be said in favour of Colepepper's advice, who was pretty indifferent in ecclesiastical matters, that the bishops had rendered themselves odious to many of those who wished well to the royal cause. See the very remarkable conversation of Hyde with sir Edward Verney, who was killed at the battle of Edgehill, where the latter declares his reluctance to fight for the bishops, whose quarrel he took it to be, though bound by gratitude not to desert the king. Clarendon's Life, p. 68.

This author represents lord Falkland as having been misled by Hampden, to take an unexpected part in favour of the first bill for excluding the bishops from parliament. "The house was so marvellously delighted to see the two inseparable friends divided in so important a point, that they could not contain from a kind of rejoicing; and the more because they saw Mr. Hyde was much surprised with the contradiction, as in truth he was, having never discovered the least

This was hardly perhaps a greater alteration of the established constitution than had resulted from the suppression of the monasteries under Henry ; when, by the fall of the mitred abbots, the secular peers acquired a preponderance in number over the spiritual which they had not previously enjoyed. It was supported by several persons, especially lord Falkland, by no means inclined to subvert the episcopal discipline ; whether from a hope to compromise better with the opposite party by this concession, or from a sincere belief that the bishops might be kept better to the duties of their function by excluding them from civil power. Considered generally, it may be reckoned a doubtful question in the theory of our government, whether the mixture of this ecclesiastical aristocracy with the house of lords is advantageous or otherwise to the public interests, or to those of religion. Their great revenues, and the precedence allotted them, seem naturally to place them on this level ; and the general property of the clergy, less protected than that of other classes against the cupidity of an administration or a faction, may perhaps require this peculiar security. In fact, the disposition of the English to honour the ministers of the church, as well as to respect the ancient institutions of their country, has usually been so powerful, that the question would hardly have been esteemed dubious, if the bishops themselves (I speak of course with such limitations as the nature of the case requires) had been at all times sufficiently studious to maintain a character of political independence, or even to conceal a spirit of servility, which the pernicious usage of continual translations from one see to another, borrowed, like many other parts of our ecclesiastical law, from the most corrupt period of the church of Rome, has had so manifest a tendency to engender.*

inclination in the other towards such a compliance," i. 413. There is, however, an earlier speech of Falkland in print, against the London petition ; wherein, while objecting to the abolition of the order, he intimates his willingness to take away their votes in parliament, with all other temporal authority. Speeches of the Happy Parliament, p. 188. (published in 1641.) Johnstone of Wariston

says there were but four or five votes against taking away civil places and seats in parliament from the bishops. Dalrymple's Memorials, ii. 116. But in the journals of the commons, 10th March, 1640-1, it is said to be resolved, after a long and mature debate, that the legislative power of bishops is a hinderance to their function.

* [1827.]

This spirit of ecclesiastical, rather than civil, democracy, was the first sign of the approaching storm that alarmed the Hertfords and Southamptons, the Hydes and Falklands. Attached to the venerable church of the English reformation, they were loth to see the rashness of some prelates avenged by her subversion, or a few recent innovations repressed by incomparably more essential changes. Full of regard for established law, and disliking the puritan bitterness, aggravated as it was by long persecution, they revolted from the indecent devastation committed in churches by the populace, and from the insults which now fell on the conforming ministers. The lords early distinguished their temper as to those points by an order on the 16th of January for the performance of divine service according to law, in consequence of the tumults that had been caused by the heated puritans under pretence of abolishing innovations. Little regard was shown to this order*; but it does not appear that the commons went farther on the opposite side than to direct some ceremonial novelties to be discontinued, and to empower one of their members, sir Robert Harley, to take away all pictures, crosses, and superstitious figures within churches or without.† But this order, like many of their other acts, was a manifest encroachment on the executive power of the crown.‡

It seems to have been about the time of the summer recess, during the king's absence in Scotland, that the appre-

* "The higher house," says Baillie, "have made an order, which was read in the churches, that none presume of their own head to alter any customs established by law: this procured ordinance does not discourage any one." P. 237. Some rioters, however, who had pulled down rails about the altar, &c. were committed by order of the lords in June. Nalson, ii. 275.

† Parl. Hist. 868. By the hands of this zealous knight fell the beautiful crosses at Charing and Cheap, to the lasting regret of all faithful lovers of antiquities and architecture.

‡ Parl. Hist. 907. Commons' Journals, Sept. 1. 1641. It was carried at the time on a division by 55 to 37, that the committee "should propound an addition to this order for preventing all con-

tempt and abuse of the Book of Common Prayer, and all tumultuous disorders that might arise in the church thereupon." This is a proof that the church party were sometimes victorious in the house. But they did not long retain this casual advantage. For, the lords having sent down a copy of their order of 16th January above mentioned, requesting the commons' concurrence, they resolved, Sept. 9. "that the house do not consent to this order; it being thought unreasonable at this time to urge the severe execution of the said laws." They contented themselves with "expecting that the commons of this realm do, in the mean time, quietly attend the reformation intended, without any tumultuous disturbance of the worship of God and peace of the realm." See Nalson, ii. 484.

prehension of changes in church and state far beyond what had been dreamed of at the opening of parliament, led to a final schism in the constitutional party.* Charles, by abandoning his former advisers, and yielding, with just as much reluctance as displayed the value of the concession, to a series of laws that abridged his prerogative, had recovered a good deal of the affection and confidence of some, and gained from others that sympathy which is seldom withheld from undeserving princes in their humiliation. Though the ill-timed death of the earl of Bedford in May had partly disappointed an intended arrangement for bringing the popular leaders into office, yet the appointments of Essex, Holland, Say, and St. John from that party, were apparently pledges of the king's willingness to select his advisers from their ranks; whatever cause there might be to suspect that their real influence over him would be too inconsiderable.† Those who were still excluded, and who distrusted the king's intentions as well towards themselves as the public cause, of whom Pym and Hampden, with the assistance of St. John,

Schism in the constitutional party.

* May, p. 75. See this passage, which is very judicious. The disunion, however, had in some measure begun not long after the meeting of parliament; the court wanted, in December, 1640, to have given the treasurer's staff to Hertford, whose brother was created a peer by the title of lord Seymour. Bedford was the favourite with the commons for the same office, and would doubtless have been a fitter man at the time, notwithstanding the other's eminent virtues. Sidney Letters, ii. 665, 666. See also what Baillie says of the introduction of seven lords, "all commonwealth's men," into the council, though, as generally happens, he is soon discontented with some of them. P. 246, 247. There was even some jealousy of Say, as favouring Strafford.

† Whitelocke, p. 46. Bedford was to have been lord treasurer, with Pym, whom he had brought into parliament for Tavistock, as his chancellor of the exchequer; Hollis secretary of state. Hampden is said, but not perhaps on good authority, to have sought the office of governor to the prince of Wales; which Hume, not very candidly, brings as a proof of his ambition. It seems

probable that, if Charles had at that time (May, 1641,) carried these plans into execution, and ceased to listen to the queen, or to those persons about his bed-chamber, who were perpetually leading him astray, he would have escaped the exorbitant demands which were afterwards made upon him, and even saved his favourite episcopacy. But, after the death of the earl of Bedford, who had not been hostile to the church, there was no man of rank in that party whom he liked to trust; Northumberland having acted, as he thought, very ungratefully, Say being a known enemy to episcopacy, and Essex, though of the highest honour, not being of a capacity to retain much influence over the leaders of the other house. Clarendon insinuates that, even as late as March, 1642, the principal patriots, with a few exceptions, would have been content with coming themselves into power under the king, and on this condition would have left his remaining prerogative untouched (ii. 326.). But it seems more probable that, after the accusation of the five members, no measure of this kind would have been of any service to Charles.

though actually solicitor-general, were the chief, found no better means of keeping alive the animosity that was beginning to subside, than by framing the Remonstrance on the state of the kingdom, presented to the king in November, 1641. This being a recapitulation of all the grievances and misgovernment that had existed since his accession, which his acquiescence in so many measures of redress ought, according to the common courtesy due to sovereigns, to have cancelled, was hardly capable of answering any other purpose than that of re-animating discontents almost appeased, and guarding the people against the confidence they were beginning to place in the king's sincerity. The promoters of it might also hope, from Charles's proud and hasty temper, that he would reply in such a tone as would more exasperate the commons. But he had begun to use the advice of judicious men, Falkland, Hyde, and Colepepper, and reined in his natural violence so as to give his enemies no advantage over him.

The jealousy which nations ought never to lay aside was especially required towards Charles, whose love of arbitrary dominion was much better proved than his sincerity in relinquishing it. But if he were intended to reign at all, and to reign with any portion either of the prerogatives of an English king, or the respect claimed by every sovereign, the Remonstrance of the commons could but prolong an irritation incompatible with public tranquillity. It admits indeed of no question, that the schemes of Pym, Hampden, and St. John, already tended to restrain the king's personal exercise of any effective power, from a sincere persuasion that no confidence could ever be placed in him, though not to abolish the monarchy, or probably to abridge in the same degree the rights of his successor. Their Remonstrance was put forward to stem the returning tide of loyalty, which not only threatened to obstruct the further progress of their endeavours, but, as they would allege, might, by gaining strength, wash away some at least of the bulwarks that had been so recently constructed for the preservation of liberty. It was carried in a full house by the small majority of 159 to 148.* So much was it deemed

* Commons' Journals, 22d November. whether the remonstrance should be
On a second division the same night, printed, the popular side lost it by 124

a trial of strength, that Cromwell declared after the division that, had the question been lost, he would have sold his estate, and retired to America.

It may be thought rather surprising that, with a house of commons so nearly balanced as they appear on this vote, the king should have new demands that annihilated his authority made upon him, and have found a greater majority than had voted the remonstrance ready to oppose him by arms; especially as that paper contained little but what was true, and might rather be censured as an ill-timed provocation than an encroachment on the constitutional prerogative. But there were circumstances, both of infelicity and misconduct, which aggravated that distrust whereon

*Suspicious
of the king's
sincerity.*

to 101. But on 15th December the printing was carried by 135 to 83. Several divisions on important subjects about this time show that the royalist minority was very formidable. But the attendance, especially on that side, seems to have been irregular; and in general, when we consider the immense importance of these debates, we are surprised to find the house so deficient in numbers as many divisions show it to have been. Clarendon frequently complains of the supineness of his party; a fault invariably imputed to their friends by the zealous supporters of established authority, who forget that sluggish, lukewarm, and thoughtless tempers must always exist, and that such will naturally belong to their side. I find in the short pencil notes taken by sir Ralph Verney, with a copy of which I have been favoured by Mr. Serjeant D'Oyly, the following entry on the 7th of August, before the king's journey to Scotland:—"A remonstrance to be made how we found the kingdom and the church, and how the state of it now stands." This is not adverted to in Nalson, nor in the Journals at this time. But Clarendon says, in a suppressed passage, vol. ii. Append. 591., that "at the beginning of the parliament, or shortly after, when all men were inflamed with the pressures and illegalities which had been exercised upon them, a committee was appointed to prepare a remonstrance of the state of the kingdom, to be presented to his majesty, in which the several grievances might be recited; which committee had never brought any report

to the house; most men conceiving, and very reasonably, that the quick and effectual progress his majesty made for the reparation of those grievances, and prevention of the like for the future, had rendered that work needless. But as soon as the intelligence came of his majesty being on his way from Scotland towards London, that committee was, with great earnestness and importunity, called upon to bring in the draft of such remonstrance," &c. I find a slight notice of this origin of the remonstrance in the Journals, Nov. 17. 1640.

In another place, also suppressed in the common editions, Clarendon says:—"This debate held many hours, in which the framers and contrivers of the declaration said very little, or answered any reasons that were alleged to the contrary; the only end of passing it, which was to incline the people to sedition, being a reason not to be given; but called still for the question, presuming their number, if not their reason, would serve to carry it; and after two in the morning, (for so long the debate continued, if that can be called a debate, when those only of one opinion argued,) &c., it was put to the question." What a strange memory this author had! I have now before me sir Ralph Verney's MS. note of the debate, whence it appears that Pym, Hampden, Hollis, Glyn, and Maynard, spoke in favour of the remonstrance; nay, as far as these brief memoranda go, Hyde himself seems not to have warmly opposed it.

every measure hostile to him was grounded. His imprudent connivance at popery, and the far more reprehensible encouragement given to it by his court, had sunk deep in the hearts of his people. His ill-wishers knew how to irritate the characteristic sensibility of the English on this topic. The queen, unpopular on the score of her imputed arbitrary counsels, was odious as a maintainer of idolatry.* The lenity shown to convicted popish priests, who, though liable to capital punishment, had been suffered to escape with sometimes a very short imprisonment, was naturally (according to the maxims of those times) treated as a grievance by the commons, who petitioned for the execution of one Goodman and others in similar circumstances, perhaps in the hope that the king would attempt to shelter them. But he dexterously left it to the house whether they should die or not; and none of them actually suffered.† Rumours of pretended conspiracies by the catholics were perpetually in circulation, and rather unworthily encouraged by the chiefs of the commons. More substantial motives for alarm appeared to arise from the obscure transaction in Scotland, commonly called the Incident, which looked so like a concerted design against the two great leaders of the constitutional party, Hamilton and Argyle, that it was not unnatural to anticipate something similar in England.‡ In the midst of these apprehensions,

* The letters of sir Edward Nicholas, published as a supplement to Evelyn's Diary, show how generally the apprehensions of popish influence were entertained. It is well for superficial pretenders to lay these on calumny and misrepresentation: but such as have read our historical documents know that the royalists were almost as jealous of the king in this respect as the puritans. See what Nicholas says to the king himself, p. 22. 25. 29. Indeed he gives several hints to a discerning reader, that he was not satisfied with the soundness of the king's intentions, especially as to O'Neale's tampering with the army, p. 77. Nicholas, however, became afterwards a very decided supporter of the royal cause; and in the council at Oxford, just before the treaty of Uxbridge, was the only one who voted according to the king's wish, not to give the members at Westminster the appellation of a parliament. P. 90.

† The king's speech about Goodman, Baillie tells us, gave great satisfaction to all; "with *much humming* was it received." P. 240. Goodman petitioned the house that he might be executed, rather than become the occasion of differences between the king and parliament. This was earlier in time, and at least equal in generosity, to lord Strafford's famous letter; or perhaps rather more so, since, though it turned out otherwise, he had greater reason to expect that he should be taken at his word. It is remarkable, that the king says in his answer to the commons, that no priest had been executed merely for religion, either by his father or Elizabeth, which, though well meant, was quite untrue. Parl. Hist. 712. Butler, ii. 5.

‡ See what Clarendon says of the effect produced at Westminster by the Incident, in one of the suppressed passages. Vol. ii. Append. p. 575. edit. 1826.

as if to justify every suspicion and every severity, burst out the Irish rebellion with its attendant massacre. Though nothing could be more unlikely in itself, or less supported by proof, than the king's connivance at this calamity, from which every man of common understanding could only expect, what actually resulted from it, a terrible aggravation of his difficulties, yet, with that distrustful temper of the English, and their jealous dread of popery, he was never able to conquer their suspicions that he had either instigated the rebellion, or was very little solicitous to suppress it; suspicions indeed, to which, however ungrounded at this particular period, some circumstances that took place afterwards gave an apparent confirmation.*

It was, perhaps, hardly practicable for the king, had he given less real excuse for it than he did, to lull that inquietude which so many causes operated to excite. The most circumspect discretion of a prince in such a difficult posture cannot restrain the rashness of eager adherents, or silence the murmurs of a discontented court. Those nearest Charles's person, and who always possessed too much of his confidence, were notoriously and naturally averse to the recent changes. Their threatening but idle speeches, and impotent denunciations of resentment, conveyed with malignant exaggeration among the populace, provoked those tumultuous assemblages, which afforded the king no bad pretext for withdrawing himself from a capital where his personal dignity was so little respected.† It is impossible however to deny

* Nalson, ii. 788. 792. 804. Clarendon, ii. 84. The queen's behaviour had been extraordinarily imprudent from the very beginning. So early as Feb. 17. 1641, the French ambassador writes word:—"La reine d'Angleterre dit publiquement qu'il y a une trêve arrestée pour trois ans entre la France et l'Espagne, et que ces deux couronnes vont unir leurs forces pour la défendre et pour venger les catholiques." Mazure, Hist. de la Révol. en 1688, ii. 419. She was very desirous to go to France, doubtless to interest her brother and the queen in the cause of royalty. Lord Holland, who seems to have been the medium between the parliamentary chiefs and the French court, signified how much this

would be dreaded by the former; and Richelieu took care to keep her away, of which she bitterly complained. This was in February. Her majesty's letter, which M. Mazure has been malicious enough to print verbatim, is a curious specimen of orthography. Id. p. 416. Her own party were equally averse to this step, which was chiefly the effect of cowardice; for Henrietta was by no means the high-spirited woman that some have fancied. It is well known that a few months afterwards she pretended to require the waters of Spa for her health; but was induced to give up her journey.

† Clarendon, ii. 81. This writer intimates that the Tower was looked upon by the court as a bridle upon the city.

that he gave by his own conduct no trifling reasons for suspicion, and last of all by the appointment of Lunsford to the government of the Tower; a choice for which, as it would never have been made from good motives, it was natural to seek the worst. But the single false step* which rendered

* Nalson, ii. 810., and other writers, ascribe this accusation of lord Kimbolton in the peers, and of the five members, as they are commonly called, Pym, Hollis, Hampden, Haslerig, and Strode, to secret information obtained by the king in Scotland of their former intrigues with that nation. This is rendered in some measure probable by a part of the written charge preferred by the attorney-general before the house of lords, and by expressions that fell from the king; such as, "it was a treason which they should all thank him for discovering." Clarendon, however, hardly hints at this; and gives, at least, a hasty reader to understand that the accusation was solely grounded on their parliamentary conduct. Probably he was aware that the act of oblivion passed last year afforded a sufficient legal defence to the charge of corresponding with the Scots in 1640. In my judgment they had an abundant justification in the eyes of their country for intrigues which, though legally treasonable, had been the means of overthrowing despotic power. The king and courtiers had been elated by the applause he received when he went into the city to dine with the lord mayor on his return from Scotland; and Madame de Motteville says plainly, that he determined to avail himself of it in order to seize the leaders in parliament. (i. 264.)

Nothing could be more irregular than the mode of Charles's proceedings in this case. He sends a message by the serjeant at arms to require of the speaker that five members should be given up to him on a charge of high treason; no magistrate's or counsellor's warrant appeared; it was the king acting singly, without the intervention of the law. It is idle to allege, like Clarendon, that privilege of parliament does not extend to treason; the breach of privilege, and of all constitutional law, was in the mode of proceeding. In fact, the king was guided by bad private advice, and cared not to let any of his privy council know

his intention, lest he should encounter opposition.

The following account of the king's coming to the house on this occasion is copied from the pencil notes of sir R. Verney. It has been already printed by Mr. Hatsell (Precedents, iv. 106.), but with no great correctness. What sir R. V. says of the transactions of Jan. 3. is much the same as we read in the Journals. He thus proceeds:—"Tuesday, January 4. 1641. The five gentlemen which were to be accused came into the house, and there was information that they should be taken away by force. Upon this the house sent to the lord mayor, aldermen, and common council, to let them know how their privileges were likely to be broken, and the city put into danger, and advised them to look to their security.

"Likewise some members were sent to the inns of court, to let them know how they heard they were tampered withal to assist the king against them, and therefore they desired them not to come to Westminster.

"Then the house adjourned to one of the clock.

"As soon as the house met again, it was moved, considering there was an intention to take these five members away by force, to avoid all tumult, let them be commanded to absent themselves; upon this the house gave them leave to absent themselves, but entered no order for it. And then the five gentlemen went out of the house.

"A little after the king came with all his guard, and all his pensioners, and two or three hundred soldiers and gentlemen. The king commanded the soldiers to stay in the hall, and sent us word he was at the door. The speaker was commanded to sit still with the mace lying before him, and then the king came to the door, and took the palsgrave in with him, and commanded all that came with him upon their lives not to come in. So the doors were kept open,

his affairs irretrievable by any thing short of civil war, and placed all reconciliation at an insuperable distance, was his attempt to seize the five members within the walls of the house; an evident violation, not of common privilege, but of all security for the independent existence of parliament in the mode of its execution, and leading to a very natural though perhaps mistaken surmise, that the charge itself of high treason made against these distinguished leaders, without communicating any of its grounds, had no other foundation than their parliamentary conduct. And we are in fact warranted by the authority of the queen herself to assert, that their aim in this most secret enterprise was to strike terror into the parliament, and regain the power that had been wrested from their grasp.* It is unnecessary to dwell on a

and the earl of Roxburgh stood within the door, leaning upon it. Then the king came upwards towards the chair with his hat off, and the speaker stepped out to meet him; then the king stepped up to his place, and stood upon the step, but sat not down in the chair.

“And after he had looked a great while, he told us he would not break our privileges, but treason had no privilege; he came for those five gentlemen, for he expected obedience yesterday, and not an answer. Then he called Mr. Pym and Mr. Hollis by name, but no answer was made. Then he asked the speaker if they were here, or where they were? Upon this the speaker fell on his knees, and desired his excuse, for he was a servant to the house, and had neither eyes nor tongue to see or say any thing, but what they commanded him: then the king told him he thought his own eyes were as good as his, and then said his birds had flown, but he did expect the house should send them to him; and if they did not, he would seek them himself, for their treason was foul, and such a one as they would all thank him to discover: then he assured us they should have a fair trial; and so went out, pulling off his hat till he came to the door.

“Upon this the house did instantly resolve to adjourn till to-morrow at one of the clock, and in the interim they might consider what to do.

“Wednesday, 5th January, 1641.

“The house ordered a committee to sit at Guildhall in London, and all that

would come had voices. This was to consider and advise how to right the house in point of privilege broken by the king's coming yesterday with a force to take members out of our house. They allowed the Irish committee to sit, but would meddle with no other business till this were ended; they acquainted the lords in a message with what they had done, and then they adjourned the house till Tuesday next.”

The author of these memoranda in pencil, which extend, at intervals of time, from the meeting of the parliament to April, 1642, though mistaken by Mr. Hatsell for sir Edmund Verney, member for the county of Bucks, and killed at the battle of Edgehill, has been ascertained by my learned friend, Mr. serjeant D'Oyly, to be his brother, sir Ralph, member for Aylesbury. He continued at Westminster, and took the covenant; but afterwards retired to France, and was disabled to sit by a vote of the house, Sept. 22, 1645.

* *Mém. de Motteville*, i. 264. Clarendon has hardly been ingenuous in throwing so much of the blame of this affair on lord Digby. Indeed, he insinuates in one place, that the queen's apprehension of being impeached, with which some one in the confidence of the parliamentary leaders (either lord Holland or lady Carlisle) had inspired her, led to the scheme of anticipating them. (ii. 232.) It has been generally supposed that lady Carlisle gave the five members a hint to absent themselves.

measure so well known, and which scarce any of the king's advocates have defended. The only material subject it affords for reflection is, how far the manifest hostility of Charles to the popular chiefs might justify them in rendering it harmless by wresting the sword out of his hands. No man doubtless has a right, for the sake only of his own security, to subvert his country's laws, or to plunge her into civil war. But Hampden, Hollis, and Pym, might not absurdly consider the defence of English freedom bound up in their own, assailed as they were for its sake and by its enemies. It is observed by Clarendon, that "Mr. Hampden was much altered after this accusation; his nature and courage seeming much fiercer than before." And it is certain that both he and Mr. Pym were not only most forward in all the proceedings which brought on the war, but among the most implacable opponents of all overtures towards reconciliation; so that although, both dying in 1643, we cannot pronounce with absolute certainty as to their views, there can be little room to doubt that they would have adhered to the side of Cromwell and St. John, in the great separation of the parliamentary party.

The noble historian confesses that not Hampden alone, but the generality of those who were beginning to judge more favourably of the king, had their inclinations alienated by this fatal act of violence.* It is worthy of remark that each of the two most striking encroachments on the king's prerogative sprang directly from the suspicions roused of an intention to destroy their privileges: the bill perpetuating the parliament having been hastily passed on the discovery of Percy's and Jermyn's conspiracy, and the present attempt on the five members inducing the commons to insist peremptorily on vesting the command of the militia in persons of their own nomination; a security, indeed, at which they had been less openly aiming from the time of that conspiracy, and particularly of late.† Every one knows that

Question of
the militia.

The French ambassador, however, Montreuil, takes the credit to himself. — "J'avois prévenu mes amis, et ils s'étoient mis en sûreté." Mazure, p. 429. It is probable that he was in communication with that intriguing lady.

* P. 159. 180.

† The earliest proof that the commons gave of their intention to take the militia into their hands was immediately upon the discovery of Percy's plot, 5th May, 1641, when an order was made that the members of each county, &c. should meet to consider in what state the places for

this was the grand question upon which the quarrel finally rested; but it may be satisfactory to show more precisely than our historians have generally done, what was meant by the power of the militia, and what was the exact ground of dispute in this respect between Charles I. and his parliament.

The military force which our ancient constitution had placed in the hands of its chief magistrate and those deriving authority from him, may be classed under two descriptions; one principally designed to maintain the king's and the nation's rights abroad, the other to protect them at home from attack or disturbance. The first comprehends the tenures by knight's service, which, according to the constant principles of a feudal monarchy, bound the owners of lands thus held from the crown, to attend the king in war, within or without the realm, mounted and

Historical sketch of the military force in England.

which they serve are in respect of arms and ammunition, and whether the deputy lieutenants and lord lieutenants are persons well affected to the religion and the public peace, and to present their names to the house, and who are the governors of forts and castles in their counties. Commons' Journals. Not long afterwards, or at least before the king's journey to Scotland, sir Arthur Haslerig, as Clarendon informs us, proposed a bill for settling the militia in such hands as they should nominate, which was seconded by St. John, and read once, "but with so universal a dislike, that it was never called upon a second time." Clarendon, i. 488. I can find nothing of this in the Journals, and believe it to be one of the anachronisms into which this author has fallen, in consequence of writing at a distance from authentic materials. The bill to which he alludes must, I conceive, be that brought in by Haslerig long after, 7th Dec. 1641, not, as he terms it, for settling the militia, but for making certain persons, leaving their names in blank, "lords general of all the forces within England and Wales, and lord admiral of England." The persons intended seem to have been Essex, Holland, and Northumberland. The commons had for some time planned to give the two former earls a supreme command over the trained bands north and south of

Trent (Journals, Nov. 15. and 16.); which was afterwards changed into the scheme of lord lieutenants of their own nomination for each county. The bill above mentioned having been once read, it was moved that it be rejected, which was negatived by 158 to 125. Commons' Journals, 7th Dec. Nalson, ii. 719., has made a mistake about these numbers. The bill, however, was laid aside, a new plan having been devised. It was ordered, 31st Dec. 1641, "that the house be resolved into a committee on Monday next (Jan. 3.), to take into consideration the militia of the kingdom." That Monday, Jan. 3., was the famous day of the king's message about the five members; and on Jan. 13. a declaration for putting the kingdom in a state of defence passed the commons, by which "all officers, magistrates, &c. were enjoined to take care that no soldiers be raised, nor any castles or arms given up, *without his majesty's pleasure signified by both houses of parliament.*" Commons' Journals. Parl. Hist. 1035. The lords at the time refused to concur in this declaration, which was afterwards changed into the ordinance for the militia; but 32 peers signed a protest, id. 1049., and the house not many days afterwards came to an opposite vote, joining with the commons in their demand of the militia. Id. 1072. 1091.

armed, during the regular term of service. Their own vassals were obliged by the same law to accompany them. But the feudal service was limited to forty days, beyond which time they could be retained only by their own consent, and at the king's expense. The military tenants were frequently called upon in expeditions against Scotland, and last of all in that of 1640; but the short duration of their legal service rendered it of course nearly useless in continental warfare. Even when they formed the battle, or line of heavy-armed cavalry, it was necessary to complete the army by recruits of foot-soldiers, whom feudal tenure did not regularly supply, and whose importance was soon made sensible by their skill in our national weapon, the bow. What was the extent of the king's lawful prerogative for two centuries or more after the conquest as to compelling any of his subjects to serve him in foreign war, independently of the obligations of tenure, is a question scarcely to be answered; since, knowing so imperfectly the boundaries of constitutional law in that period, we have little to guide us but precedents; and precedents, in such times, are apt to be much more records of power than of right. We find certainly several instances under Edward I. and Edward II., sometimes of proclamations to the sheriffs, directing them to notify to all persons of sufficient estate that they must hold themselves ready to attend the king whenever he should call on them, sometimes of commissions to particular persons in different counties, who are enjoined to choose and array a competent number of horse and foot for the king's service.* But these levies being of course vexatious to the people, and contrary at least to the spirit of those immunities which, under the shadow of the great charter, they were entitled to enjoy, Edward III., on the petition of his first parliament, who judged that such compulsory service either was or ought to be rendered illegal, passed a remarkable act, with

* Rymer, sub Edw. I. et II. passim. Thus, in 1297, a writ to the sheriff of Yorkshire directs him to make known to all, qui habent 20 libratas terræ et redditus per annum, tam illis qui non tenent de nobis in capite quam illis qui tenent, ut de equis et armis sibi provideant et se

probarent indilatè; ita quod sint prompti et parati ad veniendum ad nos et eundum cum propriâ personâ nostrâ, pro defensione ipsorum et totius regni nostri prædicti, quandocumque pro ipsis duxerimus demandandum, ii. 864.

the simple brevity of those times: "That no man from henceforth should be charged to arm himself, otherwise than he was wont in the time of his progenitors, the kings of England; and that no man be compelled to go out of his shire, but where necessity requireth, and sudden coming of strange enemies into the realm; and then it shall be done as hath been used in times past for the defence of the realm." *

This statute, by no means of inconsiderable importance in our constitutional history, put a stop for some ages to these arbitrary conscriptions. But Edward had recourse to another means of levying men without his own cost, by calling on the counties and principal towns to furnish a certain number of troops. Against this the parliament provided a remedy by an act in the 25th year of his reign: "That no man shall be constrained to find men at arms, hoblers, nor archers, other than those who hold by such service, if it be not by common consent and grant in parliament." Both these statutes were recited and confirmed in the fourth year of Henry IV. †

The successful resistance thus made by parliament appears to have produced the discontinuance of compulsory levies for foreign warfare. Edward III. and his successors, in their long contention with France, resorted to the mode of recruiting by contracts with men of high rank or military estimation, whose influence was greater probably than that of the crown towards procuring voluntary enlistments. The pay of soldiers, which we find stipulated in such of those contracts as are extant, was extremely high; but it secured the service of a brave and vigorous yeomanry. Under the house of Tudor, in conformity to their more despotic scheme of government, the salutary enactments of former times came to be disregarded; Henry VIII. and Elizabeth sometimes compelling the counties to furnish soldiers: and the prerogative of pressing men for military service, even out of the kingdom, having not only become as much established as undisputed usage could make it, but acquiring no slight degree of sanction by an act passed under Philip and Mary, which, without

* Stat. 1 Edw. III. c. 5.

† 25 Edw. III. c. 8. 4 H. IV. c. 13.

repealing or adverting to the statutes of Edward III. and Henry IV., recognizes, as it seems, the right of the crown to levy men for service in war, and imposes penalties on persons absenting themselves from musters commanded by the king's authority to be held for that purpose.* Clarendon, whose political heresies sprang in a great measure from his possessing but a very imperfect knowledge of our ancient constitution, speaks of the act that declared the pressing of soldiers illegal, though exactly following, even in its language, that of Edward III., as contrary to the usage and custom of all times.

It is scarcely perhaps necessary to observe that there had never been any regular army kept up in England. Henry VII. established the yeomen of the guard in 1485, solely for the defence of his person, and rather perhaps, even at that time, to be considered as the king's domestic servants, than as soldiers. Their number was at first fifty, and seems never to have exceeded two hundred. A kind of regular troops, however, chiefly accustomed to the use of artillery, was maintained in the very few fortified places where it was thought necessary or practicable to keep up the show of defence; the Tower of London, Portsmouth, the castle of Dover, the fort of Tilbury, and, before the union of the crowns, Berwick and some other places on the Scottish border. I have met with very little as to the nature of these garrisons. But their whole number must have been insignificant, and probably at no time equal to resist any serious attack.

We must take care not to confound this strictly military force, serving, whether by virtue of tenure or engagement, wheresoever it should be called, with that of a more domestic and defensive character to which alone the name of militia was usually applied. By the Anglo-Saxon laws, or rather by one of the primary and indispensable conditions of poli-

* 4 & 5 Philip and Mary, c. 3. The Harleian manuscripts are the best authority for the practice of pressing soldiers to serve in Ireland or elsewhere, and are full of instances. The Mouldys and Bullcalfs were in frequent requisition. See vols. 309. 1926. 2219. and others. Thanks

to Humphrey Wanley's diligence, the analysis of these papers in the catalogue will save the inquirer the trouble of reading, or the mortification of finding he cannot read, the terrible scrawl in which they are generally written.

tical society, every freeholder, if not every freeman, was bound to defend his country against hostile invasion. It appears that the alderman or earl, while those titles continued to imply the government of a county, was the proper commander of this militia. Henry II., in order to render it more effective in cases of emergency, and perhaps with a view to extend its service, enacted, by consent of parliament, that every freeman, according to the value of his estate or moveables, should hold himself constantly furnished with suitable arms and equipments.* By the statute of Winchester, in the 13th year of Edward I., these provisions were enforced and extended. Every man, between the ages of fifteen and sixty, was to be assessed, and sworn to keep armour according to the value of his lands and goods; for fifteen pounds and upwards in rent, or forty marks in goods, a hauberk, an iron breastplate, a sword, a knife, and a horse; for smaller property, less extensive arms. A view of this armour was to be taken twice in the year, by constables chosen in every hundred.† These regulations appear by the context of the whole statute to have more immediate regard to the preservation of internal peace, by suppressing tumults and arresting robbers, than to the actual defence of the realm against hostile invasion; a danger not at that time very imminent. The sheriff, as chief conservator of public peace and minister of the law, had always possessed the right of summoning the posse comitatûs; that is, of calling on all the king's liege subjects within his jurisdiction for assistance, in case of any rebellion or tumultuous rising, or when bands of robbers infested the public ways, or when, as occurred very frequently, the execution of legal process was forcibly obstructed. It seems to have been the policy of that wise prince, to whom we are indebted for so many signal improvements in our law, to give a more effective and permanent energy to this power of the sheriff. The provisions, however, of the statute of Winchester, so far as they obliged every proprietor to possess suitable arms, were of course applicable to national defence. In seasons of public danger, threatening invasion from the side of Scotland or France, it

* Wilkins's *Leges Anglo-Saxonicae*, p. 333. † Stat. 13 E. 1. Lyttleton's *Henry II.*, iii. 354.

became customary to issue commissions of array, empowering those to whom they were addressed to muster and train all men capable of bearing arms in the counties to which their commission extended, and hold them in readiness to defend the kingdom. The earliest of these commissions that I find in Rymer is of 1324, and the latest of 1557.

The obligation of keeping sufficient arms according to each man's estate was preserved by a statute of Philip and Mary, which made some changes in the rate and proportion as well as the kind of arms.* But these ancient provisions were abrogated by James in his first parliament.† The nation, become for ever secure from invasion on the quarter where the militia service had been most required, and freed from the other dangers which had menaced the throne of Elizabeth, gladly saw itself released from an expensive obligation. The government again may be presumed to have thought that weapons of offence were safer in its hands than in those of its subjects. Magazines of arms were formed in different places, and generally in each county‡: but, if we may reason from the absence of documents, there was little regard to military array and preparation; save that the citizens of London mustered their trained bands on holidays, an institution that is said to have sprung out of a voluntary association, called the artillery company, formed in the reign of Henry VIII. for the encouragement of archery, and acquiring a more respectable and martial character at the time of the Spanish armada.§

The power of calling into arms, and mustering the population of each county, given in earlier times to the sheriff or justices of the peace, or to special commissioners of array, began to be entrusted, in the reign of Mary, to a new officer, entitled the lord lieutenant. This was usually a peer, or at least a gentleman of large estate within the county, whose office gave him the command of the militia, and rendered

* 5 Philip and Mary, c. 2.

† 1 Jac. c. 25. § 46. An order of council in Dec. 1638, that every man having lands of inheritance to the clear yearly value of 200*l.* should be chargeable to furnish a light horseman, every one of 300*l.* estate to furnish a lance at the discretion of the lord-lieutenant, was un-

warranted by any existing law, and must be reckoned among the violent stretches of prerogative at that time. Rushw. Abr. ii. 500.

‡ Rymer, xix. 310.

§ Grose's Military Antiquities, i. 150. The world artillery was used in that age for the long bow.

him the chief vicegerent of his sovereign, responsible for the maintenance of public order. This institution may be considered as a revival of the ancient local earldom; and it certainly took away from the sheriff a great part of the dignity and importance which he had acquired since the discontinuance of that office. Yet the lord lieutenant has so peculiarly military an authority, that it does not in any degree control the civil power of the sheriff as the executive minister of the law. In certain cases, such as a tumultuous obstruction of legal authority, each might be said to possess an equal power; the sheriff being still undoubtedly competent to call out the *posse comitatûs* in order to enforce obedience. Practically however, in all serious circumstances, the lord lieutenant has always been reckoned the efficient and responsible guardian of public tranquillity.

From an attentive consideration of this sketch of our military law, it will strike the reader that the principal question to be determined was, whether, in time of peace, without pretext of danger of invasion, there were any legal authority that could direct the mustering and training to arms of the able-bodied men in each county, usually denominated the militia. If the power existed at all, it manifestly resided in the king. The notion that either or both houses of parliament, who possess no portion of executive authority, could take on themselves one of its most peculiar and important functions, was so preposterous that we can scarcely give credit to the sincerity of any reasonable person who advanced it. In the imminent peril of hostile invasion, in the case of intestine rebellion, there seems to be no room for doubt, that the king who could call on his subjects to bear arms for their country and laws, could oblige them to that necessary discipline and previous training, without which their service would be unavailing. It might also be urged that he was the proper judge of the danger. But that, in a season of undeniable tranquillity, he could withdraw his subjects from their necessary labours against their consent, even for the important end of keeping up the use of military discipline, is what, with our present sense of the limitations of royal power, it might be difficult to affirm. The precedents under Henry VIII. and Elizabeth were nu-

merous; but not to mention that many, perhaps most of these, might come under the class of preparations against invasion, where the royal authority was not to be doubted, they could be no stronger than those other precedents for pressing and mustering soldiers, which had been declared illegal. There were at least so many points uncertain, and some wherein the prerogative was plainly deficient, such as the right of marching the militia out of their own counties, taken away, if it had before existed, by the act just passed against pressing soldiers, that the concurrence of the whole legislature seemed requisite to place so essential a matter as the public defence on a secure and permanent footing.*

The aim of the houses however in the bill for regulating the militia, presented to Charles in February 1642, and his refusal to pass which led by rapid steps to the civil war, was not so much to remove those uncertainties by a general provision (for in effect they left them much as before), as to place the command of the sword in the hands of those they could control; — nominating in the bill the lords lieutenant of every county, who were to obey the orders of the two houses, and to be irremovable by the king for two years. No one can pretend that this was not an encroachment on his prerogative.† It can only find a justification in the precarious condition, as the commons asserted it to be, of those liberties they had so recently obtained, in their just persuasion of the king's insincerity, and in the demonstrations he had already made of an intention to win back his authority at the sword's point.‡ But it is equitable, on the other hand, to observe that the commons had by no

Encroachments of the parliament.

* Whitelock maintained, both on this occasion, and at the treaty of Uxbridge, that the power of the militia resided in the king and two houses jointly, p. 55. 129. This, though not very well expressed, can only mean that it required an act of parliament to determine and regulate it.

† See the list of those recommended, Parl. Hist. 1083. Some of these were royalists: but on the whole, three fourths of the military force of England would have been in the hands of persons, who, though men of rank, and attached to the monarchy, had given Charles no reason

to hope that they would decline to obey any order which the parliament might issue, however derogatory or displeasing to himself.

‡ "When this bill had been with much ado accepted, and first read, there were few men who imagined it would ever receive further countenance; but now there were very few who did not believe it to be a very necessary provision for the peace and safety of the kingdom. So great an impression had the late proceedings made upon them, that with little opposition it passed the commons, and was sent up to the lords." Clarend. ii. 180.

means greater reason to distrust the faith of Charles, than he had to anticipate fresh assaults from them on the power he had inherited, on the form of religion which alone he thought lawful, on the counsellors who had served him most faithfully, and on the nearest of his domestic ties. If the right of self-defence could be urged by parliament for this demand of the militia, must we not admit that a similar plea was equally valid for the king's refusal? However arbitrary and violent the previous government of Charles may have been, however disputable his sincerity at present, it is vain to deny, that he had made the most valuable concessions, and such as had cost him very dear. He had torn away from his diadem what all monarchs would deem its choicest jewel, that high attribute of uncontrollable power, by which their flatterers have in all ages told them they resemble and represent the Divinity. He had seen those whose counsels he had best approved, rewarded with exile or imprisonment, and had incurred the deep reproach of his own heart by the sacrifice of Strafford. He had just now given a reluctant assent to the extinction of one estate of parliament, by the bill excluding bishops from the house of peers. Even in this business of the militia, he would have consented to nominate the persons recommended to him as lieutenants, by commissions revocable at his pleasure; or would have passed the bill rendering them irremovable for one year, provided they might receive their orders from himself and the two houses jointly.* It was not unreasonable for the king to pause at the critical moment which was to make all future denial nugatory, and inquire whether the prevailing majority designed to leave him what they had not taken away. But he was not long kept in uncertainty upon this score. The nineteen propositions tendered to him at York in the beginning of June, and founded upon addresses and declarations

Nineteen propositions.

* Clarendon. ii. 375. Parl. Hist. 1077. 1106, &c. It may be added, that the militia bill, as originally tendered to the king by the two houses, was ushered in by a preamble asserting that there had been a most dangerous and desperate design on the house of commons, the effect of the bloody counsels of the papists, and other ill-affected persons, who had

already raised a rebellion in Ireland. Clar. p. 336. Surely he could not have passed this, especially the last allusion, without recording his own absolute dishonour: but it must be admitted, that on the king's objection they omitted this preamble, and also materially limited the powers of the lords lieutenant to be appointed under the bill.

of a considerably earlier date*, went to abrogate in spirit the whole existing constitution, and were in truth so far beyond what the king could be expected to grant, that terms more intolerable were scarcely proposed to him in his greatest difficulties, not at Uxbridge, nor at Newcastle, nor even at Newport.

These famous propositions import that the privy-council and officers of state should be approved by parliament, and take such an oath as the two houses should prescribe; that during the intervals of parliament, no vacancy in the council should be supplied without the assent of the major part, subject to the future sanction of the two houses; that the education and marriages of the king's children should be under parliamentary control; the votes of popish peers be taken away; the church government and liturgy be reformed as both houses should advise; the militia and all fortified places put in such hands as parliament should approve; finally, that the king should pass a bill for restraining all peers to be made in future from sitting in parliament, unless they be admitted with the consent of both houses. A few more laudable provisions, such as that the judges should hold their offices during good behaviour, which the king had long since promised†, were mixed up with these strange demands. Even had the king complied with such unconstitutional requisitions, there was one behind, which, though they had not advanced it on this occasion, was not likely to be forgotten. It had been asserted by the house of commons in their last remonstrance, that, on a right construction of the old coronation oath, the king was bound to assent to all bills which the two houses of parliament should offer.‡ It has been said by some

* A declaration of the grievances of the kingdom, and the remedies proposed, dated April 1., may be found in the Parliamentary History, p. 1155. But that work does not notice that it had passed the commons on Feb. 19., before the king had begun to move towards the north. Commons' Journals. It seems not to have pleased the house of lords, who postponed its consideration, and was much more grievous to the king than the nineteen propositions themselves. One proposal was to remove all papists from about the queen; that is, to deprive her of the exercise of her religion, guaranteed by

her marriage contract. To this objection Pym replied that the house of commons had only to consider the law of God and the law of the land; that they must resist idolatry, lest they incur the divine wrath, and must see the laws of this kingdom executed; that the public faith is less than that they owe to God, against which no contract can oblige, neither can any bind us against the law of the kingdom. Parl. Hist. 1162.

† Id. 702.

‡ Clarendon, p. 452. Upon this passage in the remonstrance a division took place, when it was carried by 103 to 61.

that this was actually the constitution of Scotland, where the crown possessed a counterbalancing influence; but such a doctrine was in this country as repugnant to the whole history of our laws, as it was incompatible with the subsistence of the monarchy in any thing more than a nominal pre-eminence.

In weighing the merits of this great contest, in judging whether a thoroughly upright and enlightened man would rather have listed under the royal or parliamentary standard, there are two political postulates, the concession of which we may require: one, that civil war is such a calamity as nothing but the most indispensable necessity can authorise any party to bring on; the other, that the mixed government of England by king, lords, and commons, was to be maintained in preference to any other form of polity. The first of these can hardly be disputed; and though the denial of the second would certainly involve no absurdity, yet it may justly be assumed where both parties avowed their adherence to it as a common principle. Such as prefer a despotic or a republican form of government will generally, without much further inquiry, have made their election between Charles the First and the parliament. We do not argue from the creed of the English constitution to those who have abandoned its communion.

There was so much in the conduct and circumstances of both parties in the year 1642, to excite disapprobation and distrust, that a wise and good man could hardly unite cordially with either of them. On the one hand, he would entertain little doubt of the king's desire to over-

Discussion
of the re-
spective
claims of the
two parties
to support.

Faults of
both.

Parl. Hist. 1302. The words in the old form of coronation oath, as preserved in a bill of parliament under Henry IV., concerning which this grammatico-political contention arose, are the following. "Concedis justas leges et consuetudines esse tenendas, et promittis per te eas esse protegendas, et ad honorem Dei corroborandas, *quas vulgus elegerit*, secundum vires tuas?" It was maintained by one side that *elegerit* should be construed in the future tense, while the other contended for the praterperfect. But even if the former were right, as to the point of Latin construction, though consuetu-

dines seems naturally to imply a past tense, I should by no means admit the strange inference that the king was bound to sanction all laws proposed to him. His own assent is involved in the expression, "*quas vulgus elegerit*," which was introduced, on the hypothesis of the word being in the future tense, as a security against his legislation without consent of the people in parliament. The English coronation oath, which Charles had taken, excludes the future: Sir, will you grant to hold and keep the laws and rightful customs, *which the commonalty of this your kingdom have?*

throw by force or stratagem whatever had been effected in parliament, and to establish a plenary despotism; his arbitrary temper, his known principles of government, the natural sense of wounded pride and honour, the instigations of a haughty woman, the solicitations of favourites, the promises of ambitious men, were all at work to render his new position as a constitutional sovereign, even if unaccompanied by fresh indignities and encroachments, too grievous and mortifying to be endured. He had already tampered in a conspiracy to overawe, if not to disperse, the parliament; he had probably obtained large promises, though very little to be trusted, from several of the presbyterian leaders in Scotland during his residence there in the summer of 1641; he had attempted to recover his ascendancy by a sudden blow in the affair of the five members; he had sent the queen out of England, furnished with the crown-jewels, for no other probable end than to raise men and procure arms in foreign countries*; he was now about to take the field with an army, composed in part of young gentlemen disdainful of a puritan faction that censured their licence, and of those soldiers of fortune, reckless of public principle, and averse to civil control, whom the war in Germany had trained; in part of the catholics, a wealthy and active body, devoted to the crown, from which alone they had experienced justice or humanity, and from whose favour and gratitude they now expected the most splendid returns. Upon neither of these parties could a lover of his country and her liberties look without alarm; and though he might derive more hope from those better spirits, who had withstood the prerogative in its exorbitance, as they now sustained it in its decline, yet it could not be easy to foretell that they would preserve sufficient influence to keep steady the balance of power, in the contingency of any decisive success of the royal arms.

But, on the other hand, the house of commons presented still less favourable prospects. We should not indeed judge over severely some acts of a virtuous indignation in the first

* See what is said as to this by P. Orleans, iii. 87., and by Madame de Motteville, i. 268. Her intended journey to Spa, in July, 1641, which was given up on the remonstrance of parliament, is

highly suspicious. The house, it appears, had received even then information that the crown jewels were to be carried away. Nalson, ii. 391.

moments of victory*, or those heats of debate, without some excesses of which a popular assembly is in danger of falling into the opposite extreme of phlegmatic security. But, after every allowance has been made, he must bring very heated passions to the records of those times, who does not perceive in the conduct of that body a series of glaring violations, not only of positive and constitutional, but of those higher principles which are paramount to all immediate policy. Witness the ordinance for disarming recusants passed by both houses in August 1641, and that in November, authorising the earl of Leicester to raise men for the defence of Ireland without warrant under the great seal; both manifest encroachments on the executive power†; and the enormous extension of privilege, under which every person accused on the slightest testimony of disparaging their proceedings, or even of introducing new-fangled ceremonies in the church, a matter wholly out of their cognizance, was dragged before them as a delinquent, and lodged in their prison.‡ Witness the outrageous

* The impeachments of lord Finch and of judge Berkeley for high treason are at least as little justifiable in point of law as that of Strafford. Yet, because the former of these was moved by lord Falkland, Clarendon is so far from objecting to it, that he imputes as a fault to the parliamentary leaders their lukewarmness in this prosecution, and insinuates that they were desirous to save Finch. See especially the new edition of Clarendon, vol. i. Appendix. But they might reasonably think that Finch was not of sufficient importance to divert their attention from the grand apostate, whom they were determined to punish. Finch fled to Holland; so that then it would have been absurd to take much trouble about his impeachment: Falkland, however, opened it to the lords, 14 Jan. 1641, in a speech containing full as many extravagant propositions as any of St. John's. Berkeley, besides his forwardness about ship-money, had been notorious for subserviency to the prerogative. The house sent the usher of the black rod to the court of King's Bench, while the judges were sitting, who took him away to prison; "which struck a great terror," says Whitelock, "in the rest of his brethren then sitting in Westminster-hall, and in all his profes-

sion." The impeachment against Berkeley for high treason ended in his paying a fine of 10,000*l*. But what appears strange and unjustifiable is, that the houses suffered him to sit for some terms as a judge, with this impeachment over his head. The only excuse for this is, that there were a great many vacancies on that bench.

† Journals, Aug. 30. and Nov. 9. It may be urged in behalf of these ordinances, that the king had gone into Scotland against the wish of the two houses, and after refusing to appoint a *custos regni* at their request. But if the exigency of the case might justify, under those circumstances, the assumption of an irregular power, it ought to have been limited to the period of the sovereign's absence.

‡ Parl. Hist. 678. et alibi. Journals, passim. Clarendon, i. 475. says this began to pass all bounds after the act rendering them indissoluble. "It had never," he says, "been attempted before this parliament to commit any one to prison, except for some apparent breach of privilege, such as the arrest of one of their members, or the like." Instances of this, however, had occurred before, of which I have mentioned in another place the

attempts to intimidate the minority of their own body in the commitment of Mr. Palmer, and afterwards of sir Ralph Hopton, to the Tower, for such language used in debate as would not have excited any observation in ordinary times; — their continual encroachments on the rights and privileges of the lords, as in their intimation that, if bills thought by them necessary for the public good should fall in the upper house, they must join with the minority of the lords in representing the same to the king * ; or in the impeachment of the duke of Richmond for words, and those of the most trifling nature, spoken in the upper house † ; — their despotic violation of the rights of the people, in imprisoning those who presented or prepared respectful petitions in behalf of the established constitution ‡ ; while they encouraged those of a tumultuous multitude at their bar in favour of innovation § ; — their

grossest, that of Floyd, in 1621. The lords, in March, 1642, condemned one Sandford, a tailor, for cursing the parliament, to be kept at work in Bridewell during his life, besides some minor inflictions. Rushworth. A strange order was made by the commons, Dec. 10. 1641, that sir William Earl having given information of some dangerous words spoken by certain persons, the speaker shall issue a warrant to apprehend *such persons as sir William Earl should point out.*

* The entry of this in the journals is too characteristic of the tone assumed in the commons to be omitted. "This committee (after naming some of the warmest men) is appointed to prepare heads for a conference with the lords, and to acquaint them what bills this house hath passed and sent up to their lordships, which much concern the safety of the kingdom, but have had no consent of their lordships unto them; and that, this house being the representative body of the whole kingdom, and their lordships being but as particular persons, and coming to parliament in a particular capacity, that if they shall not be pleased to consent to the passing of those acts and others necessary to the preservation and safety of the kingdom, that then this house, together with such of the lords that are more sensible of the safety of the kingdom, may join together and represent the same unto his majesty." This was on December 3. 1641, before the argument

from necessity could be pretended, and evidently contains the germ of the resolution of February 1649, that the house of lords was useless.

The resolution was moved by Mr. Pym; and on Mr. Godolphin's objecting, very sensibly, that if they went to the king with the lesser part of the lords, the greater part of the lords might go to the king with the lesser part of them, he was commanded to withdraw (Verney MS.); and an order appears on the journals, that on Tuesday next the house would take into consideration the offence now given by words spoken by Mr. Godolphin. Nothing farther, however, seems to have taken place.

† This was carried Jan. 27. 1642, by a majority of 223 to 123, the largest number, I think, that voted for any question during the parliament. Richmond was an eager courtier, and perhaps an enemy to the constitution; which may account for the unusual majority in favour of his impeachment, but cannot justify it. He had merely said, on a proposition to adjourn, "Why should we not adjourn for six months?"

‡ Parl. Hist. 1147. 1150. 1188. Clarendon, ii. 284. 346.

§ Clarendon, 322. Among other petitions presented at this time, the noble author inserts one from the porters of London. Mr. Brodie asserts of this, that "it is nowhere to be found or alluded to, so far as I recollect, except in Claren-

usurpation at once of the judicial and legislative powers in all that related to the church, particularly by their committee for scandalous ministers, under which denomination, adding reproach to injury, they subjected all who did not reach the standard of puritan perfection to contumely and vexation, and ultimately to expulsion from their lawful property.* Witness the impeachment of the twelve bishops for treason, on account of their protestation against all that should be done in the house of lords during their compelled absence through fear of the populace; a protest not perhaps entirely well expressed, but abundantly justifiable in its argument by the plainest principles of law.† These great abuses of power, becoming daily more frequent, as they became less excusable, would make a sober man hesitate to support them in a civil war, wherein their success must not only consummate the destruction of the crown, the church, and the peerage, but expose all who had dissented from their proceedings, as it ultimately happened, to an oppression less severe perhaps, but far more sweeping, than that which had rendered the star-chamber odious.

But it may reasonably also be doubted whether, in staking their own cause on the perilous contingencies of war, the

don's History; and I have no hesitation in pronouncing it a forgery by that author to disgrace the petitions which so galled him and his party. The journals of the commons give an account of every petition; and I have gone over them *with the utmost care*, in order to ascertain whether such a petition ever was presented, and yet cannot discover a trace of it." (iii. 506.) This writer is here too precipitate. No sensible man will believe Clarendon to have committed so foolish and useless a forgery; and this petition is fully noticed, though not inserted at length, in the journals of February the third.

* Nalson, ii. 234. 245.

† The bishops had so few friends in the house of commons, that in the debate arising out of this protest, all agreed that they should be charged with treason, except one gentleman, who said he thought them only mad, and proposed that they should be sent to Bedlam instead of the Tower. Even Clarendon bears rather

hard on the protest; chiefly, as is evident, because it originated with Williams. In fact, several of these prelates had not courage to stand by what they had done, and made trivial apologies. Parl. Hist. 996. Whether the violence was such as to form a complete justification for their absenting themselves, is a question of fact which we cannot well determine. Three bishops continued at their posts, and voted against the bill for removing them from the house of lords. See a passage from Hall's *Hard Measure*, in Wordsworth's *Eccles. Biogr.* v. 317. The king always entertained a notion that this act was null in itself; and in one of his proclamations from York, not very judiciously declares his intention to preserve the privileges of the *three estates* of parliament. The lords admitted the twelve bishops to bail; but, with their usual pusillanimity, recommitted them on the commons' expostulation. Parl. Hist. 1092.

house of commons did not expose the liberties for which they professedly were contending, to a far greater risk than they could have incurred even by peace with an insidious court. For let any one ask himself what would have been the condition of the parliament, if by the extension of that panic which in fact seized upon several regiments, or by any of those countless accidents which determine the fate of battles, the king had wholly defeated their army at Edgehill? Is it not probable, nay, in such a supposition, almost demonstrable, that in those first days of the civil war, before the parliament had time to discover the extent of its own resources, he would have found no obstacle to his triumphal entry into London? And, in such circumstances, amidst the defection of the timid and lukewarm, the consternation of the brawling multitude, and the exultation of his victorious troops, would the triennial act itself, or those other statutes which he had very reluctantly conceded, have stood secure? Or, if we believe that the constitutional supporters of his throne, the Hertfords, the Falklands, the Southamptons, the Spencers, would still have had sufficient influence to shield from violent hands that palladium which they had assisted to place in the building, can there be a stronger argument against the necessity of taking up arms for the defence of liberties, which, even in the contingency of defeat, could not have been subverted?

There were many indeed at that time, as there have been ever since, who, admitting all the calamities incident to civil war, of which this country reaped the bitter fruits for twenty years, denied entirely that the parliament went beyond the necessary precautions for self-defence, and laid the whole guilt of the aggression at the king's door. He had given, it was said, so many proofs of a determination to have recourse to arms, he had displayed so insidious an hostility to the privileges of parliament, that, if he should be quietly allowed to choose and train soldiers, under the name of a militia, through hired servants of his own nomination, the people might find themselves either robbed of their liberties by surprise, or compelled to struggle for them in very unfavourable circumstances. The commons, with more loyal respect perhaps than policy, had opposed no obstacle to his

deliberate journey towards the north, which they could have easily prevented *, though well aware that he had no other aim but to collect an army ; was it more than ordinary prudence to secure the fortified town of Hull with its magazine of arms from his grasp, and to muster the militia in each county under the command of lieutenants in whom they could confide, and to whom, from their rank and personal character, he could frame no just objection ?

These considerations are doubtless not without weight, and should restrain such as may not think them sufficient from too strongly censuring those, who, deeming that either civil liberty or the ancient constitution must be sacrificed, persisted in depriving Charles the First of every power, which, though pertaining to a king of England, he could not be trusted to exercise. We are, in truth, after a lapse of ages, often able to form a better judgment of the course that ought to have been pursued in political emergencies than those who stood nearest to the scene. Not only we have our knowledge of the event to guide and correct our imaginary determinations ; but we are free from those fallacious rumours, those pretended secrets, those imperfect and illusive views, those personal prepossessions, which in every age warp the political conduct of the most well-meaning. The characters of individuals, so frequently misrepresented by flattery or party rage, stand out to us revealed by the tenor of their entire lives, or by the comparison of historical anecdotes, and that more authentic information which is reserved for posterity. Looking as it were from an eminence, we can take a more comprehensive range, and class better the objects before us in their due proportions and in their bearings on one another. It is not easy for us even now to decide, keeping in view the maintenance of the entire constitution, from which party in the civil war greater mischief was to be apprehended ; but the election was, I am persuaded, still more difficult to be made by contemporaries. No one, at least, who has given any time to the study of

* May, p. 187., insinuates that the civil war should have been prevented by more vigorous measures on the part of the parliament. And it might probably have been in their power to have secured the king's person before he reached York. But the majority were not ripe for such violent proceedings.

that history, will deny that among those who fought in opposite battalions at Edgehill and Newbury, or voted in the opposite parliaments of Westminster and Oxford, there were many who thought much alike on general theories of prerogative and privilege, divided only perhaps by some casual prejudices, which had led these to look with greater distrust on courtly insidiousness, and those with greater indignation at popular violence. We cannot believe that Falkland and Colepepper differed greatly in their constitutional principles from Whitelock and Pierpoint, or that Hertford and Southampton were less friends to a limited monarchy than Essex and Northumberland.

There is, however, another argument sometimes alleged of late, in justification of the continued attacks on the king's authority; which is the most specious, as it seems to appeal to what are now denominated the Whig principles of the constitution. It has been said that, sensible of the male-administration the nation had endured for so many years, (which, if the king himself were to be deemed by constitutional fiction ignorant of it, must at least be imputed to evil advisers,) the house of commons sought only that security which, as long as a sound spirit continues to actuate its members, it must ever require — the appointment of ministers in whose fidelity to the public liberties it could better confide; that by carrying frankly into effect those counsels which he had unwisely abandoned upon the earl of Bedford's death, and bestowing the responsible offices of the state on men approved for patriotism, he would both have disarmed the jealousy of his subjects and ensured his own prerogative, which no ministers are prone to impair.

Those who are struck by these considerations may not, perhaps, have sufficiently reflected on the changes which the king had actually made in his administration since the beginning of the parliament. Besides those already mentioned, Essex, Holland, Say, and St. John, he had, in the autumn of 1641, conferred the post of secretary of state on lord Falkland, and that of master of the rolls on sir John Colepepper; both very prominent in the redress of grievances and punishment of delinquent ministers during the first part of the session, and whose attachment to the cause of consti-

tutional liberty there was no sort of reason to distrust. They were indeed in some points of a different way of thinking from Pym and Hampden, and had doubtless been chosen by the king on that account. But it seems rather beyond the legitimate bounds of parliamentary opposition to involve the kingdom in civil war, simply because the choice of the crown had not fallen on its leaders. The real misfortune was, that Charles did not rest in the advice of his own responsible ministers, against none of whom the house of commons had any just cause of exception. The theory of our constitution in this respect was very ill established; and, had it been more so, there are perhaps few sovereigns, especially in circumstances of so much novelty, who would altogether conform to it. But no appointment that he could have made from the patriotic bands of parliament would have furnished a security against the intrigues of his bed-chamber or the influence of the queen.

The real problem that we have to resolve, as to the political justice of the civil war, is not the character, the past actions, or even the existing designs, of Charles; not even whether he had as justly forfeited his crown as his son was deemed to have done for less violence and less insincerity; not even, I will add, whether the liberties of his subjects could have been absolutely secure under his government; but whether the risk attending his continuance upon the throne with the limited prerogatives of an English sovereign were great enough to counterbalance the miseries of protracted civil war, the perils of defeat, and the no less perils, as experience showed, of victory. Those who adopt the words spoken by one of our greatest orators, and quoted by another, "There was ambition, there was sedition, there was violence; but no man shall persuade me that it was not the cause of liberty on one side, and of tyranny on the other," have for themselves decided this question.* But, as I know (and the history of eighteen years is my witness) how little there was on one side of such liberty as a wise man would hold dear, so I am not yet convinced that the great body of the royalists,

* These words are ascribed to lord Essay on the History of the English Chatham, in a speech of Mr. Grattan, Government, p. 55. according to lord John Russell, in his

the peers and gentry of England, were combating for the sake of tyranny. I cannot believe them to have so soon forgotten their almost unanimous discontent at the king's arbitrary government in 1640, or their general concurrence in the first salutary measures of the parliament. I cannot think that the temperate and constitutional language of the royal declarations and answers to the house of commons in 1642, known to have proceeded from the pen of Hyde, and as superior to those on the opposite side in argument as they were in eloquence, was intended for the willing slaves of tyranny. I cannot discover in the extreme reluctance of the royalists to take up arms, and their constant eagerness for an accommodation, (I speak not of mere soldiers, but of the greater and more important portion of that party,) that zeal for the king's re-establishment in all his abused prerogatives which some connect with the very names of a royalist or a cavalier.*

It is well observed by Burnet, in answer to the vulgar

* Clarendon has several remarkable passages, chiefly towards the end of the fifth book of his History, on the slowness and timidity of the royalist party before the commencement of the civil war. The peers at York, forming, in fact, a majority of the upper house, for there were nearly forty of them, displayed much of this. Want of political courage was a characteristic of our aristocracy at this period, bravely as many behaved in the field. But I have no doubt that a real jealousy of the king's intentions had a considerable effect.

They put forth a declaration, signed by all their hands, on the 15th of June, 1642, professing before God their full persuasion that the king had no design to make war on the parliament, and that they saw no colour of preparations or counsels that might reasonably beget a belief of any such designs; but that all his endeavours tended to the settlement of the protestant religion, the just privileges of parliament, the liberty of the subject, &c. This was an ill-judged, and even absurd piece of hypocrisy, calculated to degrade the subscribers; since the design of raising troops was hardly concealed, and every part of the king's conduct since his arrival at York manifested it. The commission of array, au-

thorising certain persons in each county to raise troops, was in fact issued immediately after this declaration. It is rather mortifying to find lord Falkland's name, not to mention others, in this list; but he probably felt it impossible to refuse his signature, without throwing discredit on the king; and no man engaged in a party ever did, or ever can, act with absolute sincerity; or at least he can be of no use to his friends if he does adhere to this uncompromising principle.

The commission of array was ill received by many of the king's friends, as not being conformable to law. Clarendon, iii. 91. Certainly it was not so; but it was justifiable as the means of opposing the parliament's ordinance for the militia, at least equally illegal. This, however, shows very strongly the cautious and constitutional temper of many of the royalists, who could demur about the legality of a measure of necessity, since no other method of raising an army would have been free from similar exception. The same reluctance to enter on the war was displayed in the propositions for peace, which the king, in consequence of his council's importunity, sent to the two houses through the earl of Southampton, just before he raised his standard at Nottingham.

notion that Charles I. was undone by his concessions, that, but for his concessions, he would have had no party at all. This is, in fact, the secret of what seems to astonish the parliamentary historian, May, of the powerful force that the king was enabled to raise, and the protracted resistance he opposed. He had succeeded, according to the judgment of many real friends of the constitution, in putting the house of commons in the wrong. Law, justice, moderation, once ranged against him, had gone over to his banner. His arms might reasonably be called defensive, if he had no other means of preserving himself from the condition, far worse than captivity, of a sovereign compelled to a sort of suicide upon his own honour and authority. For, however it may be alleged that a king is bound in conscience to sacrifice his power to the public will, yet it could hardly be inexcusable not to have practised this disinterested morality; especially while the voice of his people was by no means unequivocal, and while the major part of one house of parliament adhered openly to his cause.*

It is indeed a question perfectly distinguishable from that of the abstract justice of the king's cause, whether he did not too readily abandon his post as a constitutional head of the parliament; whether, with the greater part of the peers, and a very considerable minority in the commons, resisting in their places at Westminster all violent encroachments on his rights, he ought not rather to have sometimes persisted in a temperate though firm assertion of them, sometimes had recourse to compromise and gracious concession, instead of calling away so many of his adherents to join his arms as left neither numbers nor credit with those who remained. There is a remarkable passage in lord Clarendon's life, not to quote Whitelock and other writers less favourable to Charles, where he intimates his own opinion that the king would have had a fair hope of withstanding the more violent faction, if, after the queen's embarkation for Holland in February, 1642, he

* According to a list made by the house of lords, May 25. 1642, the peers with the king at York were thirty-two; those who remained at Westminster, forty-two. But of the latter, more than ten joined the others before the commence-

ment of the war, and five or six afterwards; two or three of those at York returned. During the war there were at the outside thirty peers who sat in the parliament.

had returned to Whitehall; admitting, at the same time, the hazards and inconveniences to which this course was liable.* That he resolved on trying the fortune of arms, his noble historian insinuates to have been the effect of the queen's influence, with whom, before her departure, he had concerted his future proceedings. Yet, notwithstanding the deference owing to contemporary opinions, I cannot but suspect that Clarendon has, in this instance as in some other passages, attached too great an importance to particular individuals, measuring them rather by their rank in the state, than by that capacity and energy of mind, which, in the levelling hour of revolution, are the only real pledges of political influence. He thought it of the utmost consequence to the king that he should gain over the earls of Essex and Northumberland, both, or at least the former, wavering between the two parties, though voting entirely with the commons. Certainly the king's situation required every aid, and his repulsive hardness towards all who had ever given him offence displayed an obstinate unconciliating character, which deprived him of some support he might have received. But the subsequent history of these two celebrated earls, and indeed of all the moderate adherents to the parliament, will hardly lead us to believe that they could have afforded the king any protection. Let us suppose that he had returned to Whitehall, instead of proceeding towards the north. It is evident that he must either have passed the bill for the militia, or seen the ordinances of both houses carried into effect without his consent. He must have consented to the abolition of episcopacy, or at least have come into some compromise which would have left the bishops hardly a shadow of their jurisdiction and pre-eminence. He must have driven from his person those whom he best loved and trusted. He would have found it impossible to see again the queen, without awakening distrust and bringing insult on them both. The royalist minority of parliament, however considerable in numbers, was lukewarm and faint-hearted. That they should have gained strength so as to keep a permanent superiority over their adversaries, led as they were by statesmen so bold and profound as

* Life of Clarendon, p. 56.

Hampden, Pym, St. John, Cromwell, and Vane, is what, from the experience of the last twelve months, it was unreasonable to anticipate. But, even if the commons had been more favourably inclined, it would not have been in their power to calm the mighty waters that had been moved from their depths. They had permitted the populace to mingle in their discussions, testifying pleasure at its paltry applause, and encouraging its tumultuous aggressions on the minority of the legislature. What else could they expect than that, so soon as they ceased to satisfy the city apprentices, or the trained bands raised under their militia bill, they must submit to that physical strength which is the ultimate arbiter of political contentions?

Thus, with evil auspices, with much peril of despotism on the one hand, with more of anarchy on the other, amidst the apprehensions and sorrows of good men, the civil war commenced in the summer of 1642. I might now perhaps pass over the period that intervened, until the restoration of Charles II., as not strictly belonging to a work which undertakes to relate the progress of the English constitution. But this would have left a sort of chasm that might disappoint the reader; and as I have already not wholly excluded our more general political history, without a knowledge of which the laws and government of any people must be unintelligible, it will probably not be deemed an unnecessary digression, if I devote one chapter to the most interesting and remarkable portion of British story.

CHAPTER X.

FROM THE BREAKING OUT OF THE CIVIL WAR TO THE
RESTORATION.

PART I.

Success of the King in the first Part of the War — Efforts by the moderate Party for Peace — Affair at Brentford — Treaty of Oxford — Impeachment of the Queen — Waller's Plot — Secession of some Peers to the King's Quarters — Their Treatment there impolitic — The anti-pacific Party gain the Ascendant at Westminster — The Parliament makes a new Great Seal — And takes the Covenant — Persecution of the Clergy who refuse it — Impeachment and Execution of Laud — Decline of the King's Affairs in 1644 — Factions at Oxford — Royalist Lords and Commoners summoned to that City — Treaty of Uxbridge — Impossibility of Agreement — The Parliament insist on unreasonable Terms — Miseries of the War — Essex and Manchester suspected of Lukewarmness — Self-denying Ordinance — Battle of Naseby — Desperate Condition of the King's Affairs — He throws himself into the Hands of the Scots — His struggles to preserve Episcopacy, against the Advice of the Queen and others — Bad Conduct of the Queen — Publication of Letters taken at Naseby — Discovery of Glamorgan's Treaty — King delivered up by the Scots — Growth of the Independents and Republicans — Opposition to the Presbyterian Government — Toleration — Intrigues of the Army with the King — His Person seized — The Parliament yield to the Army — Mysterious Conduct of Cromwell — Imprudent Hopes of the King — He rejects the Proposals of the Army — His Flight from Hampton Court — Alarming Votes against him — Scots' Invasion — The Presbyterians regain the Ascendant — Treaty of Newport — Gradual Progress of a republican Party — Scheme among the Officers of bringing Charles to Trial — This is finally determined — Seclusion of Presbyterian Members — Motives of some of the King's Judges — Question of his Execution discussed — His Character — Icon Basilike.

PART II.

Abolition of the Monarchy — and of the House of Lords — Commonwealth — Schemes of Cromwell — His Conversations with Whitelock — Unpopularity of the Parliament — Their Fall — Little Parliament — Instrument of Government — Parliament called by Cromwell — Dissolved by him — Intrigues of the King and his Party — Insurrectionary Movements in 1655 — Rigorous Measures of Cromwell — His arbitrary Government — He summons another Parliament — Designs to take the Crown — The Project fails — But his Authority as Protector is augmented — He aims at forming a new House of Lords — His Death — And Character — Richard his Son succeeds him — Is supported by some prudent Men — But opposed by a Coalition — Calls a

Parliament — The Army overthrow both — Long Parliament restored — Expelled again — And again restored — Impossibility of establishing a Republic — Intrigues of the Royalists — They unite with the Presbyterians — Conspiracy of 1659 — Interference of Monk — His Dissimulation — Secluded Members return to their Seats — Difficulties about the Restoration — New Parliament — King restored — Whether previous Conditions required — Plan of reviving the Treaty of Newport inexpedient — Difficulty of framing Conditions — Conduct of the Convention about this not blamable — Except in respect of the Militia — Conduct of Monk.

FACTIONS that, while still under some restraint from the forms at least of constitutional law, excite our disgust by their selfishness or intemperance, are little likely to redeem their honour when their animosities have kindled civil warfare. If it were difficult for an upright man to enlist with an entire willingness under either the royalist or the parliamentary banner, at the commencement of hostilities in 1642, it became far less easy for him to desire the complete success of one or the other cause, as advancing time displayed the faults of both in darker colours than they had previously worn. Of the parliament — to begin with the more powerful and victorious party — it may be said, I think, with not greater severity than truth, that scarce two or three public acts of justice, humanity, or generosity, and very few of political wisdom or courage, are recorded of them from their quarrel with the king to their expulsion by Cromwell.

Notwithstanding the secession from parliament before the commencement of the war of nearly all the peers who could be reckoned on the king's side, and of a pretty considerable part of the commons, there still continued to sit at Westminster many sensible and moderate persons, who thought that they could not serve their country better than by remaining at their posts, and laboured continually to bring about a pacification by mutual concessions. Such were the earls of Northumberland, Holland, Lincoln, and Bedford, among the peers; Selden, Whitelock, Hollis, Waller, Pierpoint, and Rudyard, in the commons. These however would have formed but a very ineffectual minority, if the war itself, for at least twelve months, had not taken a turn little expected by the parliament. The hard usage Charles seemed to endure in so many encroachments on his ancient prerogative awakened the sympathies of a generous aristocracy,

accustomed to respect the established laws, and to love monarchy, as they did their own liberties, on the score of its prescriptive title; averse also to the rude and morose genius of puritanism, and not a little jealous of those upstart demagogues who already threatened to subvert the graduated pyramid of English society. Their zeal placed the king at the head of a far more considerable army than either party had anticipated.* In the first battle, that of Edgehill, though he did not remain master of the field, yet all the military consequences were evidently in his favour.† In the ensuing campaign of 1643, the advantage was for several months entirely his own; nor could he be said to be a loser on the whole result, notwithstanding some reverses that accompanied the autumn. A line drawn from Hull to Southampton would suggest no very incorrect idea of the two parties, considered as to their military occupation of the kingdom, at the beginning of September 1643; for if the parliament, by the possession of Gloucester and Plymouth, and by some force they had on foot in Cheshire and other midland parts, kept their ground on the west of this line, this was nearly compensated by the earl of Newcastle's possession at that time of most of Lincolnshire, which lay within it. Such was the temporary effect, partly indeed of what may be called the fortune of war, but rather of the zeal and spirit of the royalists, and of their advantage in a more numerous and intrepid cavalry.‡

It has been frequently supposed, and doubtless seems to have been a prevailing opinion at the time, that if the king, instead of sitting down before Gloucester at the end of August, had marched upon London, combining his operations with Newcastle's powerful army, he would have brought

* May, p. 165.

† Both sides claimed the victory. May, who thinks that Essex, by his injudicious conduct after the battle, lost the advantage he had gained in it, admits that the effect was to strengthen the king's side. "Those who thought his success impossible began to look upon him as one who might be a conqueror, and many neuters joined him," p. 176. Ludlow is of the same opinion as to

Essex's behaviour and its consequences: "Our army, after some refreshment at Warwick, returned to London, not like men that had obtained a victory, but as if they had been beaten," p. 52. This shows that they had not in fact obtained much of a victory; and lord Wharton's report to parliament almost leads us to think the advantage, upon the whole, to have been with the king. Parl. Hist. ii. 1495. ‡ May, 212. Baillie, 373. 391.

the war to a triumphant conclusion.* In these matters men judge principally by the event. Whether it would have been prudent in Newcastle to have left behind him the strong garrison of Hull under Fairfax, and an unbroken though inferior force, commanded by lord Willoughby and Cromwell in Lincolnshire, I must leave to military critics; suspecting however that he would have found it difficult to draw away the Yorkshire gentry and yeomanry, forming the strength of his army, from their unprotected homes. Yet the parliamentary forces were certainly, at no period of the war, so deficient in numbers, discipline, and confidence; and it may well be thought that the king's want of permanent resources, with his knowledge of the timidity and disunion which prevailed in the capital, rendered the boldest and most forward game his true policy.

It was natural that the moderate party in parliament should acquire strength by the untoward fortune of its arms. Their aim, as well as that of the constitutional royalists, was a speedy pacification; neither party so much considering what terms might be most advantageous to their own side, as which way the nation might be freed from an incalculably protracted calamity. On the king's advance to Colnbrook in November, 1642, the two houses made an overture for negotiation, on which he expressed his readiness to enter. But, during the parley, some of his troops advanced to Brentford, and a sharp action took place in that town. The parliament affected to consider this such a mark of perfidy and blood-thirstiness as justified them in breaking off the treaty; a step

Efforts by the moderate party for peace.

Affair at Brentford.

* May, Baillie, Mrs. Hutchinson, are as much of this opinion as sir Philip Warwick, and other royalist writers. It is certain that there was a prodigious alarm, and almost despondency, among the parliamentarians. They immediately began to make entrenchments about London, which were finished in a month. May, p. 214. In the Somers Tracts, iv. 534, is an interesting letter from a Scotsman then in London, giving an account of these fortifications, which, considering the short time employed about them, seem to have been very re-

spectable, and such as the king's army, with its weak cavalry and bad artillery, could not easily have carried. Lord Sunderland, four days before the battle of Newbury, wherein he was killed, wrote to his wife, that the king's affairs had never been in a more prosperous condition; that sitting down before Gloucester had prevented *their finishing the war that year*, "which nothing could keep us from doing, if we had a month's more time." Sidney Letters, ii. 671. He alludes in the same letters to the divisions in the royal party.

to which they were doubtless more inclined by the king's retreat, and their discovery that his army was less formidable than they had apprehended. It is very probable, or rather certain, even from Clarendon's account, that many about the king, if not himself, were sufficiently indisposed to negotiate; yet, as no cessation of arms had been agreed upon, or even proposed, he cannot be said to have waved the unquestionable right of every belligerent, to obtain all possible advantage by arms, in order to treat for peace in a more favourable position. But, as mankind are seldom reasonable in admitting such maxims against themselves, he seems to have injured his reputation by this affair of Brentford.

A treaty, from which many ventured to hope much, was begun early in the next spring at Oxford, after a struggle which had lasted through the winter within the walls of parliament.* But though the party of Pym and Hampden at Westminster were not able to prevent negotiation against the strong bent of the house of lords, and even of the city, which had been taught to lower its tone by the interruption of trade, and especially of the supply of coals from Newcastle; yet they were powerful enough to make the houses insist on terms not less unreasonable than those contained in their nineteen propositions the year before.† The king could not be justly expected to comply with these; but, had they been more moderate, or if the parliament would have in some measure receded from them, we have every reason to conclude, both by the nature of the terms he proposed in return, and by the positive testimony of Clarendon, that he would not have come sincerely into any scheme of immediate accommodation. The reason assigned by that

* Parl. Hist. iii. 45. 48. It seems natural to think that, if the moderate party were able to contend so well against their opponents, after the desertion of a great many royalist members who had joined the king, they would have maintained a decisive majority, had these continued in their places. But it is to be considered, on the other hand, that the king could never have raised an army, if he had not been able to rally the peers and gentry round his banner, and that in his army lay the real secret of the temporary strength of the pacific party.

† Parl. Hist. iii. 68. 94. Clarendon, May, Whitelock. If we believe the last (p. 68.), the king, who took as usual a very active part in the discussions upon this treaty, would frequently have been inclined to come into an adjustment of terms; if some of the more warlike spirits about him (glancing apparently at Rupert) had not overpersuaded his better judgment. This, however, does not accord with what Clarendon tells us of the queen's secret influence, nor indeed with all we have reason to believe of the king's disposition during the war.

author for the unwillingness of Charles to agree on a cessation of arms during the negotiation, though it had been originally suggested by himself (and which reason would have been still more applicable to a treaty of peace), is one so strange, that it requires all the authority of one very unwilling to confess any weakness or duplicity of the king to be believed. He had made a solemn promise to the queen on her departure for Holland the year before, "that he would receive no person who had disserved him into any favour or trust, without her privity and consent; and that, as she had undergone many reproaches and calumnies at the entrance into the war, so he would never make any peace but by her interposition and mediation, that the kingdom might receive that blessing only from her."* Let this be called, as the reader may please, the extravagance of romantic affection, or rather the height of pusillanimous and criminal subserviency, we cannot surely help acknowledging that this one marked weakness in Charles's character, had there been nothing else to object, rendered the return of cordial harmony between himself and his people scarce within the bounds of natural possibility. In the equally balanced condition of both forces at this particular juncture, it may seem that some compromise on the great question of the militia was not impracticable, had the king been truly desirous of accommodation; for it is only just to remember that the parliament had good reason to demand some security for themselves, when he had so peremptorily excluded several persons from amnesty. Both parties, in truth, were standing out for more than, either according to their situation as belligerents, or even perhaps according to the principles of our constitution, they could reasonably claim; the two houses having evidently no direct

* Life of Clarendon, p. 79. This induced the king to find pretexts for avoiding the cessation, and was the real cause of his refusal to restore the earl of Northumberland to his post of lord admiral during this treaty of Oxford, which was urged by Hyde. That peer was, at this time, and for several months afterwards, inclining to come over to the king; but, on the bad success of Holland and Bedford in their change of sides, he gave into the opposite course of politics, and joined the party of lords Say

and Wharton, in determined hostility to the king.

Dr. Lingard has lately thrown doubts upon this passage in Clarendon, but upon grounds which I do not clearly understand. Hist. of Engl. x. 208. note. That no vestige of its truth should appear, as he observes, in the private correspondence between Charles and his consort, (if he means the letters taken at Naseby, and I know no other,) is not very singular; as the whole of that correspondence is of a much latter date.

right to order the military force, nor the king, on the other hand, having a clear prerogative to keep on foot an army, which is not easily distinguishable from a militia, without consent of parliament. The most reasonable course apparently would have been for the one to have waved a dangerous and disputed authority, and the other to have desisted from a still more unconstitutional pretension; which was done by the bill of rights in 1689. The kingdom might have well dispensed, in that age, with any military organization; and this seems to have been the desire of Whitelock, and probably of other reasonable men. But unhappily when swords are once drawn in civil war, they are seldom sheathed till experience has shown which blade is the sharper.

Though this particular instance of the queen's prodigious ascendancy over her husband remained secret till the publication of lord Clarendon's life, it was in general well known, and put the leaders of the commons on a remarkable stroke of policy, in order to prevent the renewal of negotiations.

On her landing in the north, with a supply of money and arms, as well as with a few troops she had collected in Holland, they carried up to the lords an impeachment for high treason against her. This measure (so obnoxious was Henrietta) met with a less vigorous opposition than might be expected, though the moderate party was still in considerable force.* It was not only an insolence, which a king, less uxorious than Charles, could never pardon; but a violation of the primary laws and moral sentiments that preserve human society, to which the queen was acting in obedience. Scarce any proceeding of the long parliament seems more odious than this; whether designed by way of intimidation, or to exasperate the king, and render the composition of existing differences more impracticable.

* I cannot discover in the Journals any division on this impeachment. But Hollis inveighs against it in his memoirs as one of the flagrant acts of St. John's party; and there is an account of the debate on this subject in the Somers Tracts, v. 500.; whence it appears that it was opposed by Maynard, Waller, Whitelock, and others; but supported by Pym, Strode, Long, Glynn, and by

Martin with his usual fury and rudeness. The first of these carried up the impeachment to the house of lords.

This impeachment was not absolutely lost sight of for some time. In January 1644, the lords appointed a committee to consider what mode of proceeding for bringing the queen to trial was most agreeable to a parliamentary way, and to peruse precedents. Parl. Hist. 194.

The enemies of peace were strengthened by the discovery of what is usually called Waller's plot, a scheme for making a strong demonstration of the royalist party ^{Waller's plot.} in London, wherein several members of both houses appear to have been more or less concerned. Upon the detection of this conspiracy, the two houses of parliament took an oath not to lay down arms, so long as the papists now in arms should be protected from the justice of parliament; and never to adhere to, or willingly assist, the forces raised by the king, without the consent of both houses. Every individual member of the peers and commons took this oath; some of them being then in secret concert with the king, and others entertaining intentions, as their conduct very soon evinced, of deserting to his side.* Such was the commencement of a system of perjury, which lasted for many years, and belies the pretended religion of that hypocritical age. But we may always look for this effect from oppressive power, and the imposition of political tests.

The king was now in a course of success, which made him rather hearken to the sanguine courtiers of Oxford, where, according to the invariable character of an exiled faction, every advantage or reverse brought on a disproportionate exultation or despondency, than to those better counsellors who knew the precariousness of his good fortune. He published a declaration, wherein he denied the two houses at Westminster the name of a parliament; which he could no more take from them, after the bill he had passed, than they could deprive him of his royal title, and by refusing which he shut up all avenues to an equal peace.† This was soon followed by so extraordinary a political error as manifests the king's want of judgment, and the utter improbability, that any event of the war could have restored to England the blessings of liberty and repose. Three peers of the moderate party, the earls of Holland, Bedford, and Clare, dissatisfied with the preponderance of a violent faction in the commons, left their places at West-

Secession of some peers to the king's quarters.

* Parl. Hist. 129.

† Parl. Hist. 133. June 20. Clarendon, iv. 155. He published however a declaration soon after the taking of

Bristol, containing full assurances of his determination to govern by the known laws. Parl. Hist. 144.

minster, and came into the king's quarters. It might be presumed from general policy as well as from his constant declarations of a desire to restore peace, that they would have been received with such studied courtesy as might serve to reconcile to their own mind a step which, when taken with the best intentions, is always equivocal and humiliating. There was great reason to believe that the earl of Northumberland, not only the first peer then in England as to family and fortune, but a man highly esteemed for prudence, was only waiting to observe the reception of those who went first to Oxford, before he followed their steps. There were even well-founded hopes of the earl of Essex, who, though incapable of betraying his trust as commander of the parliament's army, was both from personal and public motives disinclined to the war-party in the commons. There was much to expect from all those who had secretly wished well to the king's cause, and from those whom it is madness to reject or insult, the followers of fortune, the worshippers of power, without whom neither fortune nor power can long subsist.

Their treatment there
impolitic.

Yet such was the state of Charles's council-board at Oxford that some were for arresting these proselyte earls ; and it was carried with difficulty, after they had been detained some time at Wallingford, that they might come to the court. But they met there with so many and such general slights, that, though they fought in the king's army at Newbury, they found their position intolerably ignominious ; and after about three months, returned to the parliament with many expressions of repentance, and strong testimonies to the evil counsels of Oxford.*

* Clarendon, iv. 192. 262. Whitelock, 70. They met with a worse reception at Westminster than at Oxford, as indeed they had reason to expect. A motion that the earl of Holland should be sent to the Tower was lost in the commons by only one voice, Parl. Hist. 180. They were provoked at his taking his seat without permission. After long refusing to consent, the lords agreed to an ordinance, June 29. 1644, that no peer or commoner, who had been in the king's quarters, should be admitted again to sit in either house. Parl. Hist. 271. This severity was one cause of Essex's

discontent, which was increased when the commons refused him leave to take Holland with him on his expedition into the west that summer. Baillie, i. 426. Whitelock, 87. If it be asked why this Roman rigour was less impolitic in the parliament than in the king, I can only answer, that the stronger and the weaker have different measures to pursue. But relatively to the pacification of the kingdom, upon such terms as fellow-citizens ought to require from each other, it was equally blamable in both parties, or rather more so in that possessed of the greater power.

The king seems to have been rather passive in this strange piece of impolicy, but by no means to have taken the line that became him, of repressing the selfish jealousy, or petty revengefulness of his court. If the earl of Holland was a man, whom both he and the queen, on the score of his great obligations to them, might justly reproach with some ingratitude, there was nothing to be objected against the other two, save their continuance at Westminster, and compliance in votes that he disliked. And if this were to be visited by neglect and discountenance, there could, it was plain, be no reconciliation between him and the parliament. For who could imagine that men of courage and honour, while possessed of any sort of strength and any hopes of preserving it, would put up with a mere indemnity for their lives and fortunes, subject to be reckoned as pardoned traitors, who might thank the king for his clemency, without presuming to his favour? Charles must have seen his superiority consolidated by repeated victories, before he could prudently assume this tone of conquest. Inferior in substantial force, notwithstanding his transient advantages, to the parliament, he had no probability of regaining his station, but by defections from their banner; and these, with incredible folly, he seemed to decline; far unlike his illustrious father-in-law, who had cordially embraced the leaders of a rebellion much more implacable than the present. For the Oxford counsellors and courtiers who set themselves against the reception of the three earls, besides their particular animosity towards the earl of Holland*, and that general feeling of disdain and distrust which, as Clarendon finely observes, seems by nature attached to all desertion and inconstancy, whether in politics or religion, (even among those who reap the advantage of it, and when founded upon what they ought to reckon the soundest reasons,) there seems grounds to suspect that they had

* It is intimated by Clarendon that some at Oxford, probably Jermyn and Digby, were jealous of Holland's recovering the influence he had possessed with the queen, who seems to have retained no resentment against him. As to Bedford and Clare, they would probably have been better received, if not accompanied by so obnoxious an intriguer

of the old court. This seems to account for the unanimity which the historian describes to have been shown in the council against their favourable reception. Light and passionate tempers, like that of Henrietta, are prone to forget injuries; serious and melancholic ones, like that of Charles, never lose sight of them.

deeper and more selfish designs than they cared to manifest. They had long beset the king with solicitations for titles, offices, pensions; but these were necessarily too limited for their cravings. They had sustained, many of them, great losses; they had performed real or pretended services for the king; and it is probable that they looked to a confiscation of enemies' property for their indemnification or reward. This would account for an adverseness to all overtures for peace, as decided, at this period, among a great body of the cavaliers as it was with the factions of Pym or Vane.

These factions were now become finally predominant at Westminster. On the news that prince Rupert had taken Bristol, the last and most serious loss that the parliament sustained, the lords agreed on propositions for peace to be sent to the king, of an unusually moderate tone.* The commons, on a division of 94 to 65, determined to take them into consideration; but the lord mayor Pennington having procured an address of the city against peace, backed by a tumultuous mob, a small majority was obtained against concurring with the other house.† It was after this that the lords above mentioned, as well as many of the commons, quitted Westminster. The prevailing party had no thoughts of peace, till they could dictate its conditions. Through Essex's great success in raising the siege of Gloucester, the most distinguished exploit in his military life, and the battle of Newbury wherein the advantage was certainly theirs, they became secure against any important attack on the king's side, the war turning again to endless sieges and skirmishes of partizans. And they now adopted

* Baillie deploues at this time "the horrible fears and confusions in the city, the king every where being victorious. In the city, a strong and insolent party for him," p. 391. "The malignants stirred a multitude of women of the meaner and more infamous rank to come to the door of both houses, and cry tumultuously for peace on any terms. This tumult could not be suppressed but by violence, and killing some three or four women, and hurting some of them, and imprisoning many," p. 300.

† Lords and Commons' Journals.

Parl. Hist. 156, &c. Clarendon, iv. 183. Hollis's Memoirs. Hollis was a teller for the majority on the first occasion; he had left the warlike party some months (Baillie, i. 356.); and his name is in the journals repeatedly, from November, 1642, as teller against them, though he is charged with having said the year before, that he abhorred the name of accommodation. Hutchinson, p. 296. Though a very honest, and to a certain extent an able man, he was too much carried away by personal animosities; and as these shifted, his principles shifted also.

two important measures, one of which gave a new complexion to the quarrel.

Littleton, the lord-keeper of the great seal, had carried it away with him to the king. This of itself put a stop to the regular course of the executive government, and to the administration of justice within the parliament's quarters. No employments could be filled up, no writs for election of members issued, no commissions for holding the assizes completed, without the indispensable formality of affixing the great seal. It must surely excite a smile, that men who had raised armies, and fought battles against the king, should be perplexed how to get over so technical a difficulty. But the great seal, in the eyes of the English lawyers, has a sort of mysterious efficacy, and passes for the depository of royal authority in a higher degree than the person of the king. The commons prepared an ordinance in July for making a new great seal, in which the lords could not be induced to concur till October. The royalists, and the king himself, exclaimed against this as the most audacious treason, though it may be reckoned a very natural consequence of the state in which the parliament was placed; and in the subsequent negotiations, it was one of the minor points in dispute, whether he should authorise the proceedings under the great seal of the two houses, or they consent to sanction what had been done by virtue of his own.

The parliament makes a new great seal.

The second measure of parliament was of greater moment and more fatal consequences. I have already mentioned the stress laid by the bigoted Scots presbyterians on the establishment of their own church-government in England. Chiefly perhaps to conciliate this people, the house of commons had entertained the bill for abolishing episcopacy; and this had formed a part of the nineteen propositions that both houses tendered to the king.* After the action at Brentford they concurred in a declaration to be delivered to the Scots commissioners, resident in London, wherein, after setting forth the malice of the prelatial clergy in hindering the reform-

* The resolution, that government by archbishops, bishops, &c. was inconvenient, and ought to be taken away, passed both houses unanimously, September 10. 1642. Parl. Hist. ii. 1465. But the ordinance to carry this fully into effect was not made till October, 1646. Scobell's Ordinances.

ation of ecclesiastical government, and professing their own desire willingly and affectionately to pursue a closer union in such matters between the two nations, they request their brethren of Scotland to raise such forces as they should judge sufficient for the securing the peace of their own borders against ill-affected persons there; as likewise to assist them in suppressing the army of papists and foreigners, which, it was expected, would shortly be on foot in England.*

This overture produced for many months no sensible effect. The Scots, with all their national wariness, suspected that, in spite of these general declarations in favour of their church polity, it was not much at heart with most of the parliament, and might be given up in a treaty, if the king would concede some other matters in dispute. Accordingly, when the progress of his arms, especially in the north, during the ensuing summer, compelled the parliament to call in a more pressing manner, and by a special embassy, for their aid, they resolved to bind them down by such a compact as no wavering policy should ever rescind. They insisted therefore on the adoption of the solemn league and covenant, founded on a similar association of their own, five years before, through which they had successfully resisted the king, and overthrown the prelatie government. The covenant consisted in an oath to be subscribed by all sorts of persons in both kingdoms, whereby they bound themselves to preserve the reformed religion in the church of Scotland, in doctrine, worship, discipline, and government, according to the word of God and practice of the best reformed churches; and to endeavour to bring the churches of God in the three kingdoms to the nearest conjunction and uniformity in religion, confession of faith, form of church-government, directory for worship, and catechizing; to endeavour, without respect of persons, the extirpation of popery, prelacy, (that is, church-government by archbishops, bishops, their chancellors and commissaries, deans and chapters, archdeacons, and all other ecclesiastical officers depending on that hierarchy,) and whatsoever should be found contrary to sound doctrine and the power of god-

* Parl. Hist. iii. 15.

liness; to preserve the rights and privileges of the parliaments, and the liberties of the kingdoms, and the king's person and authority, in the preservation and defence of the true religion and liberties of the kingdoms; to endeavour the discovery of incendiaries and malignants, who hinder the reformation of religion, and divide the king from his people, that they may be brought to punishment; finally, to assist and defend all such as should enter into this covenant, and not suffer themselves to be withdrawn from it, whether to revolt to the opposite party, or to give into a detestable indifference or neutrality. In conformity to the strict alliance thus established between the two kingdoms, the Scots commissioners at Westminster were intrusted, jointly with a committee of both houses, with very extensive powers to administer the public affairs.*

Every member of the commons who remained at Westminster, to the number of 228, or perhaps more, and from 20 to 30 peers that formed their upper house †, subscribed this deliberate pledge to overturn the established church; many of them with extreme reluctance, both from a dislike of the innovation, and from a consciousness that it raised a most formidable obstacle to the restoration of peace; but with a secret reserve, for which some want of precision in the language of this covenant (purposely introduced by Vane, as is said, to shelter his own schemes) afforded them a sort of apology. ‡ It was next imposed on

The parliament subscribes to the covenant.

* This committee, appointed in February, 1644, consisted of the following persons, the most conspicuous, at that time, of the parliament: the earls of Northumberland, Essex, Warwick, and Manchester; lords Say, Wharton, and Roberts; Mr. Pierrepont, the two sir Henry Vanes, sir Philip Stapylton, sir William Waller, sir Gilbert Gerrard, sir William Armyn, sir Arthur Haslerig; Messrs. Crew, Wallop, St. John, Cromwell, Brown, and Glynn. *Parl. Hist.* iii. 248.

† Somers Tracts, iv. 533. The names marked in the Parliamentary History as having taken the covenant are 236.

The earl of Lincoln alone, a man of great integrity and moderation, though only conspicuous in the Journals, refused to take the covenant, and was excluded in

consequence from his seat in the house: but on his petition next year, though, as far as appears, without compliance, was restored, and the vote rescinded. *Parl. Hist.* 393. He regularly protested against all violent measures; and we still find his name in the minority on such occasions after the Restoration.

Baillie says, the desertion of about six peers at this time to the king, was of great use to the passing of the covenant in a legal way. Vol. i. p. 390.

‡ Burnet's Mem. of Duke of Hamilton, p. 239. I am not quite satisfied as to this, which later writers seem to have taken from Burnet. It may well be supposed that the ambiguity of the covenant was not very palpable; since the Scots presbyterians, a people not easily cozened, were content with its expression. Accord-

all civil and military officers, and upon all the beneficed clergy.* A severe persecution fell on the faithful children of the Anglican church. Many had already been sequestered from their livings, or even subjected to imprisonment, by the parliamentary committee for scandalous ministers, or by subordinate committees of the same kind set up in each county within their quarters; sometimes on the score of immoralities or false doctrine, more frequently for what they termed malignity, or attachment to the king and his party.†

Yet wary men who meddled not with politics, might hope to elude this inquisition. But the covenant, imposed as a general test, drove out all who were too conscientious to pledge themselves by a solemn appeal to the Deity to resist the polity which they generally believed to be of his institution. What number of the

Persecution
of the clergy
who refuse
it.

ing to fair and honest rules of interpretation, it certainly bound the subscribers to the establishment of a church-government conformed to that of Scotland; namely, the presbyterian, exclusive of all mixture with any other. But Selden, and the other friends of moderate episcopacy who took the covenant, justified it, I suppose, to their consciences, by the pretext that, in renouncing the jurisdiction of bishops, they meant the unlimited jurisdiction without concurrence of any presbyters. It was not, however, an action on which they could reflect with pleasure. Baxter says that Gataker, and some others of the assembly, would not subscribe the covenant, but on the understanding that they did not renounce primitive episcopacy by it. *Life of Baxter*, p. 48. These controversial subtleties elude the ordinary reader of history.

* After the war was ended, none of the king's party were admitted to compound for their estates, without taking the covenant. This Clarendon, in one of his letters, calls "making haste to buy damnation at two years' purchase." Vol. ii. p. 286.

† Neal, ii. 19, &c. is fair enough in censuring the committees, especially those in the country. "The greatest part [of the clergy] were cast out for malignity [attachment to the royal cause]; superstition and false doctrine were hardly ever objected; yet the proceedings of the sequestrators were not always justifiable;

for, whereas a court of judicature should rather be counsel for the prisoner than the prosecutor, the commissioners considered the king's clergy as their most dangerous enemies, and were ready to lay hold of all opportunities to discharge them their pulpits." p. 24. But if we can rely at all on White's *Century of Malignant Ministers* (and I do not perceive that Walker has been able to controvert it), there were a good many cases of irregular life in the clergy, so far at least as haunting alehouses; which, however, was much more common, and consequently less indecent, in that age than at present. See also *Baxter's Life*, p. 74.; whose authority, though open to some exceptions on the score of prejudice, is at least better than Walker's.

The king's party were not less oppressive towards ministers whom they reckoned puritan; which unluckily comprehended most of those who were of strict lives, especially if they preached calvinistically, unless they redeemed that suspicion by strong demonstrations of loyalty. Neal, p. 21. *Baxter's Life*, p. 42. And, if they put themselves forward on this side, they were sure to suffer most severely for it on the parliament's success; an ordinance of April 1. 1643 having sequestered the private estates of all the clergy who had aided the king. Thus the condition of the English clergy was every way most deplorable; and in fact they were utterly ruined.

clergy were ejected (most of them but for refusing the covenant, and for no moral offence or imputed superstition) it is impossible to ascertain. Walker, in his *Sufferings of the Clergy*, a folio volume published in the latter end of Anne's reign, with all the virulence and partiality of the high-church faction in that age, endeavoured to support those who had reckoned it at 8000; a palpable over-statement upon his own showing, for he cannot produce near 2000 names, after a most diligent investigation. Neal, however, admits 1600, probably more than one fifth of the beneficed ministers in the kingdom.* The biographical collections furnish a pretty copious martyrology of men the most distinguished by their learning and virtues in that age. The remorseless and indiscriminate bigotry of presbyterianism might boast that it had heaped disgrace on Walton, and driven Lydiat to beggary; that it trampled on the old age of Hales, and embittered with insult the dying moments of Chillingworth.

But the most unjustifiable act of these zealots, and one of the greatest reproaches of the long parliament, was the death of archbishop Laud. In the first days of the session, while the fall of Strafford struck every one with astonishment, the commons had carried up an impeachment against him for high treason, in fourteen articles of charge; and he had lain ever since in the Tower, his revenues, and even private estate sequestered, and in great indigence. After nearly three years' neglect, specific articles were exhibited against him in October, 1643, but not proceeded on with vigour till December, 1644; when, for whatever reason, a determination was taken to pursue this unfortunate prelate to death. The charges against him, which Wild, Maynard, and other managers of the impeachment, were to aggravate into treason, related partly to those papistical innovations which had nothing of a political character about them, partly of the violent proceedings in the star-chamber and high-commission courts, wherein Laud was

* Neal, p. 93. He says it was not tendered, by favour, to some of the clergy who had not been active against the parliament, and were reputed Calvinists.

p. 59. Sanderson is said to be one instance. This historian, an honest and well-natured man at bottom, justly censures its imposition.

Impeachment and execution of Laud.

very prominent as a councillor, but certainly without any greater legal responsibility than fell on many others. He defended himself, not always prudently or satisfactorily, but with courage and ability; never receding from his magnificent notions of spiritual power, but endeavouring to shift the blame of the sentences pronounced by the council on those who concurred with him. The imputation of popery he repelled by a list of the converts he had made; but the word was equivocal, and he could not deny the difference between his protestantism and that of our reformation. Nothing could be more monstrous than the allegation of treason in this case. The judges, on a reference by the lords, gave it to be understood, in their timid way, that the charges contained no legal treason.* But, the commons having changed their impeachment into an ordinance for his execution, the peers were pusillanimous enough to comply. It is said by Clarendon that only seven lords were in the house on this occasion: but the Journals unfortunately bear witness to the presence of twenty.† Laud had amply merited punishment for his tyrannical abuse of power; but his execution at the age of seventy, without the slightest pretence of political necessity, was a far more unjustifiable instance of it than any that was alleged against him.

Pursuant to the before-mentioned treaty, the Scots army of 21,000 men marched into England in January, 1644. This was a very serious accession to Charles's difficulties, already sufficient to dissipate all hopes of final triumph, except in the most sanguine minds. His successes, in fact, had been rather such as to surprise well-judging men than to make them expect any more favourable termination of the war than by a fair treaty. From the beginning it may be said that the yeomanry and trading classes of towns were generally hostile to the king's side, even in those counties which were in his military occupation; except in a few, such as Cornwall, Worcester, Salop, and

* "All the judges answered that they could deliver no opinion in this case, in point of treason by the law; because they could not deliver any opinion in point of treason, but what was particularly expressed to be treason in the statute of

25 E. III., and so referred it wholly to the judgment of this house." *Lords' Journals*, 17th December, 1644.

† *Lords' Journals*, 4th January. It is not said to be done *nem. con.*

Decline of
the king's
affairs in
1644.

most of Wales, where the prevailing sentiment was chiefly royalist* ; and this disaffection was prodigiously increased through the licence of his ill-paid and ill-disciplined army. On the other hand, the gentry were, in a great majority, attached to his cause, even in the parts of England which lay subject to the parliament. But he was never able to make any durable impression on what were called the associated counties, extending from Norfolk to Sussex inclusively, within which no rising could be attempted with any effect† ; while, on the other hand, the parliament possessed several garrisons, and kept up considerable forces in that larger portion of the kingdom where he might be reckoned superior. Their resources were far greater ; and the taxes imposed by them, though exceedingly heavy, were more regularly paid, and less ruinous to the people, than the sudden exactions, half plunder, half contribution, of the ravenous cavaliers. The king lost ground during the winter. He had built hopes on bringing over troops from Ireland ; for the sake of which he made a truce, then called the cessation, with the rebel catholics. But this reinforcement having been beaten and dispersed by Fairfax at Namptwich, he had the mortification

* "The difference in the temper of the common people of both sides was so great that they who inclined to the parliament left nothing unperformed that might advance the cause ; whereas they who wished well to the king thought they had performed their duty in doing so, and that they had done enough for him, in that they had done nothing against him." Clarendon, pp. 3. 452. "Most of the gentry of the county (Nottinghamshire)," says Mrs. Hutchinson, "were disaffected to the parliament ; most of the middle sort, the able substantial freeholders and the other commons, who had not their dependence upon the malignant nobility and gentry, adhered to the parliament." p. 81. This I conceive to have been the case in much the greater part of England. Baxter, in his *Life*, p. 30., says just the same thing in a passage worthy of notice. But the Worcestershire populace, he says, were violent royalists. p. 39. Clarendon observes in another place, iii. 41., "There was in this county (Cornwall), as throughout the kingdom, a wonderful and super-

stitious reverence towards the name of a parliament, and a prejudice to the power of the court." He afterwards, p. 436., calls "an implicit reverence to the name of a parliament, the fatal disease of the whole kingdom." So prevalent was the sense of the king's arbitrary government, especially in the case of ship-money. Warburton remarks, that he never expressed any repentance, or made any confession in his public declarations, that his former administration had been illegal. Notes on Clarendon, p. 566. But this was not, perhaps, to be expected ; and his repeated promises to govern according to law might be construed into tacit acknowledgments of past errors.

† The associated counties, properly speaking, were at first Norfolk, Suffolk, Essex, Hertford, Cambridge ; to which some others were added. Sussex, I believe, was not a part of the association ; but it was equally within the parliamentary pale, though the gentry were remarkably loyal in their inclinations. The same was true of Kent.

of finding that this scheme had much increased his own unpopularity, and the distrust entertained of him even by his adherents, without the smallest advantage. The next campaign was marked by the great defeat of Rupert and Newcastle at Marston Moor, and the loss of the north of England; a blow so terrible as must have brought on his speedy ruin, if it had not been in some degree mitigated by his strange and unexpected success over Essex in the west, and by the tardiness of the Scots in making use of their victory. Upon the result of the campaign of 1644, the king's affairs were in such bad condition that nothing less than a series of victories could have reinstated them; yet not so totally ruined as to hold out much prospect of an approaching termination to the people's calamities.

There had been, from the very commencement of the war, all that distraction in the king's councils at Oxford, and all those bickerings and heart-burnings among his adherents, which naturally belong to men embarked in a dangerous cause with different motives and different views. The military men, some of whom had served with the Swedes in Germany, acknowledged no laws but those of war; and could not understand that, either in annoying the enemy or providing for themselves, they were to acknowledge any restraints of the civil power. The lawyers, on the other hand, and the whole constitutional party, laboured to keep up, in the midst of arms, the appearances at least of legal justice, and that favourite maxim of Englishmen, the supremacy of civil over military authority, rather more strictly perhaps than the nature of their actual circumstances would admit. At the head of the former party stood the king's two nephews, Rupert and Maurice, the younger sons of the late unfortunate elector palatine, soldiers of fortune (as we may truly call them), of rude and imperious characters, avowedly despising the council and the common law, and supported by Charles, with all his injudiciousness and incapacity for affairs, against the greatest men of the kingdom. Another very powerful and obnoxious faction was that of the catholics, proud of their services and sacrifices, confident in the queen's protection, and looking at least to a full toleration as their just reward. They were the natural

enemies of peace, and little less hated at Oxford than at Westminster.*

At the beginning of the winter of 1643 the king took the remarkable step of summoning the peers and commoners of his party to meet in parliament at Oxford. This was evidently suggested by the constitution-
Royalist lords and commoners summoned to that city.
 alists with the intention of obtaining a supply by more regular methods than forced contribution, and of opposing a barrier to the military and popish interests.† Whether it were equally calculated to further the king's cause may admit of some doubt. The royalist convention indeed, which name it ought rather to have taken than that of parliament, met in considerable strength at Oxford. Forty-three peers, and one hundred and eighteen commoners, subscribed a letter to the earl of Essex, expressing their anxiety for a treaty of peace; twenty-nine of the former, and fifty-seven of the latter, it is said, being then absent on the king's service, or other occasions.‡ Such a display of numbers, nearly double in one

* Clarendon, *passim*, May, 160. Baillie, i. 416. See, in the Somers Tracts, v. 495., a dialogue between a gentleman and a citizen, printed at Oxford, 1643. Though of course a royalist pamphlet, it shows the disunion that prevailed in that unfortunate party, and inveighs against the influence of the papists, in consequence of which the marquis of Hertford is said to have declined the king's service. Rupert is praised, and Newcastle struck at. It is written, on the whole, in rather a lukewarm style of loyalty. The earl of Holland and sir Edward Dering gave out as their reason for quitting the king's side, that there was great danger of popery. This was much exaggerated: yet lord Sunderland talks the same language. Sidney Papers, ii. 667. Lord Falkland's dejection of spirits, and constant desire of peace, must chiefly be ascribed to his disgust with the councils of Oxford, and the greater part of those with whom he was associated.

E quel che più ti graverà le spalle
Sarà la compagnia malvagia e rìa,
Nella quel tu cadrai in questa valle.

We know too little of this excellent man, whose talents however and early pursuits do not seem to have particularly qualified him for public life. It is evident that he

did not plunge into the loyal cause with all the zeal of his friend Hyde; and the king doubtless had no great regard for the counsels of one who took so very different a view of some important matters from himself. Life of Clarendon, 48. He had been active against Strafford, and probably had a bad opinion of Laud. The prosecution of Finch for high treason he had himself moved. In the Ormond Letters, i. 20., he seems to be struck at by one writing from Oxford, June 1. 1643: "God forbid that the best of men and kings be so used by some bad hollow-hearted counsellors, who affect too much the parliamentary way. Many spare not to name them; and I doubt not but you have heard their names."

† It appears by the late edition of Clarendon, iv. 351., that he was the adviser of calling the Oxford parliament. The former editors omitted his name.

‡ Parl. Hist. 218. The number who took the covenant in September, 1643, appears by a list of the long parliament in the same work, vol. ii., to be 236; but twelve of these are included in both lists, having gone afterwards into the king's quarters. The remainder, about 100, were either dead since the beginning of

house, and nearly half in the other, of those who remained at Westminster, might have an effect on the nation's prejudices, and at least redeem the king from the charge of standing singly against his parliament. But they came in no spirit of fervid loyalty, rather distrustful of the king, especially on the score of religion; averse to some whom he had injudiciously raised to power, such as Digby and Cottington; and so eager for pacification as not perhaps to have been unwilling to purchase it by greater concessions than he could prudently make.* Peace however was by no means brought nearer by their meeting; the parliament, jealous and alarmed at it, would never recognise their existence; and were so provoked at their voting the lords and commons at Westminster guilty of treason, that, if we believe a writer of some authority, the two houses unanimously passed a vote on Essex's motion, summoning the king to appear by a certain day.† But the Scots commissioners had force enough to turn aside such violent suggestions, and ultimately obtained the concurrence of both houses in propositions for a treaty.‡ They had begun to find themselves less likely to sway the councils of Westminster than they had expected, and dreaded the rising

the troubles, or for some reason absented themselves from both assemblies. Possibly the list of those who took the covenant is not quite complete; nor do I think the king had much more than about sixty peers on his side. The parliament however could not have produced thirty. *Lords' Journals*, Jan. 22. 1644. Whitelock, p. 80., says that two hundred and eighty appeared in the house of commons, Jan. 1644, besides one hundred absent in the parliament's service; but this cannot be quite exact.

* Rushworth *Abr.* v. 266. and 296.; where is an address to the king, intimating, if attentively considered, a little apprehension of popery and arbitrary power. Baillie says, in one of his letters, "The first day the Oxford parliament met, the king made a long speech; but many being ready to give in papers for the removing of Digby, Cottington, and others from court, the meeting was adjourned for some days," i. 429. Indeed, the restoration of Cottington, and still

more of Windebank, to the king's councils, was no pledge of protestant or constitutional measures. This opposition, so natural to parliaments in any circumstances, disgusted Charles. In one of his letters to the queen, he congratulates himself on being "freed from the place of all mutinous motions, his mongrel parliament." It may be presumed that some of those who obeyed the king's summons to Oxford were influenced less by loyalty than a consideration that their estates lay in parts occupied by his troops; of course the same is applicable to the Westminster parliament.

† Baillie, 441. I can find no mention of this in the *Journals*; but, as Baillie was then in London, and in constant intercourse with the leaders of parliament, there must have been some foundation for his statement, though he seems to have been inaccurate as to the fact of the vote.

‡ *Parl. Hist.* 299. et post. Clarendon, v. 16. Whitelock, 110, &c. Rush. *Abr.* v. 449, &c.

ascendancy of Cromwell. The treaty was opened at Uxbridge in January, 1645. But neither the king nor his adversaries entered on it with minds sincerely bent on peace: they, on the one hand, resolute not to swerve from the utmost rigour of a conqueror's terms, without having conquered; and he, though more secretly, cherishing illusive hopes of a more triumphant restoration to power than any treaty could be expected to effect.*

The three leading topics of discussion among the negotiators at Uxbridge were, the church, the militia, and the state of Ireland. Bound by their unhappy covenant, and watched by their Scots colleagues, the English commissioners on the parliament side demanded the complete establishment of a presbyterian polity, and the substitution of what was called the directory for the Anglican liturgy. Upon this head there was little prospect of a union. The king had deeply imbibed the tenets of Andrews and Laud, believing an episcopal government indispensably necessary to the valid administration of the sacraments, and the very existence of a Christian church. The Scots, and a portion of the English clergy, were equally confident that their presbyterian form was established by the apostles as a divine model, from which

* It was impossible for the king to avoid this treaty. Not only his Oxford parliament, as might naturally be expected, were openly desirous of peace, but a great part of the army had, in August, 1644, while opposed to that of Essex in the west, taken the extraordinary step of sending a letter to that general, declaring their intentions for the rights and liberties of the people, privileges of parliament, and protestant religion against popish innovations; and that on the faith of subjects, the honour and reputation of gentlemen and soldiers, they would with their lives maintain that which his majesty should publicly promise in order to a bloodless peace; they went on to request that Essex, with six more, would meet the general (earl of Brentford) with six more, to consider of all means possible to reconcile the unhappy differences and misunderstandings that have so long afflicted the kingdom.

Sir Edward Walker's Historical Discourses, 59. The king was acquainted with this letter before it was sent, but after some hands had been subscribed to it. He consented, but evidently with great reluctance, and even indignation; as his own expressions testify in this passage of Walker, whose manuscript here, as in many other places, contains interlineations by Charles himself. It was doubtless rather in a mutinous spirit, which had spread widely through the army, and contributed to its utter ruin in the next campaign. I presume it was at the king's desire that the letter was signed by the general, as well as by prince Maurice, and all the colonels, I believe, in his army, to take off the appearance of a faction; but it certainly originated with Wilmot, Percy, and some of those whom he thought ill affected. See Clarendon, iv. 527. et post. Rushw. Abr. v. 348. 358.

it was unlawful to depart.* Though most of the laity in this kingdom entertained less narrow opinions, the parliamentary commissioners thought the king ought rather to concede such a point than themselves, especially as his former consent to the abolition of episcopacy in Scotland weakened a good deal the force of his plea of conscience; while the royalists, even could they have persuaded their master, thought episcopacy, though not absolutely of divine right (a notion which they left to the churchmen), yet so highly beneficial to religion, and so important to the monarchy, that nothing less than extreme necessity, or at least the prospect of a signal advantage, could justify its abandonment. They offered however what in an earlier stage of their dissensions would have satisfied almost every man, that limited scheme of episcopal hierarchy, above mentioned as approved by Usher, rendering the bishop among his presbyters much like the king in parliament, not free to exercise his jurisdiction, nor to confer orders without their consent, and offered to leave all ceremonies to the minister's discretion. Such a compromise would probably have pleased the English nation, averse to nothing in their established church except its abuses; but the parliamentary negotiators would not so much as enter into discussion upon it.†

They were hardly less unyielding on the subject of the militia. They began with a demand of naming all the commanders by sea and land, including the lord-lieutenant of Ireland and all governors of garrisons, for an unlimited time. The king, though not very willingly, proposed that the command should be vested in twenty persons, half to be named by himself, half by the parliament, for the term of three years,

* The king's doctors, Steward and Sheldon, argued at Uxbridge that episcopacy was *jure divino*; Henderson and others that presbytery was so. Whitelock, 132. These churchmen should have been locked up like a jury, without food or fire, till they agreed.

† If we may believe Clarendon, the earl of Loudon offered in the name of the Scots, that if the king would give up episcopacy, they would not press any of the other demands. It is certain however that they would never have suffered him

to become the master of the English parliament; and, if this offer was sincerely made, it must have been from a conviction that he could not become such.

† Rushworth, Whitelock, Clarendon. The latter tells in his life, which reveals several things not found in his history, that the king was very angry with some of his Uxbridge commissioners, especially Mr. Bridgman, for making too great concessions with respect to episcopacy. He lived, however, to make himself much greater.

which he afterwards extended to seven; at the expiration of which time it should revert to the crown. But the utmost concession that could be obtained from the other side was to limit their exclusive possession of this power to seven years, leaving the matter open for an ulterior arrangement by act of parliament at their termination.* Even if this treaty had been conducted between two belligerent states, whom rivalry or ambition often excite to press every demand which superior power can extort from weakness, there yet was nothing in the condition of the king's affairs which should compel him thus to pass under the yoke, and enter his capital as a prisoner. But we may also remark that, according to the great principle, that the English constitution, in all its component parts, was to be maintained by both sides in this contest, the question for parliament was not what their military advantages or resources for war entitled them to ask, but what was required for the due balance of power under a limited monarchy. They could rightly demand no further concession from the king than was indispensable for their own and the people's security; and I leave any one who is tolerably acquainted with the state of England at the beginning of 1645, to decide whether their privileges and the public liberties incurred a greater risk, by such an equal partition of power over the sword as the king proposed, than his prerogative and personal freedom would have encountered by abandoning it altogether to their discretion. I am far from thinking that the acceptance of the king's propositions at Uxbridge would have restored tranquillity to England. He would still have repined at the limitations of monarchy, and others would have conspired against its existence. But of the various consequences which we may picture to ourselves as capable of resulting from a pacification, that which appears to me the least likely is, that Charles should have re-established that arbitrary power which he had exercised in the earlier period of his reign. Whence, in fact, was he to look for assistance? Was it with such creatures of a court as Jermyyn or Ashburnham, or with a worn-out veteran of office, like Cottington, or a rash adventurer, like Digby, that he

The parliament insist on unreasonable terms.

* Whitelock, 133.

could outwit Vane, or overawe Cromwell, or silence the press and the pulpit, or strike with panic the stern puritan and the confident fanatic? Some there were, beyond question, both soldiers and courtiers, who hated the very name of a limited monarchy, and murmured at the constitutional language which the king, from the time he made use of the pens of Hyde and Falkland, had systematically employed in his public declarations.* But it is as certain that the great majority of his Oxford parliament, and of those upon whom he must have depended, either in the field or in council, were apprehensive of any victory that might render him absolute, as that Essex and Manchester were unwilling to conquer at the expense of the constitution.† The catholics indeed, generally speaking, would have gone great lengths in asserting his authority. Nor is this any reproach to that body, by no means naturally less attached to their country and its liberties than other Englishmen, but driven by an unjust persecution to see their only hope of emancipation in the nation's servitude. They could not be expected to sympathize in that patriotism of the seventeenth century, which, if it poured warmth and radiance on the protestant, was to them as a devouring fire. But the king could have made no use of the catholics as a distinct body for any political purpose, without uniting all other parties against him. He had already given

* The creed of this party is set forth in the *Behemoth* of Hobbes; which is, in other words, the application of those principles of government which are laid down in the *Leviathan*, to the constitution and state of England in the civil war. It is republished in Baron Maseres's *Tracts*, ii. 565. 567. Sir Philip Warwick, in his *Memoirs*, 198., hints something of the same kind.

† Warburton, in the notes subjoined to the late edition of Clarendon, vii. 563., mentions a conversation he had with the duke of Argyle and lord Cobham (both soldiers, and the first a distinguished one) as to the conduct of the king and the earl of Essex after the battle of Edgehill. They agreed it was inexplicable on both sides by any military principle. Warburton explained it by the unwillingness to be *too victorious*, felt by Essex himself, and by those whom the king was forced

to consult. Father Orleans, in a passage with which the bishop probably was acquainted, confirms this; and his authority is very good as to the secret of the court. Rupert, he says, proposed to march to London. "Mais l'esprit Anglois, qui ne se dement point même dans les plus attachés à la royauté, l'esprit Anglois, dis-je, toujours entêté de ces libertés si funestes au repos de la nation, porta la plus grande partie du conseil à s'opposer à ce dessein. Le prétexte fut qu'il étoit dangereux pour le roy de l'entreprendre, et pour la ville que le prince Robert l'exécutât, jeune comme il étoit, emporté, et capable d'y mettre le feu. La vraie raison étoit qu'ils craignoient que, si le roy entroit dans Londres les armes à la main, il ne prétendist sur la nation une espèce de droit de conquête, qui le rendist trop absolu." *Révolut. d'Angleterre*, iii. 104.

so much offence, at the commencement of the war, by accepting the services which the catholic gentry were forward to offer, that instead of a more manly justification, which the temper of the times, he thought, did not permit, he had recourse to the useless subterfuges of denying or extenuating the facts, and even to a strangely improbable recrimination; asserting, on several occasions, that the number of papists in the parliament's army was much greater than in his own.*

It may still indeed be questioned whether, admitting the propositions tendered to the king to have been unreasonable and insecure, it might not yet have been expedient, in the perilous condition of his affairs, rather to have tried the chances of peace than those of war. If he could have determined frankly and without reserve to have relinquished the church, and called the leaders of the presbyterian party in both houses to his councils, it is impossible to prove that he might not both have regained his power over the militia in no long course of time, and prevailed on the parliament to consent to its own dissolution. The dread that party felt of the republican spirit rising amongst the independents, would have induced them to place in the hands of any sovereign they could trust, full as much authority as our constitution permits. But no one who has paid attention to the history of that period, will conclude that they could have secured the king against their common enemy, had he even gone wholly into their own measures.† And this were to suppose such

* Rushworth, Abr. iv. 550. At the very time that he was publicly denying his employment of papists, he wrote to Newcastle, commanding him to make use of all his subjects' services, without examining their consciences, except as to loyalty. Ellis's Letters, iii. 291., from an original in the Museum. No one can rationally blame Charles for any thing in this, but his inveterate and useless habit of falsehood. See Clarendon, iii. 610.

It is probable that some foreign catholics were in the parliament's service. But Dodd says, with great appearance of truth, that no one English gentleman of that persuasion was in arms on their side. Church History of Engl., iii. 28. He reports as a matter of hearsay, that, out

of about five hundred gentlemen who lost their lives for Charles in the civil war, one hundred and ninety-four were catholics. They were, doubtless, a very powerful faction in the court and army. Lord Spencer (afterwards earl of Sunderland), in some remarkable letters to his wife from the king's quarters at Shrewsbury, in September, 1642, speaks of the insolency of the papists with great dissatisfaction. Sidney Papers, ii. 667.

† It cannot be doubted, and is admitted in a remarkable conversation of Hollis and Whitelock with the king at Oxford in November, 1644, that the exorbitant terms demanded at Uxbridge were carried by the violent party, who disliked all pacification. Whitelock, 113.

an entire change in his character, and ways of thinking, as no external circumstances could produce. Yet his prospects from a continuance of hostilities were so unpromising that most of the royalists would probably have hailed his almost unconditional submission at Uxbridge. Even the steady Richmond and Southampton, it is said, implored him to yield, and deprecated his misjudging confidence in promises of foreign aid, or in the successes of Montrose.* The more lukewarm or discontented of his adherents took this opportunity of abandoning an almost hopeless cause; between the breach of the treaty of Uxbridge and the battle of Naseby, several of the Oxford peers came over to the parliament, and took an engagement never to bear arms against it. A few instances of such defection had occurred before.†

It remained only, after the rupture of the treaty at Uxbridge, to try once more the fortune of war. The ^{Miseries of the war.} people, both in the king's and parliament's quarters, but especially the former, heard with dismay that peace could not be attained. Many of the perpetual skirmishes and captures of towns which made every man's life and fortune precarious, have found no place in general history; but may be traced in the journal of Whitelock, or in the *Mercuries* and other fugitive sheets, great numbers of which are still extant. And it will appear, I believe, from these, that scarcely one county in England was exempt, at one time or other of the war, from becoming the scene of this unnatural contest. Compared indeed with the civil wars in France in the preceding century, there had been fewer acts of enormous cruelty, and less atrocious breaches of public faith. But much blood had been wantonly shed, and articles of capitulation had been very indifferently kept. "Either side," says Clarendon, "having somewhat to object to the other, the requisite honesty

* Baillie, ii. 91. He adds, "That which has been the greatest snare to the king is the unhappy success of Montrose in Scotland." There seems indeed great reason to think that Charles, always sanguine, and incapable of calculating probabilities, was unreasonably elated by victories from which no permanent advantage ought to have been expected. Burnet confirms this on good authority.

Introduction to History of his Times, 51.

† Whitelock, 109. 137. 142. Rushw. Abr. v. 163. The first deserter (except indeed the earls of Holland and Bedford) was sir Edward Dering, who came into the parliament's quarters, Feb. 1644. He was a weak man of some learning, who had already played a very changeable part before the war.

and justice of observing conditions was mutually, as it were by agreement, for a long time violated.* The royalist army, especially the cavalry, commanded by men either wholly unprincipled, or at least regardless of the people, and deeming them ill affected, the princes Rupert and Maurice, Goring and Wilmot, lived without restraint of law or military discipline, and committed every excess even in friendly quarters.† An ostentatious dissoluteness became characteristic of the cavalier, as a formal austerity was of the puritan; one spoiling his neighbour in the name of God, the other of the king. The parliament's troops were not quite free from these military vices, but displayed them in a much less scandalous degree, owing to their more religious habits and the influence of their presbyterian chaplains, to the better example of their commanders, and to the comparative, though not absolute, punctuality of their pay.‡ But this pay was raised through unheard-of assessments, especially an excise on liquors, a new

* A flagrant instance of this was the plunder of Bristol by Rupert, in breach of the capitulation. I suspect that it was the policy of one party to exaggerate the cruelties of the other; but the short narratives dispersed at the time give a wretched picture of slaughter and devastation.

† Clarendon and Whitelock *passim*. Baxter's *Life*, p. 44. 55. This license of Maurice's and Goring's armies in the west first led to the defensive insurrection; if so it should be called, of the clubmen; that is, of yeomen and country people, armed only with clubs, who hoped, by numbers and concert, to resist effectually the military marauders of both parties, declaring themselves neither for king nor parliament, but for their own liberty and property. They were of course regarded with dislike on both sides; by the king's party when they first appeared in 1644, because they crippled the royal army's operations, and still more openly by the parliament next year, when they opposed Fairfax's endeavour to carry on the war in the counties bordering on the Severn. They appeared at times in great strength; but the want of arms and discipline made it not very difficult to suppress them. Clarendon, v. 197. Whitelock, 137. Parl. Hist. 279. 390.

The king himself, whose disposition

was very harsh and severe, except towards the few he took into his bosom, can hardly be exonerated from a responsibility for some acts of inhumanity; (see Whitelock, 67., and Somers Tracts, iv. 502.; v. 369.; Maseres's Tracts, i. 144., for the ill treatment of prisoners;) and he might probably have checked the outrages which took place at the storming of Leicester, where he was himself present. Certainly no imputation of this nature can be laid at the door of the parliamentary commanders; though some of them were guilty of the atrocity of putting their Irish prisoners to death, in obedience, however, to an ordinance of parliament. Parl. Hist. iii. 295.; Rushworth's *Abridgement*, v. 402. It passed October 24. 1644, and all remissness in executing it was to be reckoned a favouring of the Irish rebellion. When we read, as we do perpetually, these violent and barbarous proceedings of the parliament, is it consistent with honesty or humanity to hold up that assembly to admiration, while the faults on the king's side are studiously aggravated? The partiality of Oldmixon, Harris, Macaulay, and now of Mr. Brodie and Mr. Godwin, is full as glaring, to say the very least, as that of Hume.

‡ Clarendon and Baxter.

name in England, and through the sequestration of the estates of all the king's adherents: resources, of which he also had availed himself, partly by the rights of war, partly by the grant of his Oxford parliament.*

A war so calamitous seemed likely to endure till it had exhausted the nation. With all the parliament's superiority, they had yet to subdue nearly half the kingdom. The Scots had not advanced southward, content with reducing Newcastle, and the rest of the northern counties. These they treated almost as hostile, without distinction of parties, not only exacting contributions, but committing, unless they are much belied, great excesses of indiscipline; their presbyterian gravity not having yet overcome the ancient national propensities.† In the midland and western parts the king had just the worse, without having sustained material loss; and another summer might pass away in marches and countermarches, in skirmishes of cavalry, in tedious sieges of paltry fortifications, some of them mere country houses, which nothing but an amazing deficiency in that branch of military science could have rendered tenable. This protraction of the war had long given rise to no unnatural discontent with its management, and to suspicions, first of Essex, then of Manchester and others in command, as if they were secretly reluctant to complete the triumph of their employers. It is indeed not impossible

Essex and Manchester suspected of lukewarmness.

* The excise was first imposed by an ordinance of both houses in July, 1643, (Husband's Collection of Ordinances, p. 267.) and afterwards by the king's convention at Oxford. See a view of the financial expedients adopted by both parties in Lingard, x. 243. The plate brought into the parliament's commissioners at Guildhall, in 1642, for which they allowed the value of the silver, and one shilling per ounce more, is stated by Neal at 1,267,326*l.*, an extraordinary proof of the wealth of London; yet I do not know his authority, though it is probably good. The university of Oxford gave all they had to the king; but could not of course vie with the citizens.

The sums raised within the parliament's quarters, from the beginning of the war to 1647, are reckoned in a

pamphlet of that year, quoted in Sinclair's Hist. of the Revenue, i. 283., at 17,512,400*l.* But, on reference to the tract itself, I find this written at random. The contributions, however, were really very great; and, if we add those to the king, and the loss by waste and plunder, we may form some judgment of the effects of the civil war.

† The independents raised loud clamours against the Scots army; and the northern counties naturally complained of the burthen of supporting them as well as of their excesses. Many passages in Whitelock's journal during 1645 and 1646 relate to this. Hollis endeavours to deny or extenuate the charges; but he is too prejudiced a writer, and Baillie himself acknowledges a great deal. Vol. ii. p. 138. 142. 106.

that both these peers, especially the former, out of their desire to see peace restored on terms compatible with some degree of authority in the crown, and with the dignity of their own order, did not always press their advantages against the king, as if he had been a public enemy.* They might have thought that, having drawn the sword avowedly for the preservation of his person and dignity as much as for the rights and liberties of the people, they were no farther bound by their trust than to render him and his adherents sensible of the impracticability of refusing their terms of accommodation.

There could however be no doubt that Fairfax and Cromwell were far superior, both by their own talents for war and the discipline they had introduced into their army, to the earlier parliamentary commanders, and that, as a military arrangement, the self-denying ordinance was judiciously conceived. This, which took from all members of both houses their commands in the army, or civil employments, was, as is well known, the first great victory of the independent party which had grown up lately in parliament

* The chief imputation against Manchester was for not following up his victory in the second battle of Newbury, with which Cromwell openly taxed him; see Ludlow, i. 133. There certainly appears to have been a want of military energy on this occasion; but it is said by Baillie (ii. 76.) that all the general officers, Cromwell not excepted, concurred in Manchester's determination. Essex had been suspected from the time of the affair at Brentford, or rather from the battle of Edgehill (Baillie and Ludlow); and his whole conduct, except in the celebrated march to relieve Gloucester, confirmed a reasonable distrust either of his military talents, or of his zeal in the cause. "He loved monarchy and nobility," says Whitelock, p. 108., "and dreaded those who had a design to destroy both." Yet Essex was too much a man of honour to enter on any private intrigues with the king. The other peers employed under the parliament, Stamford, Denbigh, Willoughby, were not successful enough to redeem the suspicions that fell upon their zeal.

All our republican writers, such as Ludlow and Mrs. Hutchinson in that age, Mrs. Macaulay and Mr. Brodie more

of late, speak acrimoniously of Essex. "Most will be of opinion," says Mr. B., (History of British Empire, iii. 565.) "that as ten thousand pounds a year out of the sequestered lands were settled upon him for his services, he was rewarded infinitely beyond his merits." The reward was doubtless magnificent; but the merit of Essex was this, that he made himself the most prominent object of vengeance in case of failure, by taking the command of an army to oppose the king in person at Edgehill: a command of which no other man in his rank was capable, and which could not, at that time, have been intrusted to any man of inferior rank without dissolving the whole confederacy of the parliament.

It is to be observed, moreover, that the two battles of Newbury, like that of Edgehill, were by no means decisive victories on the side of the parliament; and that it is not clear whether either Essex or Manchester could have pushed the king much more than they did. Even after Naseby, his party made a pretty long resistance, and he had been as much blamed as they for not pressing his advantages with vigour.

under Vane and Cromwell.* They carried another measure of no less importance, collateral to the former; the new-modelling, as it was called, of the army; reducing it to twenty-one or twenty-two thousand men; discharging such officers and soldiers as were reckoned unfit, and completing their regiments by more select levies. The ordinance, after being once rejected by the lords, passed their house with some modifications in April.† But many joined them on this occasion for those military reasons which I have mentioned, deeming almost any termination of the war better than its continuance. The king's rejection of their terms at Uxbridge had disgusted, however unreasonably, some of the men hitherto accounted moderate, such as the earl of Northumberland and Pierpoint; who, deeming reconciliation impracticable, took from this time a different line of politics from that they had previously followed, and were either not alive to the danger of new-modelling the army, or willing to hope that it might be disbanded before that danger could become imminent. From Fairfax too, the new general, they saw little to fear and much to expect; while, Cromwell, as a member of the house of commons, was positively excluded by the ordinance itself. But, through a successful intrigue of his friends, this great man, already not less formidable to

* It had been voted by the lords a year before, Dec. 12. 1643, "That the opinion and resolution of this house is from henceforth not to admit the members of either house of parliament into any place or office, excepting such places of great trust as are to be executed by persons of eminency and known integrity, and are necessary for the government and safety of the kingdom." But a motion to make this resolution into an ordinance was carried in the negative. *Lords' Journals*. Parl. Hist. 187. The first motion had been for a resolution without this exception, that no place of profit should be executed by the members of either house.

† Whitelock, p. 118. 120. It was opposed by him, but supported by Pierpoint, who carried it up to the lords. The lords were chiefly of the presbyterian party; though Say, Wharton, and a few more, were connected with the independents. They added a proviso to

the ordinance raising forces to be commanded by Fairfax, that no officer refusing the covenant should be capable of serving, which was thrown out in the lower house. But another proviso was carried in the commons by 82 to 63, that the officers, though appointed by the general, should be approved by both houses of parliament. Cromwell was one of the tellers for the minority. *Commons' Journals*, Feb. 7. and 13. 1645.

In the original ordinance the members of both houses were excluded during the war; but in the second, which was carried, the measure was not made prospective. This, which most historians have overlooked, is well pointed out by Mr. Godwin. By virtue of this alteration, many officers were elected in the course of 1645 and 1646; and the effect, whatever might be designed, was very advantageous to the republican and independent factions.

the presbyterian faction than to the royalists, was permitted to continue lieutenant-general.* The most popular justification for the self-denying ordinance, and yet perhaps its real condemnation, was soon found at Naseby; for there Fairfax and Cromwell triumphed not only over the king and the monarchy, but over the parliament and the nation.

It does not appear to me that a brave and prudent man, in the condition of Charles the First, had, up to that unfortunate day, any other alternative than a vigorous prosecution of the war, in hope of such decisive success as, though hardly within probable calculation, is not unprecedented in the changeful tide of fortune. I cannot therefore blame him either for refusing unreasonable terms of accommodation, or for not relinquishing altogether the contest. But, after his defeat at Naseby, his affairs were, in a military sense, so irretrievable that, in prolonging the war with as much obstinacy as the broken state of his party would allow, he displayed a good deal of that indifference to the sufferings of the kingdom and of his own adherents, which has been sometimes imputed to him. There was, from the hour of that battle, one only safe and honourable course remaining. He justly abhorred to reign, if so it could be named, the slave of parliament, with the sacrifice of his conscience and his friends. But it was by no means necessary to reign at all. The sea was for many months open to him; in France, or still better in Holland, he would have found his misfortunes respected, and an asylum in that decent privacy which becomes an exiled sovereign. Those very hopes which he too fondly cherished, and which lured him to destruction, hopes of regaining power through the disunion of his enemies, might have been entertained with better reason, as with greater safety, in a foreign land. It is not perhaps very probable that he would have been restored; but his restoration in such circumstances seems less desperate than through any treaty that he could conclude in captivity at home.†

* Whitelock, p. 145.

† [It was the opinion of Montreuil that the plan of flight, which the king was

meditating before he took refuge with the Scots, "is by far the best, and in every point of view necessary; for the parliament will

Battle of
Naseby.

Desperate
condition of
the king's
affairs.

Whether any such thoughts of abandoning a hopeless contest were ever entertained by the king during this particular period, it is impossible to pronounce; we should infer the contrary from all his actions. It must be said that many of his counsellors seem to have been as pertinacious as himself, having strongly imbibed the same sanguine spirit, and looking for deliverance, according to their several fancies, from the ambition of Cromwell or the discontent of the Scots. But, whatever might have been the king's disposition, he would not have dared to retire from England. That sinister domestic rule, to which he had so long been subject, controlled every action. Careless of her husband's happiness, and already attached probably to one whom she afterwards married, Henrietta longed only for his recovery of a power which would become her own.* Hence, while she constantly laid her injunctions on Charles never to concede any thing as to the militia or the Irish catholics, she became desirous, when no other means presented itself, that he should sacrifice what was still nearer to his heart, the episcopal church-government. The queen-regent of France, whose sincerity in desiring the king's restoration there can be no ground to deny†, was equally persuaded that he could hope for it on

by that time have fallen into dissensions, and the throne will be far more easily restored, if the king come back to it from abroad, than if he were to issue from a prison. I only fear that flight will, perhaps, be no longer possible." Jan. 10. 1646. Raumer, p. 340.]

* Whether there are sufficient grounds for concluding that Henrietta's connexion with Jermyin was criminal, I will not pretend to decide; though Warburton has settled the matter in a very summary style. See one of his notes on Clarendon, vol. vii. p. 636. But I doubt whether the bishop had authority for what he there says, though it is likely enough to be true. See also a note of Lord Dartmouth on Burnet, i. 63.

† Clarendon speaks often in his History, and still more frequently in his private letters, with great resentment of the conduct of France, and sometimes of Holland, during our civil wars. I must confess that I see nothing to warrant

this. The States-General, against whom Charles had so shamefully been plotting, interfered as much for the purpose of mediation as they could with the slightest prospect of success, and so as to give offence to the parliament (Rushworth Abridged, v. 567.; Baillie, ii. 78.; Whitelock, 141. 148.; Harris's Life of Cromwell, 246.); and as to France, though Richelieu had instigated the Scots malecontents, and possibly those of England, yet after his death, in 1642, no sort of suspicion ought to lie on the French government; the whole conduct of Anne of Austria having been friendly, and both the mission of Harcourt in 1643, and the present negotiations of Montreuil and Bellievre, perfectly well intended. That Mazarin made promises of assistance which he had no design, nor perhaps any power, to fulfil, is true; but this is the common trick of such statesmen, and argues no malevolent purpose. But Hyde, out of his just

no less painful conditions. They reasoned of course very plausibly from the great precedent of flexible consciences, the reconciliation of Henrietta's illustrious father to the catholic church. As he could neither have regained his royal power, nor restored peace to France without this compliance with his subjects' prejudices, so Charles could still less expect, in circumstances by no means so favourable, that he should avoid a concession, in the eyes of almost all men but himself, of incomparably less importance. It was in expectation, or, perhaps, rather in the hope, of this sacrifice, that the French envoy, Montreuil, entered on his ill-starred negotiation for the king's taking shelter with the Scots army. And it must be confessed that several of his best friends were hardly less anxious that he should desert a church he could not protect.* They doubted*not, reasoning from their own characters, that he would ultimately give way. But that Charles, unchangeably resolved on this head†, should have put himself in the power of men fully as bigoted as himself (if he really conceived that the Scots presbyterians would shed their blood to re-establish the pre-

The king
throws him-
self into the
hands of
the Scots.

dislike of the queen, hated all French connexions; and his passionate loyalty made him think it a crime, or at least a piece of base pusillanimity, in foreign states, to keep on any terms with the rebellious parliament. The case was altered, after the retirement of the regent Anne from power: Mazarin's latter conduct was, as is well known, exceedingly adverse to the royal cause.

The account given by Mr. D'Israeli of Tabran's negotiations in the fifth volume of his Commentaries on the Reign of Charles I., though it does not contain any thing very important, tends to show Mazarin's inclination towards the royal cause in 1644 and 1645.

* Colepepper writes to Ashburnham, in February, 1646, to advance the Scots treaty with all his power. "It is the only way left to save the crown and the kingdom; all other tricks will deceive you. . . . It is no time to dally on distinctions and criticisms. All the world will laugh at them when a crown is in question." *Clar. Papers*, ii. 207.

The king had positively declared his resolution not to consent to the establish-

ment of presbytery. This had so much disgusted both the Scots and English presbyterians (for the latter had been concerned in the negotiation), that Montreuil wrote to say he thought they would rather make it up with the independents than treat again. "De sorte qu'il ne faut plus marchander, et que V. M. se doit hâter d'envoyer aux deux parlemens son consentement aux trois propositions d'Uxbridge; ce qu'étant fait, elle sera en sureté dans l'armée d'Ecosse." (15th Jan. 1646.) P. 211.

† "I assure you," he writes to Capel, Hopton, &c. Feb. 2. 1646, "whatever paraphrases or prophecies may be made upon my last message (pressing the two houses to consent to a personal treaty), I shall never part with the church, the essentials of my crown, or my friends." P. 206. Baillie could not believe the report that the king intended to take refuge in the Scots army, as "there would be no shelter there for him, unless he would take the covenant, and follow the advice of his parliament. Hard pills to be swallowed by a wilful and an unadvised prince." Vol. ii. p. 203.

lacy they abhorred), was an additional proof of that delusion which made him fancy that no government could be established without his concurrence; unless indeed we should rather consider it as one of those desperate courses, into which he who can foresee nothing but evil from every calculable line of action will sometimes plunge at a venture, borrowing some ray of hope from the uncertainty of its consequences.*

It was an inevitable effect of this step, that the king surrendered his personal liberty, which he never afterwards recovered. Considering his situation, we may at first think the parliament tolerably moderate, in offering nearly the same terms of peace at Newcastle which he had rejected at Uxbridge; the chief difference being, that the power of the militia which had been demanded for commissioners nominated and removable by the two houses during an indefinite period, was now proposed to reside in the two houses for the space of twenty years; which rather more unequivocally indicated their design of making the parliament perpetual.† But in fact they had so abridged the royal prerogative by their former propositions, that, preserving the decent semblance of monarchy, scarce any thing farther could be exacted. The king's circumstances were, however, so altered, that, by persisting in his refusal of those propositions, he excited a natural indignation at his obstinacy in men who felt their own right (the conqueror's right), to dictate terms at pleasure. Yet this might have had a nobler character of firmness, if, during all the tedious parlies of the last three years of his life, he had not, by tardy and partial concessions, given

* Not long after the king had taken shelter with the Scots, he wrote a letter to Ormond, which was intercepted, wherein he assured him of his expectation that their army would join with his, and act in conjunction with Montrose, to procure a happy peace and the restoration of his rights. Whitelock, p. 208. Charles had bad luck with his letters, which fell, too frequently for his fame and interests, into the hands of his enemies. But who, save this most ill-judging of princes, would have entertained an idea that the Scots presbyterian army

would co-operate with Montrose, whom they abhorred, and very justly, for his treachery and cruelty, above all men living?

† Parl. Hist. 499. Whitelock, 215. 218. It was voted, 17th June, that after these twenty years, the king was to exercise no power over the militia without the previous consent of parliament, who were to pass a bill at any time respecting it, if they should judge the kingdom's safety to be concerned, which should be valid without the king's assent. Commons' Journal.

up so much of that for which he contended, as rather to appear like a pedlar haggling for the best bargain, than a sovereign unalterably determined by conscience and public spirit. We must, however, forgive much to one placed in such unparalleled difficulties. Charles had to contend, during his unhappy residence at Newcastle, not merely with revolted subjects in the pride of conquest, and with bigoted priests, as blindly confident in one set of doubtful propositions as he was in the opposite, but with those he had trusted the most, and loved the dearest. We have in the Clarendon State Papers a series of letters from Paris, written, some by the queen, others jointly by Colepepper, Jermyn, and Ashburnham, or the two former, urging him to sacrifice episcopacy, as the necessary means of his restoration. We have the king's answers, that display, in an interesting manner, the struggles of his mind under this severe trial.* No candid reader, I think, can doubt that a serious sense of obligation was predominant in Charles's persevering fidelity to the English church. For, though he often alleges the incompatibility of presbyterianism with monarchy, and says very justly, "I am most confident that religion will much sooner regain the militia than the militia will religion †," yet these arguments seem rather in-

Charles's struggles to preserve episcopacy, against the advice of the queen and others.

* P. 248. "Show me any precedent," he says in another place, "wherever presbyterian government and regal was together without perpetual rebellions, which was the cause that necessitated the king my father to change that government in Scotland. And even in France, where they are but on tolerance, which in likelihood shall cause moderation, did they ever sit still so long as they had power to rebel? And it cannot be otherwise; for the ground of their doctrine is anti-monarchical." P. 260. See also p. 273.

† "The design is to unite you with the Scots nation and the presbyterians of England against the anti-monarchical party, the independents. . . . If by conscience it is intended to assert that episcopacy is *jure divino* exclusive, whereby no protestant, or rather Christian church, can be acknowledged for such without a bishop, we must therein crave leave wholly to differ. And if we be in an error, we are in good company, there not being, as we have cause to believe,

six persons of the protestant religion of the other opinion. . . . Come, the question in short is, whether you will choose to be a king of presbytery, or no king, and yet presbytery or perfect independency to be?" P. 263. They were however as much against his giving up the militia, or his party, as in favour of his abolishing episcopacy.

Charles was much to be pitied throughout all this period; none of his correspondents understood the state of affairs so well as himself: he was with the Scots, and saw what they were made of, while the others fancied absurdities through their own private self-interested views. It is very certain that by sacrificing episcopacy he would not have gained a step with the parliament; and as to reigning in Scotland alone, suspected, insulted, degraded, this would perhaps just have been possible for himself; but neither Henrietta nor her friends would have found an asylum there.

tended to weigh with those who slighted his scruples, than the paramount motives of his heart. He could hardly avoid perceiving that, as Colepepper told him in his rough style, the question was, whether he would choose to be a king of presbytery or no king. But the utmost length which he could prevail on himself to go was to offer the continuance of the presbyterian discipline, as established by the parliament, for three years, during which a conference of divines might be had, in order to bring about a settlement. Even this he would not propose without consulting two bishops, Juxon and Duppa, whether he could lawfully do so. They returned a very cautious answer, assenting to the proposition as a temporary measure, but plainly endeavouring to keep the king fixed in his adherence to the episcopal church.*

Pressed thus on a topic, so important above all others in his eyes, the king gave a proof of his sincerity by greater concessions of power than he had ever intended. He had some time before openly offered to let the parliament name all the commissioners of the militia for seven years, and all the officers of state and judges to hold their places for life.† He now empowered a secret agent in London, Mr. William Murray, privately to sound the parliamentary leaders, if they would consent to the establishment of a moderated episcopacy after three or five years, on condition of his departing from the right of the militia during his whole life.‡ This derelict-

* Juxon had been well treated by the parliament, in consequence of his prudent abstinence from politics, and residence in their quarters. He dates his answer to the king from his palace at Fulham. He was, however, dispossessed of it not long after by virtue of the ordinance directing the sale of bishops' lands. Nov. 16. 1646. Parl. Hist. 528. A committee was appointed, Nov. 2. 1646, to consider of a fitting maintenance to be allowed the bishops, both those who had remained under the parliament, and those who had deserted it. Journals. I was led to this passage, by Mr. Godwin, Hist. of Commonwealth, ii. 250. Whether any thing farther was done, I have not observed. But there is an order in the Journals, 1st May, 1647, that whereas divers of the late tenants of Dr. Juxon, late bishop of

London, have refused to pay the rents or other sums of money due to him as bishop of London at or before the 1st of November last, the trustees of bishops' lands are directed to receive the same, and pay them over to Dr. Juxon. Though this was only justice, it shows that justice was done, at least in this instance, to a bishop. Juxon must have been a very prudent and judicious man, though not learned; which probably was all the better.

† Jan. 29. 1646. Parl. Hist. 436. Whitelock says, "Many sober men and lovers of peace were earnest to have complied with what the king proposed; but the major part of the house was contrary, and the new-elected members joined those who were averse to compliance." P. 207.

‡ Clar. Papers, p. 275.

tion of the main ground of contest brought down the queen's indignation on his head. She wrote several letters, in an imperious and unfeeling tone, declaring that she would never set her foot in England as long as the parliament should exist.* Jermyn and Colepepper assumed a style hardly less dictatorial in their letters †, till Charles withdrew the proposal, which Murray seems never to have communicated. ‡ It was indeed the evident effect of despair and a natural weariness of his thorny crown. He now began to express serious thoughts of making his escape §, and seems even to hint more than once at a resignation of his government to the Prince of Wales. But Henrietta forbid him to think of an escape, and alludes to the other with contempt and indignation. || With this selfish and tyrannical woman, that life of exile and privacy which religion and letters would have rendered tolerable to the king, must have been spent in hardly less bitterness than on a dishonoured throne. She had displayed in France as little virtue as at home; the

Bad conduct
of the
queen.

* Clar. Papers, p. 294. 297. 300. She had said as much before (King's Cabinet Opened, p. 28.); so that this was not a burst of passion. "Conservez-vous la militia," she says in one place, p. 271., "et n'abandonnez jamais; et par cela tout reviendra." Charles, however, disclaimed all idea of violating his faith in case of a treaty, p. 273.; but observed as to the militia, with some truth, that "the retaining of it is not of so much consequence—I am far from saying, none—as is thought, without the concurrence of other things; because the militia here is not, as in France and other countries, a formed powerful strength; but it serves more to hold off ill than to do much good. And certainly if the pulpits teach not obedience, (which will never be, if presbyterian government be absolutely settled,) the crown will have little comfort of the militia." P. 296.

† P. 301. ‡ P. 313.

§ P. 245. 247. 278. 314. In one place he says, that he will go to France to clear his reputation to the queen, p. 265. He wrote in great distress of mind to Jermyn and Colepepper, on her threatening to retire from all business into a monastery, in consequence of his refusal

to comply with her wishes, p. 270. See also Montreuil's memoir in Thurloe's State Papers, i. 85., whence it appears that the king had thoughts of making his escape in Jan. 1647.

|| "For the proposition to Bellievre, (a French agent at Newcastle, after Montreuil's recall,) I hate it. If any such thing should be made public, you are undone; your enemies will make a malicious use of it. Be sure you never own it again in any discourse, otherwise than as intended as a foil, or an hyperbole, or any other ways, except in sober earnest," &c. p. 304. The queen and her counsellors, however, seem afterwards to have retracted in some measure what they had said about his escape; and advised that if he could not be suffered to go into Scotland, he would try Ireland or Jersey, p. 312.

Her dislike to the king's escape showed itself, according to Clarendon, vi. 192., even at a time when it appeared the only means to secure his life, during his confinement in the Isle of Wight. Some may suspect that Henrietta had consoled herself too well with lord Jermyn to wish for her husband's return.

small resources which should have been frugally dispensed to those who had lost all for the royal cause were squandered upon her favourite and her French servants.* So totally had she abandoned all regard to English interests, that Hyde and Capel, when retired to Jersey, the governor of which, sir Edward Carteret, still held out for the king, discovered a plan formed by the queen and Jermyn to put that island into the hands of France.† They were exceedingly perplexed at this discovery, conscious of the impossibility of defending Jersey, and yet determined not to let it be torn away from the sovereignty of the British crown. No better expedient occurred than, as soon as the project should be ripe for execution, to despatch a message “to the earl of Northumberland or some other person of honour,” asking for aid to preserve the island. This was of course, in other words, to surrender it into the power of the parliament, which they would not name even to themselves. But it was evidently more consistent with their loyalty to the king and his family, than to trust the good faith of Mazarin. The scheme, however, was abandoned; for we hear no more of it.

It must, however, be admitted at the present day, that there was no better expedient for saving the king’s life, and some portion of the royal authority for his descendants (a frank renunciation of episcopacy perhaps only excepted), than such an abdication; the time for which had come before he put himself into the hands of the Scots. His own party had been weakened, and the number of his well-wishers diminished, by something more than the events of war. The last unfortunate year had, in two memorable instances, revealed fresh proofs of that culpable imprudence, speaking mildly, which made wise and honest men hopeless of any permanent accommodation. At the battle of Naseby, copies of some letters to the queen, chiefly written about the time of the treaty of Uxbridge, and strangely preserved, fell into the hands of the enemy, and were instantly published.‡ No other losses of that fatal day were more in-

Publication
of letters
taken at
Naseby.

* P. 344.

† P. 279.

‡ Clarendon and Hume inveigh against the parliament for this publication; in which they are of course followed by the

whole rabble of Charles’s admirers. But it could not reasonably be expected that such material papers should be kept back: nor were the parliament under

jurious to his cause. Besides many proofs of a contemptible subserviency to one justly deemed irreconcilable to the civil and religious interests of the kingdom, and many expressions indicating schemes and hopes inconsistent with any practicable peace, and especially a design to put an end to the parliament*, he gave her power to treat with the English catholics, promising to take away all penal laws against them as

any obligation to do so. The former writer insinuates that they were garbled; but Charles himself never pretended this (see Supplement to Evelyn's Diary, p. 101.); nor does there seem any foundation for the surmise. His own friends garbled them however after the restoration; some passages are omitted in the edition of King Charles's Works; so that they can only be read accurately in the original publication, called the King's Cabinet Opened, a small tract in quarto; or in the modern compilations, such as the Parliamentary History, which have copied it. Ludlow says he has been informed that some of the letters taken at Naseby were suppressed by those intrusted with them, who since the king's restoration have been rewarded for it. *Memoirs*, i. 156. But I should not be inclined to believe this.

There is, however, an anecdote which may be mentioned in this place:—A Dr. Hickman, afterwards bishop of Derry, wrote in 1690 the following letter to Sprat, bishop of Rochester, a copy of which, in Dr. Birch's hand-writing may be found in the British Museum. It was printed by him in the Appendix to the "Inquiry into the Share K. Charles I. had in Glamorgan's Transactions," and from thence by Harris, in his *Life of Charles I.* p. 144.

"My Lord,

"Last week Mr. Bennet [a bookseller] left with me a manuscript of letters from king Charles I. to his queen; and said it was your lordship's desire and Dr. Pelling's that my lord Rochester should read them over, and see what was fit to be left out in the intended edition of them. Accordingly, my lord has read them over, and upon the whole matter says he is very much amazed at the design of printing them, and thinks that the king's enemies could not have done him a greater discourtesy. He showed me many passages which detract very

much from the reputation of the king's prudence, and something from his integrity; and in short he can find nothing throughout the whole collection, but what will lessen the character of the king and offend all those who wish well to his memory. He thinks it very unfit to expose any man's conversation and familiarity with his wife, but especially that king's; for it was apparently his blind side, and his enemies gained great advantage by showing it. But my lord hopes his friends will spare him; and therefore he has ordered me not to deliver the book to the bookseller, but put it into your lordship's hands; and when you have read it, he knows you will be of his opinion. If your lordship has not time to read it all, my lord has turned down some leaves where he makes his chief objections. If your lordship sends any servant to town, I beg you will order him to call here for the book, and that you would take care about it."

Though the description of these letters answers perfectly to those in the King's Cabinet Opened, which certainly "detract much from the reputation of Charles's prudence, and something from his integrity," it is impossible that Rochester and the others could be ignorant of so well-known a publication; and we must consequently infer that some letters injurious to the king's character have been suppressed by the caution of his friends.

* The king had long entertained a notion, in which he was encouraged by the attorney-general Herbert, that the act against the dissolution of the parliament without its own consent was void in itself. *Life of Clarendon*, p. 86. This high monarchical theory of the nullity of statutes in restraint of the prerogative was never thoroughly eradicated till the Revolution, and in all contentions between the crown and parliament destroyed the confidence, without which no accommodation could be durable.

soon as God should enable him to do so, in consideration of such powerful assistance, as might deserve so great a favour, and enable him to effect it.* Yet it was certain that no parliament, except in absolute duress, would consent to repeal these laws. To what sort of victory therefore did he look? It was remembered that, on taking the sacrament at Oxford some time before, he had solemnly protested that he would maintain the protestant religion of the church of England, without any connivance at popery. What trust could be reposed in a prince capable of forfeiting so solemn a pledge? Were it even supposed that he intended to break his word with the catholics, after obtaining such aid as they could render him, would his insincerity be less flagrant? †

These suspicions were much aggravated by a second discovery that took place soon afterwards, of a secret treaty between the earl of Glamorgan and the confederate Irish catholics, not merely promising the repeal of the penal laws, but the establishment of their religion in far the greater part of Ireland. ‡ The marquis of Ormond, as

Discovery of Glamorgan's treaty.

* "There is little or no appearance but that this summer will be the hottest for war of any that hath been yet; and be confident that, in making peace, I shall ever show my constancy in adhering to bishops and all our friends, not forgetting to put a short period to this perpetual parliament." *King's Cabinet Opened*, p. 7. "It being presumption, and no piety, so to trust to a good cause as not to use all lawful means to maintain it, I have thought of one means more to furnish thee with for my assistance, than hitherto thou hast had: it is, that I give thee power to promise in my name, to whom thou thinkest most fit, that I will take away all the penal laws against the Roman catholics in England as soon as God shall enable me to do it; so as by their means, or in their favours, I may have so powerful assistance as may deserve so great a favour, and enable me to do it. But if thou ask what I call that assistance, I answer that when thou knowest what may be done for it, it will be easily seen, if it deserve to be so esteemed. I need not tell thee what secrecy this business requires; yet this I will say, that this is the greatest point of confidence I can express to thee; for it is no thanks

to me to trust thee in any thing else but in this, which is the only point of difference in opinion betwixt us: and yet I know thou wilt make as good a bargain for me, even in this, as if thou wert a protestant." *Id. ibid.* "As to my calling those at London a parliament, I shall refer thee to Digby for particular satisfaction; this in general—if there had been but two, besides myself, of my opinion, I had not done it; and the argument that prevailed with me was, that the calling did no ways acknowledge them to be a parliament, upon which condition and construction I did it, and no otherwise, and accordingly it is registered in the council books, with the council's unanimous approbation." *Id.* p. 4. The one counsellor who concurred with the king was secretary Nicholas. *Supplement to Evelyn's Memoirs*, p. 90.

† The queen evidently suspected that he might be brought to abandon the catholics. *King's Cabinet Opened*, p. 30, 31. And, if fear of her did not prevent him, I make no question that he would have done so, could he but have carried his other points.

‡ *Parl. Hist.* 428.; *Somers Tracts*, v. 542. It appears by several letters of the

well as lord Digby, who happened to be at Dublin, loudly exclaimed against Glamorgan's presumption in concluding such a treaty, and committed him to prison on a charge of treason. He produced two commissions from the king, secretly granted without any seal or the knowledge of any minister, containing the fullest powers to treat with the Irish, and promising to fulfil any conditions into which he should enter. The king, informed of this, disavowed Glamorgan; and asserted in a letter to the parliament that he had merely a commission to raise men for his service, but no power to treat of any thing else, without the privity of the lord lieutenant, much less to capitulate any thing concerning religion or any property belonging either to church or laity.* Gla-

king, published among those taken at Naseby, that Ormond had power to promise the Irish a repeal of the penal laws, and the use of private chapels, as well as a suspension of Poyning's law. King's Cabinet Opened, p. 16. 19.; Rushw. Abr. v. 589. Glamorgan's treaty granted them all the churches, with the revenues thereof, of which they had at any time since October, 1641, been in possession; that is, the re-establishment of their religion: they, on the other hand, were to furnish a very large army to the king in England.

* Rushw. Abr. v. 582. 594. This, as well as some letters taken on lord Digby's rout at Sherborne about the same time, made a prodigious impression. "Many good men were sorry that the king's actions agreed no better with his words; that he openly protested before God with horrid imprecations that he endeavoured nothing so much as the preservation of the protestant religion, and rooting out of popery; yet in the mean time, underhand, he promised to the Irish rebels an abrogation of the laws against them, which was contrary to his late expressed promises in these words, 'I will never abrogate the laws against the papists.' And again he said, 'I abhor to think of bringing foreign soldiers into the kingdom,' and yet he solicited the duke of Lorraine, the French, the Danes, and the very Irish, for assistance." May's Breviate of Hist. of Parliament in Maseres's Tracts, i. 61. Charles had certainly never scrupled (I do not say that he

ought to have done so) to make application in every quarter for assistance; and began in 1642 with sending a col. Cochran on a secret mission to Denmark, in the hope of obtaining a subsidiary force from that kingdom. There was at least no danger to the national independence from such allies. "We fear this shall undo the king for ever, that no repentance shall ever obtain a pardon of this act, if it be true, from his parliaments." Baillie, ii. 185. Jan. 20. 1646. The king's disavowal had some effect; it seems as if even those who were prejudiced against him could hardly believe him guilty of such an apostasy, as it appeared in their eyes. P. 175. And, in fact, though the catholics had demanded nothing unreasonable either in its own nature or according to the circumstances wherein they stood, it threw a great suspicion on the king's attachment to his own faith, when he was seen to abandon altogether, as it seemed, the protestant cause in Ireland, while he was struggling so tenaciously for a particular form of it in Britain. Nor was his negotiation less impolitic than dishonourable. Without depreciating a very brave and injured people, it may be said with certainty that an Irish army could not have had the remotest chance of success against Fairfax and Cromwell; the courage being equal on our side, the skill and discipline incomparably superior. And it was evident that Charles could never reign in England but on a protestant interest.

morgan, however, was soon released, and lost no portion of the king's or his family's favour.

This transaction has been the subject of much historical controversy. The enemies of Charles, both in his own and later ages, have considered it as a proof of his indifference at least to the protestant religion, and of his readiness to accept the assistance of Irish rebels on any conditions. His advocates for a long time denied the authenticity of Glamorgan's commissions. But Dr. Birch demonstrated that they were genuine; and, if his dissertation could have left any doubt, later evidence might be adduced in confirmation.* Hume,

* Birch's Inquiry into the Share which King Charles I. had in the Transactions of the Earl of Glamorgan, 1747. Four letters of Charles to Glamorgan, now in the British Museum (Sloane MSS. 4161.), in Birch's handwriting, but of which he was not aware at the time of that publication, decisively show the king's duplicity. In the first, which was meant to be seen by Digby, dated Feb. 3. 1646, he blames him for having been drawn to consent to conditions much beyond his instructions. "If you had advised with my lord-lieutenant, as you promised me, all this had been helped;" and tells him he had commanded as much favour to be shown him as might possibly stand with his service and safety. On Feb. 28. he writes, by a private hand, sir John Winter, that he is every day more and more confirmed in the trust that he had of him. In a third letter, dated April 5., he says, in a cipher, to which the key is given, "you cannot be but confident of my making good all instructions and promises to you and nuncio." The fourth letter is dated April 6., and is in these words:—"Herbert, as I doubt not but you have too much courage to be dismayed or discouraged at the usage like you have had, so I assure you that my estimation of you is nothing diminished by it, but rather begets in me a desire of revenge, and reparation to us both (for in this I hold myself equally interested with you), whereupon not doubting of your accustomed care and industry in my service, I assure you of the continuance of my favour and protection to you, and that in deeds more than in

words I shall show myself to be your most assured constant friend. C. R."

These letters have lately been republished by Dr. Lingard, *Hist. of Eng.* x. note B. from Warner's *Hist. of the Civil War in Ireland*. The cipher may be found in the *Biographia Britannica*, under the article "Bales." Dr. L. endeavours to prove that Glamorgan acted all along with Ormond's privity; and it must be owned that the expression in the king's last letter about revenge and reparation, which Dr. L. does not advert to, has a very odd appearance.

The controversy is, I suppose, completely at an end; so that it is hardly necessary to mention a letter from Glamorgan, then marquis of Worcester, to Clarendon, after the restoration, which has every internal mark of credibility, and displays the king's unfairness. *Clar. State Pap.* ii. 201., and Lingard, *ubi supra*. It is remarkable that the transaction is never mentioned in the *History of the Rebellion*. The noble author was, however, convinced of the genuineness of Glamorgan's commission, as appears by a letter to secretary Nicholas. "I must tell you, I care not how little I say in that business of Ireland, since those strange powers and instructions given to your favourite Glamorgan, which appear to be so inexcusable to justice, piety, and prudence. And I fear there is very much in that transaction of Ireland, both before and since, that you and I were never thought wise enough to be advised with in. Oh! Mr. Secretary, those stratagems have given me more sad hours than all the misfortunes in war which have befallen the king, and look like the ef-

in a very artful and very unfair statement, admitting the authenticity of these instruments, endeavours to show that they were never intended to give Glamorgan any power to treat without Ormond's approbation. But they are worded in the most unconditional manner, without any reference to Ormond. No common reader can think them consistent with the king's story. I do not, however, impute to him any intention of ratifying the terms of Glamorgan's treaty. His want of faith was not to the protestant, but to the catholic. Upon weighing the whole of the evidence, it appears to me that he purposely gave Glamorgan, a sanguine and injudicious man, whom he could easily disown, so ample a commission as might remove the distrust that the Irish were likely to entertain of a negotiation wherein Ormond should be concerned; while by a certain latitude in the style of the instrument, and by his own letters to the lord lieutenant about Glamorgan's errand, he left it open to assert, in case of necessity, that it was never intended to exclude the former's privity and sanction. Charles had unhappily long been in the habit of perverting his natural acuteness to the mean subterfuges of equivocal language.

By these discoveries of the king's insincerity, and by what seemed his infatuated obstinacy in refusing terms of accommodation, both nations became more and more alienated from him; the one hardly restrained from casting him off; the other ready to leave him to his fate.* This ill opinion of the king forms one apology for that action which has exposed the Scots nation to so much reproach—

The king delivered up by the Scots.

facts of God's anger towards us." Id. p. 237. See also a note of Mr. Laing, *Hist. of Scotland*, iii. 557., for another letter of the king to Glamorgan, from Newcastle, in July, 1646, not less explicit than the foregoing.

* Burnet's *Mem. of Dukes of Hamilton*, 284. Baillie's letters, throughout 1646, indicate his apprehension of the prevalent spirit, which he dreaded as implacable, not only to monarchy, but to presbytery and the Scots nation. "The leaders of the people seem inclined to have no shadow of a king, to have liberty for all religions, a lame Erastian presbytery, to be so injurious to us as to chase us hence with the sword." 148. March

31. 1646. "The common word is, that they will have the king prisoner. Possibly they may grant to the prince to be a duke of Venice. The militia must be absolutely, for all time to come, in the power of the parliament alone," &c. 200. On the king's refusal of the propositions sent to Newcastle, the Scots took great pains to prevent a vote against him, 226. There was still, however, danger of this. 236. Oct. 13. and p. 243. His intrigues with both parties, the presbyterians and independents, were now known; and all sides seem to have been ripe for deposing him, 245. These letters are a curious contrast to the idle fancies of a speedy and triumphant restoration, which Cla-

their delivery of his person to the English parliament. Perhaps if we place ourselves in their situation, it will not appear deserving of quite such indignant censure. It would have shown more generosity to have offered the king an alternative of retiring to Holland; and from what we now know, he probably would not have neglected the opportunity. But the consequence might have been his solemn deposition from the English throne; and, however we may think such banishment more honourable than the acceptance of degrading conditions, the Scots, we should remember, saw nothing in the king's taking the covenant, and sweeping away prelatie superstitions, but the bounden duty of a Christian sovereign, which only the most perverse self-will induced him to set at nought.* They had a right also to consider the interests of his family, which the threatened establishment of a republic in England would defeat. To carry him back with their army into Scotland, besides being equally ruinous to the English monarchy, would have exposed their nation to the most serious dangers. To undertake his defence by arms against England, as the ardent royalists desired, and doubtless the determined republicans no less, would have been, as was proved afterwards, a mad and culpable renewal of the miseries of both kingdoms.† He had voluntarily come to

rendon himself, as well as others of less judgment, seem to have entertained.

* "Though he should swear it," says Baillie, "no man will believe that he sticks upon episcopacy for any conscience," ii. 205. And again: "It is pity that base hypocrisy, when it is pellucid, shall still be entertained. No oaths did ever persuade me, that episcopacy was ever adhered to on any conscience," 224. This looks at first like mere bigotry. But, when we remember that Charles had abolished episcopacy in Scotland, and was ready to abolish protestantism in Ireland, Baillie's prejudices will appear less unreasonable. The king's private letters in the Clarendon Papers have convinced me of his conscientiousness about church government; but of this his contemporaries could not be aware.

† Hollis maintains that the violent party were very desirous that the Scots should carry the king with them, and that nothing could have been more in-

jurious to his interests. If we may believe Berkley, who is much confirmed by Baillie, the presbyterians had secretly engaged to the Scots that the army should be disbanded, and the king brought up to London with honour and safety. *Memoirs of Sir J. Berkley*, in *Maseres's Tracts*, i. 358. Baillie, ii. 257. This affords no bad justification of the Scots for delivering him up.

"It is very like," says Baillie, "if he had done any duty, though he had never taken the covenant, but permitted it to have been put in an act of parliament in both kingdoms, and given so satisfactory an answer to the rest of the propositions, as easily he might, and sometimes I know he was willing, certainly Scotland had been for him as one man; and the body of England, upon many grounds, was upon a disposition to have so cordially embraced him, that no man, for his life, durst have muttered against his present restitution. But remaining

their camp; no faith was pledged to him; their very right to retain his person, though they had argued for it with the English parliament, seemed open to much doubt. The circumstance, unquestionably, which has always given a character of apparent baseness to this transaction, is the payment of 400,000*l.* made to them so nearly at the same time that it has passed for the price of the king's person. This sum was part of a larger demand on the score of arrears of pay, and had been agreed upon long before we have any proof or reasonable suspicion of a stipulation to deliver up the king.* That the parliament would never have actually paid it in case of a refusal to comply with this requisition, there can be, I presume, no kind of doubt; and of this the Scots must have been fully aware. But whether there were any such secret bargain as had been supposed, or whether they would have delivered him up, if there had been no pecuniary expectation in the case, is what I cannot perceive sufficient grounds to pronounce with confidence; though I am much inclined to believe the affirmative of the latter question. And it is deserving of particular observation, that the party in the house of commons which sought most earnestly to obtain possession of the king's person, and carried all the votes for payment of money to the Scots, was that which had no further aim than an accommodation with him, and a settlement of the government on the basis of its fundamental laws, though doubtless on terms very derogatory to his prerogative; while those who opposed each part of the negotiation were the zealous enemies of the king,

what he was in all his maxims, a full Canterburian, both in matters of religion and state, he still inclined to a new war; and for that end resolved to go to Scotland. Some great men there pressed the equity of Scotland's protecting of him on any terms. This untimeous excess of friendship has ruined that unhappy prince; for the better party finding the conclusion of the king's coming to Scotland, and thereby their own present ruin, and the ruin of the whole cause, the making the malignants masters of church and state, the drawing the whole force of England upon Scotland for their perjurious violation of their covenant,

they resolved by all means to cross that design." P. 253.

* The votes for payment of the sum of 400,000*l.* to the Scots are on Aug. 21. 27. and Sept. 1.; though it was not fully agreed between the two nations till Dec. 8. Whitelock, 220. 229. But Whitelock dates the commencement of the understanding as to the delivery of the king about Dec. 24., p. 231. See Commons' Journals. Baillie, ii. 246. 253. Burnet's Memoirs of Hamilton, 293, &c. Laing, iii. 362.; and Mr. Godwin's History of the Commonwealth, ii. 258.; a work in which great attention has been paid to the order of time.

and, in some instances, at least, of the monarchy. The Journals bear witness to this.*

Whatever might have been the consequence of the king's accepting the propositions of Newcastle, his chance of restoration upon any terms was now in all appearance very slender. He had to encounter enemies more dangerous and implacable than the presbyterians. That faction, which from small and insensible beginnings had acquired continued strength, through ambition in a few, through fanaticism in many, through a despair in some of reconciling the pretensions of royalty with those of the people, was now rapidly ascending to superiority. Though still weak in the house of commons, it had spread prodigiously in the army, especially since its new-modelling at the time of the self-denying ordinance.† The presbyterians saw with dismay the growth of their own and the constitution's enemies. But the royalists, who had less to fear from confusion than from any settlement that the commons would be brought to make, rejoiced in the increasing disunion; and fondly believed, like their master, that one or other party must seek assistance at their hands.‡

The independent party comprehended, besides the mem-

* Journals, Aug. and Sept. Godwin, ubi supra. Baillie, ii. passim.

† Baillie, who, in Jan. 1644, speaks of the independents as rather troublesome than formidable, and even says: "No man, I know, in either of the houses of any note is for them," 437.; and that "lord Say's power and reputation is none at all;" admits, in a few months, the alarming increase of independency and sectarianism in the earl of Manchester's army; more than two parts in three of the officers and soldiers being with them, and those the most resolute and confident; though they had no considerable force, either in Essex's or Waller's army, nor in the assembly of divines or the parliament, ii. 5. 19, 20. This was owing in a great degree to the influence, at that period, of Cromwell over Manchester. "The man," he says, "is a very wise and active head, universally well beloved, as religious and stout; being a known independent, and most of the soldiers

who love new ways put themselves under his command," 60.

‡ The independent party, or at least some of its most eminent members, as lord Say and Mr. St. John, were in a secret correspondence with Oxford, through the medium of lord Saville, in the spring of 1645, if we believe Hollis, who asserts that he had seen their letters, asking offices for themselves. Mem. of Hollis, sect. 43. Baillie refers this to an earlier period, the beginning of 1644, i. 427.; and I conceive that Hollis has been incorrect as to the date. The king, however, was certainly playing a game with them in the beginning of 1646, as well as with the presbyterians, so as to give both parties an opinion of his insincerity. Clarendon State Papers, 214.; and see two remarkable letters written by his order to sir Henry Vane, 226., urging an union, in order to overthrow the presbyterian government.

bers of that religious denomination*, a countless brood of fanatical sectaries, nursed in the lap of presbyterianism, and fed with the stimulating aliment she furnished, till their intoxicated fancies could neither be restrained within the limits of her creed nor those of her discipline.† The presbyterian zealots were systematically intolerant. A common cause made toleration the doctrine of the sectaries. About the beginning of the war, it had been deemed expedient to call together an assembly of divines, nominated by the parliament, and consisting not only of clergymen, but, according to the presbyterian usage, of lay members, peers as well as commoners, by whose advice a general reformation of the church was to be planned.‡ These were chiefly presbyterian; though a small minority of independents, and a few moderate episcopalians, headed by Selden §, gave them much trouble. The general

Opposition to the presbyterian government.

Toleration.

* The principles of the independents are set forth candidly, and even favourably, by Collier, 829.; as well as by Neal, ii. 98. For those who are not much acquainted with ecclesiastical distinctions, it may be useful to mention the two essential characteristics of this sect, by which they differed from the presbyterians. The first was, that all churches or separate congregations were absolutely independent of each other as to jurisdiction or discipline; whence they rejected all synods and representative assemblies as possessing authority; though they generally admitted, to a very limited degree, the alliance of churches for mutual counsel and support. Their second characteristic was the denial of spiritual powers communicated in ordination by apostolical succession; deeming the call of a congregation a sufficient warrant for the exercise of the ministry. See Orme's *Life of Owen*, for a clear view and able defence of the principles maintained by this party. I must add, that Neal seems to have proved that the independents, as a body, were not systematically adverse to monarchy.

† Edwards's *Gangræna*, a noted book in that age, enumerates one hundred and seventy-six heresies, which however are reduced by him to sixteen heads; and these seem capable of further consolidation. Neal, 249. The house ordered a

general fast, Feb. 1647, to beseech God to stop the growth of heresy and blasphemy. Whitelock, 236.: a presbyterian artifice to alarm the nation.

‡ Parl. Hist. ii. 1479. They did not meet till July 1. 1643. Rush. Abr. v. 123. Neal, 42. Collier, 823. Though this assembly showed abundance of bigotry and narrowness, they were by no means so contemptible as Clarendon represents them, ii. 423.; and perhaps equal in learning, good sense, and other merits, to any lower house of convocation that ever made a figure in England.

§ Whitelock, 71. Neal, 103. Selden, who owed no gratitude to the episcopal church, was from the beginning of its dangers a steady and active friend, displaying, whatever may have been said of his timidity, full as much courage as could reasonably be expected from a studious man advanced in years. Baillie, in 1641, calls him "the avowed proctor of the bishops," i. 245.; and when provoked by his Erastian opposition in 1646, presumes to talk of his "insolent absurdity," ii. 96. Selden sat in the assembly of divines; and by his great knowledge of the ancient languages and of ecclesiastical antiquities, as well as by his sound logic and calm clear judgment, obtained an undeniable superiority, which he took no pains to conceal.

imposition of the covenant, and the substitution of the directory for the common prayer, (which was forbidden to be used even in any private family, by an ordinance of August, 1645,) seemed to assure the triumph of presbyterianism; which became complete, in point of law, by an ordinance of February, 1646, establishing for three years the Scots model of classes, synods, and general assemblies throughout England.* But in this very ordinance there was a reservation which wounded the spiritual arrogance of that party. Their favourite tenet had always been the independency of the church. They had rejected, with as much abhorrence as the catholics themselves, the royal supremacy, so far as it controlled the exercise of spiritual discipline. But the house of commons were inclined to part with no portion of that prerogative which they had wrested from the crown. Besides the independents, who were still weak, a party called Erastians†, and chiefly composed of the common lawyers, under

* Scobell. Rush. Abr. v. 576. Parl. Hist. iii. 444. Neal, 199. The latter says, this did not pass the lords till June 6. But this is not so. Whitelock very rightly opposed the prohibition of the use of the common prayer, and of the silencing episcopal ministers, as contrary to the principle of liberty of conscience avowed by the parliament, and like what had been complained of in the bishops, 226. 239. 281. But, in Sept. 1647, it was voted that the indulgence in favour of tender consciences should not extend to tolerate the common prayer. Id. 274.

† The Erastians were named from Erastus, a German physician in the sixteenth century. The denomination is often used in the present age ignorantly, and therefore indefinitely; but I apprehend that the fundamental principle of his followers was this:—That in a commonwealth where the magistrate professes Christianity, it is not convenient that offences against religion and morality should be punished by the censures of the church, especially by excommunication. Probably he may have gone farther, as Selden seems to have done (Neal, 194.), and denied the right of exclusion from church communion, even without reference to the temporal power; but the limited proposition was of course sufficient to raise the practical contro-

versy. The Helvetic divines, Gualter and Bullinger, strongly concurred in this with Erastus: "Contendimus disciplinam esse debere in ecclesiâ, sed satis esse, si ea administratur a magistratu." Erastus, de Excommunicatione, p. 350.; and a still stronger passage in p. 379. And it is said that archbishop Whitgift, caused Erastus's book to be printed at his own expense. See one of Warburton's notes on Neal. Calvin, and the whole of his school, held, as is well known, a very opposite tenet. See Erasti Theses de Excommunicatione, 4to. 1579.

The ecclesiastical constitution of England is nearly Erastian in theory, and almost wholly so in practice. Every sentence of the spiritual judge is liable to be reversed by a civil tribunal, the court of delegates by virtue of the king's supremacy over all causes. And, practically, what is called church discipline, or the censures of ecclesiastical governors for offences, has gone so much into disuse, and what remains is so contemptible, that I believe no one, except those who derive a little profit from it, would regret its abolition.

"The most part of the house of commons," says Baillie, ii. 149., "especially the lawyers, whereof there are many, and divers of them very able men, are either half or whole Erastians, believing no

the guidance of Selden, the sworn foe of every ecclesiastical usurpation, withstood the assembly's pretensions with success. They negated a declaration of the divine right of presbyterian government. They voted a petition from the assembly, complaining of a recent ordinance as an encroachment on spiritual jurisdiction, to be a breach of privilege. The presbyterian tribunals were made subject to the appellat control of parliament; as those of the Anglican church had been to that of the crown. The cases wherein spiritual censures could be pronounced, or the sacrament denied, instead of being left to the clergy, were defined by law.* Whether from dissatisfaction on this account, or some other reason, the presbyterian discipline was never carried into effect, except to a certain extent in London and in Lancashire. But the beneficed clergy throughout England, till the return of Charles II., were chiefly, though not entirely, of that denomination. †

This party was still so far predominant, having the strong support of the city of London and its corporation ‡, with

church government to be of divine right, but all to be a human constitution, depending on the will of the magistrate." "The pope and king," he says in another place, 196., were never more earnest for the headship of the church than the plurality of this parliament." See also p. 183.; and Whitelock, 169.

* Parl. Hist. 459. et alibi. Rushw. Abr. v. 578. et alibi. Whitelock, 165. 169. 173. 176. et post. Baillie's Letters, passim. Neal, 23. &c. 194. et post. Collier, 841. The assembly attempted to sustain their own cause by counter votes; and, the minority of independents and Erastians having withdrawn, it was carried with the single dissent of Lightfoot, that Christ had established a government in his church independent of the civil magistrate. Neal, 223.

† Neal, 228. Warburton says, in his note on this passage, that "the presbyterian was to all intents and purposes the established religion during the time of the commonwealth." But, as coercive discipline and synodical government are no small intents and purposes of that religion, this assertion requires to be modified, as it has been in my text. Besides which, there were many ministers

of the independent sect in benefices, some of whom probably had never received ordination. "Both baptists and independents," says a very well informed writer of the latter denomination, "were in the practice of accepting the livings, that is, the temporalities of the church. They did not, however, view themselves as parish ministers, and bound to administer all the ordinances of religion to the parish population. They occupied the parochial edifices, and received a portion of the tithes for their maintenance; but in all other respects acted according to their own principles." Orme's Life of Owen, 136. This he thinks would have produced very serious evils, if not happily checked by the Restoration. "During the commonwealth," he observes afterwards, 245., "no system of church government can be considered as having been properly or fully established. The presbyterians, if any, enjoyed this distinction."

‡ The city began to petition for the establishment of presbytery, and against toleration of sectaries, early in 1646; and not long after came to assume what seemed to the commons too dictatorial a tone. This gave much offence, and con-

almost all the peers who remained in their house, that the independents and other sectaries neither opposed this ordinance for its temporary establishment, nor sought any thing farther than a toleration for their own worship. The question, as Neal well observes, was not between presbytery and independency, but between presbytery with a toleration, and without one.* Not merely from their own exclusive bigotry,

tributed to drive some members into the opposite faction. Neal, 193. 221. 241. Whitelock, 207. 240.

* Vol. ii. 268. See also 207. and other places. This is a remark that requires attention; many are apt to misunderstand the question. "For this point (toleration) both they and we contend," says Baillie, "tanquam pro aris et focis," ii. 175. "Not only they praise your magistrate," (writing to a Mr. Spang in Holland,) "who for policy gives some secret tolerance to divers religions, wherein, as I conceive, your divines preach against them as great sinners, but avow that by God's command the magistrate is discharged to put the least discourtesy on any man, Jew, Turk, Papist, Socinian, or whatever, for his religion," 18. See also 61., and many other passages. "The army," (says Hugh Peters in a tract, entitled *A Word for the Army, and Two Words to the People*, 1647,) "never hindered the state from a state religion, having only wished to enjoy now what the puritans begged under the prelates; when we desire more, blame us, and shame us." In another, entitled *Vox Militaris*, the author says: "We did never engage against this platform, nor for that platform, nor ever will, except better informed; and, therefore, if the state establisheth presbytery, we shall never oppose it."

The question of toleration, in its most important shape, was brought at this time before parliament, on occasion of one Paul Best who had written against the doctrine of the trinity. According to the common law, heretics, on being adjudged by the spiritual court, were delivered over to be burned under the writ de hæretico comburendo. This punishment had been inflicted five times under Elizabeth; on Wielmacker and Ter Wort, two Dutch anabaptists, who, like many of that sect, entertained Arian tenets, and were burned in Smithfield in 1575; on

Matthew Hammond in 1579, Thomas Lewis in 1583, and Francis Ket, in 1588; all burned by Scambler, bishop of Norwich. It was also inflicted on Bartholomew Legat and Edward Wightman, under James, in 1614; the first burned by King, bishop of London, the second by Neyle of Litchfield. A third, by birth a Spaniard, incurred the same penalty; but the compassion of the people showed itself so strongly at Legat's execution, that James thought it expedient not to carry the sentence into effect. Such is the venomous and demoralizing spirit of bigotry, that Fuller, a writer remarkable for good nature and gentleness, expresses his indignation at the pity which was manifested by the spectators of Legat's sufferings. *Church Hist.* part ii. p. 62. In the present case of Paul Best, the old sentence of fire was not suggested by any one; but an ordinance was brought in, Jan. 1646, to punish him with death, Whitelock, 190. Best made, at length, such an explanation as was accepted, Neal, 214.; but an ordinance to suppress blasphemies and heresies as capital offences was brought in. *Commons' Journals*, April, 1646. The independents gaining strength, this was long delayed; but the ordinance passed both houses May 2. 1648. *Id.* 303. Neal, 338., justly observes, that it shows the governing presbyterians would have made a terrible use of their power, had they been supported by the sword of the civil magistrate. The denial of the trinity, incarnation, atonement, or inspiration of any book of the Old or New Testament, was made felony. Lesser offences, such as anabaptism, or denying the lawfulness of presbyterian government, were punishable by imprisonment till the party should recant. It was much opposed, especially by Whitelock. The writ de hæretico comburendo, as is well known, was taken away by act of parliament in 1677.

but from a political alarm by no means ungrounded, the presbyterians stood firmly against all liberty of conscience. But in this again they could not influence the house of commons to suppress the sectaries, though no open declaration in favour of indulgence was as yet made. It is still the boast of the independents that they first brought forward the great principles of religious toleration (I mean as distinguished from maxims of political expediency) which had been confined to a few philosophical minds; to sir Thomas More, in those days of his better judgment when he planned his republic of Utopia, to Thuanus, or L'Hospital. Such principles are indeed naturally congenial to the persecuted; and it is by the alternate oppression of so many different sects, that they have now obtained their universal reception. But the independents also assert that they first maintained them while in power; a far higher praise, which however can only be allowed them by comparison. Without invidiously glancing at their early conduct in New England*, it must be admitted that the continuance of the penal laws against catholics, the prohibition of the episcopalian worship, and the punishment of one or two anti-trinitarians under Cromwell, are proofs that the tolerant principle had not yet acquired perfect vigour. If the independent sectaries were its earliest advocates, it was the Anglican writers, the school of Chillingworth, Hales, Taylor, Locke, and Hoadley, that rendered it victorious.†

* "In all New England, no liberty of living for a presbyterian. Whoever there, were they angels for life and doctrine, will essay to set up a different way from them [the independents], shall be sure of present banishment." Baillie, ii. 4. also 17. I am surprised to find a late writer of that country (Dwight's Travels in New England) attempt to extenuate at least the intolerance of the independents towards the quakers, who came to settle there; and which, we see, extended also to the presbyterians. But Mr. Orme, with more judgment, observes that the New England congregations did not sufficiently adhere to the principle of independency, and acted too much as a body; to which he ascribes their persecution of the quakers and others. Life of Owen, p. 335. It is certain that the congregational scheme leads to toleration, as the national church

scheme is adverse to it, for manifold reasons which the reader will discover.

† Though the writings of Chillingworth and Hales are not directly in behalf of toleration, no one could relish them without imbibing its spirit in the fullest measure. The great work of Jeremy Taylor, on the Liberty of Prophesying, was published in 1647; and, if we except a few concessions to the temper of the times, which are not reconcileable to its general principles, has left little for those who followed him. Mr. Orme admits that the remonstrants of Holland maintained the principles of toleration very early, p. 50.; but refers to a tract by Leonard Busher, an independent, in 1614, as "containing the most enlightened and scriptural views of religious liberty," p. 99. He quotes other writings of the same sect under Charles I.

The king, as I have said, and his party cherished too sanguine hopes from the disunion of their opponents.* Though warned of it by the parliamentary commissioners at Uxbridge, though in fact it was quite notorious and undisguised, they seem never to have comprehended that many active spirits looked to the entire subversion of the monarchy. The king in particular was haunted by a prejudice, natural to his obstinate and undiscerning mind, that he was necessary to the settlement of the nation; so that, if he remained firm, the whole parliament and army must be at his feet. Yet during the negotiations at Newcastle there was daily an imminent danger that the majority of parliament, irritated by his delays, would come to some vote excluding him from the throne. The Scots presbyterians, whatever we may think of their behaviour, were sincerely attached, if not by loyal affection, yet by national pride, to the blood of their ancient kings. They thought and spoke of Charles as of a headstrong child, to be restrained and chastised, but never cast off.† But in England he had absolutely no friends among the prevailing party; many there were who thought monarchy best for the nation, but none who cared for the king.

* Several proofs of this occur in the Clarendon State Papers. A letter, in particular, from Colepepper to Digby, in Sept. 1645, is so extravagantly sanguine, considering the posture of the king's affairs at that time, that, if it was perfectly sincere, Colepepper must have been a man of less ability than has generally been supposed. Vol. ii. p. 188. Neal has some sensible remarks on the king's mistake in supposing that any party which he did not join must in the end be ruined, p. 268. He had not lost this strange confidence after his very life had become desperate; and told sir John Bowring, when he advised him not to spin out the time at the treaty of Newport, that "any interests would be glad to come in with him." See Bowring's Memoirs in Halifax's Miscellanies, 132.

† Baillie's letters are full of this feeling, and must be reckoned fair evidence, since no man could be more bigoted to presbytery, or more bitter against the royalist party. I have somewhere seen Baillie praised for his mildness. His

letters give no proof of it. Take the following specimens:—"Mr. Maxwell of Ross has printed at Oxford so desperately malicious an invective against our assemblies and presbyteries, that, however I could hardly consent to the hanging of Canterbury or of any jesuit, yet I could give my sentence freely against that unhappy man's life." ii. 99. "God has struck Coleman with death; he fell in an ague, and after three or four days expired. It is not good to stand in Christ's way." P. 199.

Baillie's judgment of men was not more conspicuous than his moderation. "Vane and Cromwell are of horrible hot fancies to put all in confusion, but not of any deep reach. St. John and Pierpoint are more stayed, but not great heads." P. 258. The drift of all his letters is, that every man who resisted the jus divinum of presbytery was knave or fool, if not both. They are however eminently serviceable as historical documents.

This schism nevertheless between the parliament and the army was at least in appearance very desirable for Charles, and seemed to afford him an opportunity which a discreet prince might improve to great advantage, though it unfortunately deluded him with chimerical expectations.* At the conclusion of the war, which the useless obstinacy of the royalists had protracted till the beginning of 1647 †, the commons began to take measures for breaking the force of their remaining enemy. They resolved to disband a part of the army, and to send the rest into Ireland. ‡ They formed schemes for getting rid of Cromwell, and even made some demur about continuing Fairfax in command. § But in all

* "Now for my own particular resolution," he says in a letter to Digby, March 26. 1646, "it is this. I am endeavouring to get to London, so that the conditions may be such as a gentleman may own, and that the rebels may acknowledge me king; being not without hope that I shall be able so to draw either the presbyterians or independents to side with me for extirpating the one or the other, that I shall be really king again." Carte's Ormond, iii. 452; quoted by Mr. Brodie, to whom I am indebted for the passage. I have mentioned already his overture about this time to sir Henry Vane through Ashburnham.

† Clarendon, followed by Hume and several others, appears to say that Raglan castle in Monmouthshire, defended by the marquis of Worcester, was the last that surrendered; namely, in August, 1646. I use the expression *appears to say*, because the last edition, which exhibits his real text, shows that he paid this compliment to Pendennis castle in Cornwall, and that his original editors (I suppose to do honour to a noble family) foisted in the name of Raglan. It is true however of neither. The North Welsh castles held out considerably longer; that of Harlech was not taken till April, 1647, which put an end to the war. Whitelock.

Clarendon, still more unyielding than his master, extols the long resistance of his party, and says that those who surrendered at the first summons obtained no better terms than they who made the stoutest defence; as if that were a sufficient justification for prolonging a civil war. In fact, however, they did the king some

harm; inasmuch as they impeded the efforts made in parliament to disband the army. Several votes of the commons show this; see the journals of 12th May and 31st July, 1646.

‡ The resolution to disband Fairfax's regiment next Tuesday at Chelmsford passed 16th May, 1647, by 136 to 115; Algernon Sidney being a teller of the noes. Commons' Journals. In these votes the house, that is, the presbyterian majority, acted with extreme imprudence; not having provided for the payment of the army's arrears at the time they were thus disbanding them. Whitelock advised Hollis and his party not to press the disbanding; and on finding them obstinate, drew off, as he tells us, from that connexion, and came nearer to Cromwell, p. 248. This, however, he had begun to do rather earlier. Independently of the danger of disgusting the army, it is probable that, as soon as it was disbanded, the royalists would have been up in arms. For the growth of this discontent, day by day, peruse Whitelock's Journals for March and the three following months, as well as the Parliamentary History.

§ It was only carried by 159 to 147, March 5. 1647, that the forces should be commanded by Fairfax. But on the 8th, the house voted without a division, that no officer under him should be above the rank of a colonel, and that no member of the house should have any command in the army. It is easy to see at whom this was levelled. Commons' Journals. They voted at the same time that the officers should all take the covenant, which had

measures that exact promptitude and energy, treachery and timidity are apt to enfeeble the resolutions of a popular assembly. Their demonstrations of enmity were how-

Intrigues of the army with the king.

ever so alarming to the army, who knew themselves disliked by the people, and dependent for their pay on the parliament, that as early as April, 1647, an overture was secretly made to the king, that they would replace him in his power and dignity. He cautiously answered that he would not involve the kingdom in a fresh war, but should ever feel the strongest sense of this offer from the army.*

Whether they were discontented at the coldness of this reply, or, as is more probable, the offer had only proceeded from a minority of the officers, no further overture was made, till not long afterwards the bold manœuvre of Joyce had placed the king's person in their power.

His person seized.

The first effect of this military violence was to display the parliament's deficiency in political courage. It contained, we well know, a store of energetic spirits,

The parliament yield to the army.

not apt to swerve from their attachments. But, where two parties are almost equally balanced, the defection, which external circumstances must produce among those timid and feeble men from whom no assembly can be free, even though they should form but a small minority, will of course give a character of cowardice and vacillation to counsels, which is imputed to the whole. They immediately expunged, by a majority of 96 to 79, a vote of reprehension passed some weeks before, upon a remonstrance from the army which the presbyterians had highly resented, and gave other proofs of retracing their steps. But the army was not inclined to accept their submission in full discharge of the provocation. It had schemes of its own for the reformation and settlement of the kingdom, more extensive than those of the presbyterian faction. It had its own wrongs also to

been rejected two years before; and, by a majority of 136 to 108, that they should all conform to the government of the church established by both houses of parliament.

* *Clar. State Papers*, ii. 365. The army, in a declaration not long after the king fell into their power, June 24., use these

expressions: — "We clearly profess that we do not see how there can be any peace to this kingdom firm or lasting, without a due provision for the rights, quiet, and immunity of his majesty, his royal family, and his late partakers." *Parl. Hist.* 647.

revenge. Advancing towards London, the general and council of war sent up charges of treason against eleven principal members of that party, who obtained leave to retire beyond sea. Here may be said to have fallen the legislative power and civil government of England; which from this hour till that of the restoration had never more than a momentary and precarious gleam of existence, perpetually interrupted by the sword.

Those who have once bowed their knee to force, must expect that force will be for ever their master. In a few weeks after this submission of the commons to the army, they were insulted by an unruly, tumultuous mob of apprentices, engaged in the presbyterian politics of the city, who compelled them by actual violence to rescind several of their late votes.* Trampled upon by either side, the two speakers, several peers, and a great number of the lower house, deemed it somewhat less ignominious, and certainly more politic, to throw themselves on the protection of the army. They were accordingly soon restored to their places, at the price of a more complete and irretrievable subjection to the military power than they had already undergone. Though the presbyterians maintained a pertinacious resistance within the walls of the house, it was evident that the real power of command was gone from them, and that Cromwell with the army must either become arbiters between the king and parliament, or crush the remaining authority of both.†

* Hollis censures the speakers of the two houses and others who fled to the army from this mob; the riot being "a sudden tumultuous thing of young idle people without design." Possibly this might be the case; but the tumult at the door of the house, 26th July, was such that it could not be divided. Their votes were plainly null, as being made under duress. Yet the presbyterians were so strong in the commons, that a resolution to annul all proceedings during the speaker's absence was lost by 97 to 95, after his return; and it was only voted to repeal them. A motion to declare that the houses, from 26th July to 6th August, had been under a force, was also lost by 78 to 75. Journals, 9th and 17th August. The lords however passed an

ordinance to this effect; and after once more rejecting it, the commons agreed on August 20., with a proviso that no one should be called in question for what had been done.

† These transactions are best read in the Commons' Journals, and the Parliamentary History, and next to those in Whitelock, Hollis relates them with great passion; and Clarendon, as he does every thing else that passed in London, very imperfectly. He accounts for the earl of Manchester and the speaker Lenthal's retiring to the army by their persuasion that the chief officers had nearly concluded a treaty with the king, and resolved to have their shares in it. This is a very unnecessary surmise. Lenthal was a poor-spirited man, always influenced by

There are few circumstances in our history which have caused more perplexity to inquirers than the conduct of Cromwell and his friends towards the king in the year 1647. Those who look only at the ambitious and dissembling character of that leader, or at the fierce republicanism imputed to Ireton, will hardly believe that either of them could harbour any thing like sincere designs of restoring him even to that remnant of sovereignty which the parliament would have spared. Yet, when we consider attentively the public documents and private memoirs of that period, it does appear probable, that their first intentions towards the king were not unfavourable, and so far sincere that it was their project to make use of his name rather than totally to set him aside. But whether by gratifying Cromwell and his associates with honours, and throwing the whole administration into their hands, Charles would have long contrived to keep a taruished crown on his head, must be very problematical.

The new gaolers of this unfortunate prince began by treating him with unusual indulgence, especially in permitting his episcopal chaplains to attend him. This was deemed a pledge of what he thought an invaluable advantage in dealing with the army, that they would not insist upon the covenant, which in fact was nearly as odious to them as to the royalists, though for very different reasons. Charles, naturally sanguine, and utterly incapable in every part of his life of taking a just view of affairs, was ex-

Mysterious
conduct of
Cromwell.

Imprudent
hopes of
the king.

those whom he thought the strongest, and in this instance, according to Ludlow, p. 206., persuaded against his will by Haslerig to go the army. Manchester indeed had more courage and honour; but he was not of much capacity, and his parliamentary conduct was not systematic. But upon the whole it is obvious, on reading the list of names (Parl. Hist. 757.), that the king's friends were rather among those who staid behind, especially in the lords, than among those who went to the army. Seven of eight peers who continued to sit from 26th July to 6th of August, 1647, were impeached for it afterwards (Parl. Hist. 764.), and they were all of the most moderate party. If

the king had any previous connexion with the city, he acted very disingenuously in his letter to Fairfax, Aug. 3., while the contest was still pending; wherein he condemns the tumult, and declares his unwillingness that his friends should join with the city against the army, whose proposals he had rejected the day before with an imprudence of which he was now sensible. This letter, as actually sent to Fairfax, is in the Parliamentary History, 734., and may be compared with a rough draught of the same, preserved in Clarendon Papers, 373., from which it materially differs, being much sharper against the city.

travagantly elated by these equivocal testimonials of good-will. He blindly listened to private insinuations from rash or treacherous friends, that the soldiers were with him, just after his seizure by Joyce. "I would have you to know, sir," he said to Fairfax, "that I have as good an interest in the army as yourself;" an opinion as injudiciously uttered as it was absurdly conceived.* These strange expectations account for the ill reception which in the hasty irritation of disappointment he gave to the proposals of the army, when they were actually tendered to him at Hampton Court, and which seems

He rejects
the proposals
of the army.

* Fairfax's Memoirs in Maseres's Collection of Tracts, vol. i. p. 447. "By this," says Fairfax, who had for once found a man less discerning of the times than himself, "I plainly saw the broken reed he leaned on. The agitators had brought the king into an opinion that the army was for him." Ireton said plainly to the king, "Sir, you have an intention to be the arbitrator between the parliament and us; and we mean to be so between your majesty and the parliament." Berkley's Memoirs. Ibid. p. 360.

This folly of the king, if Mrs. Hutchinson is well informed, alienated Ireton, who had been more inclined to trust him than is commonly believed. "Cromwell," she says, "was at that time so incorruptibly faithful to his trust and the people's interest, that he could not be drawn in to practise even his own usual and natural dissimulation on this occasion. His son-in-law Ireton, that was as faithful as he, was not so fully of the opinion, till he had tried it, and found to the contrary, but that the king might have been managed to comply with the public good of his people, after he could no longer uphold his own violent will; but upon some discourses with him, the king uttering these words to him, 'I shall play my game as well as I can,' Ireton replied, 'If your majesty have a game, you must give us also the liberty to play ours.' Colonel Hutchinson privately discoursing with his cousin about the communications he had had with the king, Ireton's expressions were these:—'He gave us words, and we paid him in his own coin, when we found he had no real intention to the people's good, but to prevail, by our factions, to regain by art what he had lost in fight.'" p. 274.

It must be said for the king that he was by no means more sanguine or more blind than his distinguished historian and minister. Clarendon's private letters are full of strange and absurd expectations. Even so late as October, 1647, he writes to Berkley in high hopes from the army, and presses him to make no concessions except as to persons. "If they see you will not yield, they must; for sure they have as much or more need of the king than he of them." P. 379. The whole tenor, indeed, of Clarendon's correspondence demonstrates that, notwithstanding the fine remarks occasionally scattered through his history, he was no practical statesman, nor had any just conception, at the time, of the course of affairs. He never flinched from one principle, not very practicable or rational in the circumstances of the king; that nothing was to be receded from which had ever been demanded. This may be called magnanimity; but no foreign or domestic discussion could be settled, if all men were to act upon it, or if all men, like Charles and Clarendon, were to expect that Providence would interfere to support what seems to them the best, that is, their own cause. The following passage is a specimen:—"Truly I am so unfit to bear a part in carrying on this new contention [by negotiation and concession], that I would not, to preserve myself, wife, and children from the lingering death of want by famine (for a sudden death would require no courage), consent to the lessening any part, which I take to be in the function of a bishop, or the taking away the smallest prebendary in the church, or to be bound not to endeavour to alter any such alteration." Id. vol. iii. p. 2. Feb. 4. 1648.

to have eventually cost him his life. These proposals appear to have been drawn up by Ireton, a lawyer by education, and a man of much courage and capacity. He had been supposed, like a large proportion of the officers, to aim at a settlement of the nation under a democratical polity. But the army, even if their wishes in general went so far, which is hardly evident, were not yet so decidedly masters as to dictate a form of government uncongenial to the ancient laws and fixed prejudices of the people. Something of this tendency is discoverable in the propositions made to the king, which had never appeared in those of the parliament. It was proposed that parliaments should be biennial; that they should never sit less than a hundred and twenty days, nor more than two hundred and forty; that the representation of the commons should be reformed, by abolishing small boroughs and increasing the number of members for counties, so as to render the house of commons, as near as might be, an equal representation of the whole. In respect of the militia and some other points, they either followed the parliamentary propositions of Newcastle, or modified them favourably for the king. They excepted a very small number of the king's adherents from the privilege of paying a composition for their estates, and set that of the rest considerably lower than had been fixed by the parliament. They stipulated that the royalists should not sit in the next parliament. As to religion, they provided for liberty of conscience, declared against the imposition of the covenant, and by insisting on the retrenchment of the coercive jurisdiction of bishops and the abrogation of penalties for not reading the common prayer, left it to be implied that both might continue established.* The whole tenor of these propositions was in a

* Parl. Hist. 738. Clarendon talks of these proposals as worse than any the king had ever received from the parliament; and Hollis says they "dissolved the whole frame of the monarchy." It is hard to see, however, that they did so in a greater degree than those which he had himself endeavoured to obtain as a commissioner at Uxbridge. As to the church, they were manifestly the best that Charles had ever seen. As to his prerogative and the power of the monarchy, he was so tho-

roughly beaten, that no treaty could do him any essential service; and he had, in truth, only to make his election, whether to be the nominal chief of an aristocratical or a democratical republic. In a well-written tract, called *Vox Militaris*, containing a defence of the army's proceedings and intentions, and published apparently in July, 1647, their desire to preserve the king's rights, according to their notion of them, and the general laws of the realm, is strongly asserted.

style far more respectful to the king, and lenient towards his adherents, than had ever been adopted since the beginning of the war. The sincerity indeed of these overtures might be very questionable, if Cromwell had been concerned in them; but they proceeded from those elective tribunes called Agitators, who had been established in every regiment to superintend the interests of the army.* And the terms were surely as good as Charles had any reason to hope. The severities against his party were mitigated. The grand obstacles to all accommodation, the covenant and presbyterian establishment, were at once removed; or, if some difficulty might occur as to the latter, in consequence of the actual possession of benefices by the presbyterian clergy, it seemed not absolutely insuperable. For the changes projected in the constitution of parliament, they were not necessarily injurious to the monarchy. That parliament should not be dissolved until it had sat a certain time, was so salutary a provision, that the triennial act was hardly complete without it.

It is however probable, from the king's extreme tenaciousness of his prerogative, that these were the conditions that he found it most difficult to endure. Having obtained, through sir John Berkley, a sight of the propositions before they were openly made, he expressed much displeasure; and said that, if the army were inclined to close with him, they would never have demanded such hard terms. He seems to have principally objected, at least in words, to the exception of seven unnamed persons from pardon, to the exclusion of his party from the next parliament, and to the want of any articles in favour of the church. Berkley endeavoured to show him that it was not likely that the army, if meaning sincerely, should ask less than this. But the king, still tampering with the Scots, and keeping his eyes fixed on the city and parliament, at that moment came to an open breach with the army, disdainfully refused the propositions when publicly tendered to him, with such expressions of misplaced resentment and preposterous con-

* The precise meaning of this word seems obscure. Some have supposed it to be a corruption of adjutators, as if the modern term adjutant meant the same thing. But I find agitator always so spelled in the pamphlets of the time.

fidence as convinced the officers that they could neither conciliate nor trust him.* This unexpected haughtiness lost him all chance with those proud and republican spirits; and, as they succeeded about the same time in bridling the presbyterian party in parliament, there seemed no necessity for an agreement with the king, and their former determinations of altering the frame of government returned with more revengeful fury against his person.†

* Berkley's *Memoirs*, 366. He told lord Capel about this time that he expected a war between Scotland and England; that the Scots hoped for the assistance of the presbyterians; and that he wished his own party to rise in arms on a proper conjuncture, without which he could not hope for much benefit from the others. Clarendon, v. 476.

† Berkley, 368, &c. Compare the letter of Ashburnham, published in 1648, and reprinted in 1764; also the memoirs of Hollis, Huntingdon, and Fairfax, which are all in Maseres's Collection; also Ludlow, Hutchinson, Clarendon, Burnet's *Memoirs of Hamilton*, and some despatches in 1647 and 1648, from a royalist in London, printed in the appendix to the second volume of the Clarendon Papers. This correspondent of secretary Nicholas believes Cromwell and Ireton to have all along planned the king's destruction, and set the levellers on, till they proceeded so violently, that they were forced to restrain them. This also is the conclusion of Major Huntingdon, in his *Reasons for laying down his Commission*. But the contrary appears to me more probable.

Two anecdotes, well known to those conversant in English history, are too remarkable to be omitted. It is said by the editor of *Lord Orrery's Memoirs*, as a relation which he had heard from that noble person, that in a conversation with Cromwell concerning the king's death, the latter told him, he and his friends had once a mind to have closed with the king, fearing that the Scots and presbyterians might do so; when one of their spies, who was of the king's bed-chamber, gave them information of a letter from his majesty to the queen, sewed up in the skirt of a saddle, and directing them to an inn where it might be found. They obtained the letter ac-

cordingly, in which the king said, that he was courted by both factions, the Scots presbyterians and the army; that those which bade fairest for him should have him; but he thought he should rather close with the Scots than the other. Upon this, finding themselves unlikely to get good terms from the king, they from that time vowed his destruction. *Carte's Ormond*, ii. 12.

A second anecdote is alluded to by some earlier writers, but is particularly told in the following words, by Richardson, the painter, author of some anecdotes of Pope, edited by Spence. "Lord Bolingbroke told us, June 12. 1742, (Mr. Pope, lord Marchmont, and myself,) that the second earl of Oxford had often told him that he had seen, and had in his hands, an original letter that Charles the First wrote to his queen, in answer to one of hers that had been intercepted, and then forwarded to him; wherein she had reproached him for having made those villains too great concessions, viz. that Cromwell should be lord-lieutenant of Ireland for life without account; that that kingdom should be in the hands of the party, with an army there kept which should know no head but the lieutenant; that Cromwell should have a garter, &c.: That in this letter of the king's it was said, that she should leave him to manage, who was better informed of all circumstances than she could be; but she might be entirely easy as to whatever concessions he should make them; for that he should know in due time how to deal with the rogues, who, instead of a silken garter, should be fitted with a hempen cord. So the letter ended; which answer as they waited for, so they intercepted accordingly; and it determined his fate. This letter lord Oxford said he had offered 500*l.* for."

The authenticity of this latter story has

Charles's continuance at Hampton Court, there can be little doubt, would have exposed him to such imminent risk that, in escaping from thence, he acted on a reasonable principle of self-preservation. He might probably, with due precautions, have reached France or Jersey. But the hastiness of his retreat from Hampton Court giving no time, he fell again into the toils, through the helplessness of his situation, and the unfortunate counsels of one whom he trusted.* The fortitude of his own mind sustained him in this state of captivity and entire seclusion from his friends. No one, however sensible to the infirmities of Charles's disposition, and the defects of his understanding, can refuse admiration to that patient firmness and unaided acuteness which he displayed throughout the last and most melancholy year of his life. He had now abandoned all expectation of obtaining any present terms for the church or crown. He proposed therefore what he had privately empowered Murray to offer the year before, to confirm the presbyterian government for three years, and to give up the militia during his whole life, with other concessions of importance.† To preserve the church lands from sale, to shield his friends from proscription, to obtain a legal security for

His flight
from
Hampton
Court.

been constantly rejected by Hume and the advocates of Charles in general; and, for one reason among others, that it looks like a misrepresentation of that told by lord Orrery, which both stands on good authority, and is perfectly conformable to all the memoirs of the time. I have however been informed, that a memorandum nearly conformable to Richardson's anecdote is extant, in the handwriting of lord Oxford.

It is possible that this letter is the same with that mentioned by lord Orrery; and in that case was written in the month of October. Cromwell seems to have been in treaty with the king as late as September; and advised him, according to Berkley, to reject the proposals of the parliament in that month. Herbert mentions an intercepted letter of the queen (Memoirs, 60.); and even his story proves that Cromwell and his party broke off with Charles from a conviction of his dissimulation. See Laing's note, iii. 562.; and the note by Strype, therein

referred to, on Kennet's Complete Hist. of England, iii. 170.; which speaks of a "constant tradition" about this story, and is more worthy of notice, because it was written before the publication of Lord Orrery's Memoirs, or of the Richardsoniana.

* Ashburnham gives us to understand that the king had made choice of the Isle of Wight, previously to his leaving Hampton Court, but probably at his own suggestion. This seems confirmed by the king's letter in Burnet's Mem. of Dukes of Hamilton, 326. Clarendon's account is a romance, with a little mixture probably of truth. — But Ashburnham's Narrative, published in 1830, proves that he suggested the Isle of Wight, in consequence of the king's being forced to abandon a design he had formed of going to London, the Scots commissioners retracting their engagement to support him.

† Parl. Hist. 799.

the restoration of the monarchy in his son, were from henceforth the main objects of all his efforts. It was however far too late, even for these moderate conditions of peace. Upon his declining to pass four bills, tendered to him as preliminaries of a treaty, which on that very account, besides his objections to part of their contents, he justly considered as unfair, the parliament voted that no more addresses should be made to him, and that they would receive no more messages.* He was placed in close and solitary confinement; and at a meeting of the principal officers at Windsor it was concluded to bring him to trial, and avenge the blood shed in the war by an awful example of punishment; Cromwell and Ireton, if either of them had been ever favourable to the king, acceded at this time to the severity of the rest.

Yet in the midst of this peril and seeming abandonment, his affairs were really less desperate than they had been; and a few rays of light broke for a time through the clouds that enveloped him. From the hour that the Scots delivered him up at Newcastle, they seem to have felt the discredit of such an action, and longed for the opportunity of redeeming their public name. They perceived more and more that a well-disciplined army, under a subtle chief inveterately hostile to them, were rapidly becoming masters of England. Instead of that covenanted alliance, that unity in church and state they had expected, they were to look for all the jealousy and dissension that a complete discordance in civil and spiritual

* Jan. 15. This vote was carried by 141 to 92. Id. 831. And see Append. to 2d vol. of *Clar. State Papers*. Cromwell was now vehement against the king, though he had voted in his favour on Sept. 22. *Journals*, and *Berkley*, 372. A proof that the king was meant to be wholly rejected is, that at this time, in the list of the navy, the expression "his majesty's ship," was changed to "the parliament's ship." *Whitelock*, 291.

The four bills were founded on four propositions (for which I refer to *Hume* or the *Parliamentary History*, not to *Clarendon*, who has mis-stated them) sent down from the lords. The lower house voted to agree with them by 115 to 106;

Sidney and *Evelyn* tellers for the Ayes, *Martin* and *Morley* for the Noes. The increase of the minority is remarkable, and shows how much the king's refusal of the terms offered him in September, and his escape from *Hampton Court*, had swollen the commonwealth party; to which, by the way, colonel *Sidney* at this time seems not to have belonged. *Ludlow* says, that party hoped the king would not grant the four bills, i, 224. The commons published a declaration of their reasons for making no further addresses to the king, wherein they more than insinuate his participation in the murder of his father by *Buckingham*. *Parl. Hist.* 847.

polity could inspire. Their commissioners therefore in England, the earl of Lanark, always a moderate royalist, and the earl of Lauderdale, a warm presbyterian, had kept up a secret intercourse with the king at Hampton Court. After his detention at Carisbrook, they openly declared ^{Scots invasion.} themselves against the four bills proposed by the English parliament; and at length concluded a private treaty with him, by which, on certain terms quite as favourable as he could justly expect, they bound themselves to enter England with an army, in order to restore him to his freedom and dignity.* This invasion was to be combined with risings in various parts of the country; the presbyterian and royalist, though still retaining much of animosity towards each other, concurring at least in abhorrence of military usurpation; and the common people having very generally returned to that affectionate respect for the king's person, which sympathy for his sufferings, and a sense how little they had been gainers by the change of government, must naturally have excited.† The unfortunate issue of the Scots expedition under the Duke of Hamilton, and of the various insurrections throughout England, quelled by the vigilance and good conduct of Fairfax and Cromwell, is well known. But these ^{The presbyterians regain the ascendant.} formidable manifestations of the public sentiment in favour of peace with the king on honourable conditions, wherein the city of London, ruled by the presbyterian minis-

* Clarendon, whose aversion to the Scots warps his judgment, says that this treaty contained many things dishonourable to the English nation. Hist. v. 532. The king lost a good deal in the eyes of this uncompromising statesman, by the concessions he made in the Isle of Wight. State Papers, 387. I cannot, for my own part, see any thing derogatory to England in the treaty; for the temporary occupation of a few fortified towns in the north can hardly be called so. Charles, there is some reason to think, had on a former occasion made offers to the Scots far more inconsistent with his duty to this kingdom.

† Clarendon. May, Breviate of the Hist. of the Parliament, in Maseres's Tracts, i. 113. Whitelock: 307. 317, &c. In a conference between the two houses,

July 25. 1648, the commons gave as a reason for insisting on the king's surrender of the militia as a preliminary to a treaty, that such was the disaffection to the parliament on all sides, that without the militia they could never be secure. Rush. Apr. vi. 444. "The chief citizens of London," says May, 122., "and others called presbyterians, though the presbyterian Scots abominated this army, wished good success to these Scots no less than the malignants did. Whence let the reader judge of the times." The fugitive sheets of this year, such as the Mercurius Aulicus, bear witness to the exulting and insolent tone of the royalists. They chuckle over Fairfax and Cromwell, as if they had caught a couple of rats in a trap.

ters, took a share, compelled the house of commons to retract its measures. They came to a vote, by 165 to 99, that they would not alter the fundamental government by king, lords, and commons *; they abandoned their impeachment against seven peers, the most moderate of the upper house, and the most obnoxious to the army †; they restored the eleven members to their seats ‡; they revoked their resolution against a personal treaty with the king, and even that which required his assent by certain preliminary articles. § In a word, the party for distinction's sake called presbyterian, but now rather to be denominated constitutional, regained its ascendancy. This change in the counsels of parliament brought on the treaty of Newport.

The treaty of Newport was set on foot and managed by those politicians of the house of lords, who, having long suspected no danger to themselves but from the power of the king, had discovered, somewhat of the latest, that the crown itself was at stake, and that their own privileges were set on the same cast. Nothing was more remote from the intentions of the earl of Northumberland or lord Say, than to see themselves pushed from their seats by such upstarts as Ireton and Harrison; and their present mortification afforded a proof how men reckoned wise in their generation become the dupes of their own selfish, crafty, and pusillanimous policy. They now grow anxious to see a treaty concluded with the king. Sensible that it was necessary to anticipate, if possible, the return of Cromwell from the north, they implored him to comply at once with all the propositions of parliament, or at least to yield in the first instance as far as he meant to go. || They had not, however, mitigated in

* April 28. 1648. Parl. Hist. 883.

† June 6. These peers were the earls of Suffolk, Middlesex, and Lincoln, lords Willoughby of Parham, Berkley, Hunsdon, and Maynard. They were impeached for sitting in the house during the tumults from 26th of July to 6th of August, 1647. The earl of Pembroke, who had also continued to sit, merely because he was too stupid to discover which party was likely to prevail, escaped by truckling to the new powers.

‡ June 8.

§ See Parl. Hist. 823. 892. 904. 921. 924. 959. 996. for the different votes on this subject, wherein the presbyterians gradually beat the independent or republican party, but with very small and precarious majorities.

|| Clarendon, vi. 155. He is very absurd in imagining that any of the parliamentary commissioners would have been satisfied with "an act of indemnity and oblivion."

That the parliament had some reason to expect the king's firmness of purpose to

any degree the rigorous conditions so often proposed; nor did the king during this treaty obtain any reciprocal concession worth mentioning in return for his surrender of almost

give way, in spite of all his haggling, will appear from the following short review of what had been done. 1. At Newmarket, in June, 1642, he absolutely refused the nineteen propositions tendered to him by the lords and commons. 2. In the treaty of Oxford, March, 1643, he seems to have made no concessions, not even promising an amnesty to those he had already excluded from pardon. 3. In the treaty of Uxbridge, no mention was made on his side of exclusion from pardon; he offered to vest the militia for seven years in commissioners jointly appointed by himself and parliament, so that it should afterwards return to him, and to limit the jurisdiction of the bishops. 4. In the winter of 1645, he not only offered to disband his forces, but to let the militia be vested for seven years in commissioners to be appointed by the two houses, and afterwards to be settled by bill; also to give the nomination of officers of state and judges *pro hæc vice* to the houses. 5. He went no farther in substance till May, 1647; when he offered the militia for ten years, as well as great limitations of episcopacy, and the continuance of presbyterian government for three years; the whole matter to be afterwards settled by bill on the advice of the assembly of divines, and twenty more of his own nomination. 6. In his letter from Carisbrook, Nov. 1647, he gave up the militia for his life. This was in effect to sacrifice almost every thing as to immediate power; but he struggled to save the church lands from confiscation, which would have rendered it hardly practicable to restore episcopacy in future. His further concessions in the treaty of Newport, though very slowly extorted, were comparatively trifling.

What Clarendon thought of the treaty of Newport may be imagined. "You may easily conclude," he writes to Digby, "how fit a counsellor I am like to be, when the best that is proposed is that which I would not consent unto to preserve the kingdom from ashes. I can tell you worse of myself than this; which is, that there may be some reasonable expedients which possibly might in truth restore and preserve all, in which I could

bear no part." P. 459. See also p. 351. and 416. I do not divine what he means by this, unless it were the king's abdication. But what he could not have approved was, that the king had no thoughts of dealing sincerely with the parliament in this treaty, and gave Ormond directions to obey all his wife's commands, but not to obey any further orders he might send, nor to be startled at his great concessions respecting Ireland, for they would come to nothing. Carte's Papers, i. 185. See Mr. Brodie's remarks on this, iv. 143—146. He had agreed to give up the government of Ireland for twenty years to the parliament. In his letter sent from Holmby in May, 1647, he had declared that he would give full satisfaction with respect to Ireland. But he thus explains himself to the queen:—"I have so couched that article that, if the Irish give me cause, I may interpret it enough to their advantage. For I only say that I will give them (the two houses) full satisfaction as to the management of the war, nor do I promise to continue the war; so that, if I find reason to make a good peace there, my engagement is at an end. Wherefore make this my interpretation known to the Irish." "What reliance," says Mr. Laing, from whom I transcribe this passage, (which I cannot find in the Clarendon State Papers, quoted by him,) "could parliament place at the beginning of the dispute, or at any subsequent period, on the word or moderation of a prince, whose solemn and written declarations were so full of equivocation?" Hist. of Scotland, iii. 409. It may here be added that, though Charles had given his parole to colonel Hammond, and had the sentinels removed in consequence, he was engaged during most part of his stay at Carisbrook in schemes for an escape. See Col. Cooke's Narrative, printed with Herbert's Memoirs; and in Rushw. Abr. vi. 534. But his enemies were apprised of this intention, and even of an attempt to escape by removing a bar of his window, as appears by the letters from the committee of Derby House, Cromwell, and others, to Col. Hammond, published in 1764.

all that could be demanded. Did the positive adherence of the parliament to all these propositions, in circumstances so perilous to themselves, display less unreasonable pertinacity than that so often imputed to Charles? Or if, as was the fact, the majority which the presbyterians had obtained was so precarious that they dared not hazard it by suggesting any more moderate counsels, what rational security would the treaty have afforded him, had he even come at once into all their requisitions? His real error was to have entered upon any treaty, and still more to have drawn it out by tardy and ineffectual capitulations. There had long been only one course either for safety or for honour, the abdication of his royal office; now probably too late to preserve his life, but still more honourable than the treaty of Newport. Yet though he was desirous to make his escape to France, I have not observed any hint that he had thoughts of resigning the crown; whether from any mistaken sense of obligation, or from an apprehension that it might affect the succession of his son.

There can be no more erroneous opinion than that of such as believe that the desire of overturning the monarchy produced the civil war, rather than that the civil war brought on the former. In a peaceful and ancient kingdom like England, the thought of change could not spontaneously arise. A very few speculative men, by the study of antiquity, or by observation of the prosperity of Venice and Holland, might be led to an abstract preference of republican politics; some fanatics might aspire to a Jewish theocracy; but at the meeting of the Long Parliament, we have not the slightest cause to suppose that any party, or any number of persons among its members, had formed what must then have appeared so extravagant a conception.* The insuperable distrust of the

* Clarendon mentions an expression that dropped from Henry Martin in conversation, not long after the meeting of the parliament: "I do not think one man wise enough to govern us all." This may doubtless be taken in a sense perfectly compatible with our limited monarchy. But Martin's republicanism was soon apparent: he was sent to the Tower in August, 1643, for language reflecting on the king. *Parl. Hist.* 161. A Mr. Chillingworth had before incurred the same punishment for a like offence, De-

ember 1. 1641. *Nelson*, ii. 714. Sir Henry Ludlow, father of the regicide, was also censured on the same account. As the opposite faction grew stronger, Martin was not only restored to his seat, but the vote against him was expunged. Vane, I presume, took up republican principles pretty early; perhaps also Haslerig. With these exceptions, I know not that we can fix on any individual member of parliament the charge of an intention to subvert the constitution till 1646 or 1647.

king's designs, the irritation excited by the sufferings of the war, the impracticability, which every attempt at negotiation displayed, of obtaining his acquiescence to terms deemed indispensable, gradually created a powerful faction, whose chief bond of union was a determination to set him aside.* What further scheme they had planned is uncertain; none probably in which any number were agreed: some looked to the prince of Wales, others perhaps, at one time, to the elector palatine †; but necessity itself must have suggested to many the idea of a republican settlement. In the new-modelled army of 1645, composed of independents and enthusiasts of every denomination, a fervid eagerness for changes in the civil polity, as well as in religion, was soon found to predominate. Not checked, like the two houses, by attachment to forms, and by the influence of lawyers, they launched forth into varied projects of reform, sometimes judicious, or at least plausible, sometimes wildly fanatical. They reckoned the king a tyrant,

* Pamphlets may be found as early as 1643 which breathe this spirit; but they are certainly rare till 1645 and 1646. Such are "Plain English," 1643; "The Character of an Anti-malignant," 1645; "Last warning to all the Inhabitants of London," 1647.

† Charles Louis, elector palatine, elder brother of the princes Rupert and Maurice, gave cause to suspect that he was looking towards the throne. He left the king's quarters where he had been at the commencement of the war, and retired to Holland; whence he wrote, as well as his mother, the queen of Bohemia, to the parliament, disclaiming and renouncing prince Rupert, and begging their own pensions might be paid. He came over to London in August, 1644, took the covenant, and courted the parliament. They showed, however, at first, a good deal of jealousy of him; and intimated that his affairs would prosper better by his leaving the kingdom. Whitelock, 101. Rush. Abr. iv. 359. He did not take this hint, and obtained next year an allowance of 8000*l.* per annum. Id. 145. Lady Ranelagh, in a letter to Hyde, March, 1644, conjuring him by his regard for lord Falkland's memory, to use all his influence to procure a message from the king for a treaty, adds: "Methinks what I have informed my sister, and what she

will inform you, of the posture the prince elector's affairs are in here, should be a motive to hasten away this message." Clar. State Papers, ii. 167. Clarendon himself in a letter to Nicholas, Dec. 12. 1646, (where he gives his opinion that the independents look more to a change of the king and his line than of the monarchy itself, and would restore the full prerogative of the crown to one of their own choice,) proceeds in these remarkable words: "And I pray God they have not such a nose of wax ready for their impression. This it makes me tremble more than all their discourses of destroying monarchy; and that towards this end, they find assistance from those who from their hearts abhor their confusions." P. 308. These expressions seem more applicable by far to the elector than to Cromwell. But the former was not dangerous to the parliament, though it was deemed fit to treat him with respect. In March, 1647, we find a committee of both houses appointed to receive some intelligence which the prince elector desired to communicate to the parliament of great importance to the protestant religion. Whitelock, 241. Nothing farther appears about this intelligence; which looks as if he were merely afraid of being forgotten. He left England in 1649, and died in 1680.

whom, as they might fight against, they might also put to death, and whom it were folly to provoke, if he were again to become their master. Elated with their victories, they began already in imagination to carve out the kingdom for themselves; and remembered that saying so congenial to a revolutionary army, that the first of monarchs was a successful leader, the first of nobles were his followers.*

The knowledge of this innovating spirit in the army gave confidence to the violent party in parliament, and increased its numbers by the accession of some of those to whom nature has given a fine sense for discerning their own advantage. It was doubtless swollen through the publication of the king's letters, and his pertinacity in clinging to his prerogative. And the complexion of the house of commons was materially altered by the introduction at once of a large body of fresh members. They had at the beginning abstained from issuing writs to replace those whose death or expulsion had left their seats vacant. These vacancies, by the disabling votes against all the king's party †, became so numerous that it seemed a glaring violation of the popular principles to which they appealed, to carry on the public business with so maimed a representation of the people. It was however plainly impossible to have elections in many parts of the kingdom, while the royal army was in strength; and the change, by filling up nearly two hundred vacancies at once, was likely to become so important, that some feared that the cavaliers, others that the independents and republicans, might find their advantage in it. ‡ The latter party were generally earnest for new elections; and carried

* Baxter's Life, 50. He ascribes the increase of enthusiasm in the army to the loss of its presbyterian chaplains, who left it for their benefices, on the reduction of the king's party and the new-modelling of the troops. The officers then took on them to act as preachers. *Id.* 54.; and Neal, 183. I conceive that the year 1645 is that to which we must refer the appearance of a republican party in considerable numbers, though not yet among the house of commons.

† These passed against the royalist members separately, and for the most part in the first months of the war.

‡ "The best friends of the parliament were not without fears what the issue of the new elections might be; for though the people durst not choose such as were open enemies to them, yet probably they would such as were most likely to be for a peace on any terms, corruptly preferring the fruition of their estates and sensual enjoyments before the public interest," &c. Ludlow, i. 168. This is a fair confession how little the commonwealth party had the support of the nation.

their point against the presbyterians in September, 1645, when new writs were ordered for all the places which were left deficient of one or both representatives.* The result of these elections, though a few persons rather friendly to the king came into the house, was on the whole very favourable to the army. The self-denying ordinance no longer being in operation, the principal officers were elected on every side; and, with not many exceptions, recruited the ranks of that small body, which had already been marked by implacable dislike of the king, and by zeal for a total new-modelling of the government.† In the summer of 1646, this party had so far obtained the upper hand, that, according to one of our best authorities, the Scots commissioners had all imaginable difficulty to prevent his deposition. In the course of the year 1647, more overt proofs of a design to change the established constitution were given by a party out of doors. A petition was addressed “to the supreme authority of this nation, the commons assembled in parliament.” It was voted upon a division, that the house dislikes this petition, and cannot approve of its being delivered; and afterwards, by a majority of only 94 to 86, that it was seditious and insolent, and should be burnt by the hangman.‡ Yet the first decisive proof, perhaps, which the journals of parliament afford of the existence of a republican party, was the vote of 22d September 1647, that they would once again make application to the king for those things which they judged necessary for the welfare and safety of the kingdom. This was carried by 70 to 23.§ Their subsequent resolution of January 4. 1648,

* C. Journals. Whitelock, 168. The borough of Southwark had just before petitioned for a new writ, its member being dead or disabled.

† That the house of commons, in December, 1645, entertained no views of altering the fundamental constitution, appears from some of their resolutions as to conditions of peace: “That Fairfax should have an earldom, with 5000*l.* a year; Cromwell and Waller baronies, with half that estate; Essex, Northumberland, and two more be made dukes; Manchester and Salisbury, marquises, and other peers of their party be elevated to higher ranks; Haslerig, Stapylton, and

Skipton to have pensions.” Parl. Hist. 403. Whitelock, 182. These votes do not speak much for the magnanimity and disinterestedness of that assembly, though it may suit political romancers to declaim about it.

‡ Commons' Journals, May 4. and 18. 1647. This minority were not, in general, republican; but were unwilling to increase the irritation of the army by so strong a vote.

§ Commons' Journals. Whitelock, 271. Parl. Hist. 781. They had just been exasperated by his evasion of their propositions. Id. 778. By the smallness of the numbers, and the names of the tellers,

against any further addresses to the king, which passed by a majority of 141 to 91, was a virtual renunciation of allegiance. The lords, after a warm debate, concurred in this vote. And the army had in November, 1647, before the king's escape from Hampton Court, published a declaration of their design for the settlement of the nation under a sovereign representative assembly, which should possess authority to make or repeal laws, and to call magistrates to account.

We are not certainly to conclude that all who, in 1648, had made up their minds against the king's restoration, were equally averse to all regal government. The prince of Wales had taken so active, and, for a moment, so successful a share in the war of that year, that his father's enemies were become his own. Meetings however were held, where the military and parliamentary chiefs discussed the schemes of raising the duke of York, or his younger brother the duke of Gloucester, to the throne. Cromwell especially wavered, or pretended to waver, as to the settlement of the nation; nor is there any evidence, so far as I know, that he had ever professed himself averse to monarchy, till, dexterously mounting on the wave which he could not stem, he led on those zealots who had resolved to celebrate the inauguration of their new commonwealth with the blood of a victim king.*

It was about the end of 1647, as I have said, that the

it seems as if the presbyterian party had been almost entirely absent; which may be also inferred from other parts of the Journals. See October 9. for a long list of absentees. Haslerig and Evelyn, both of the army faction, told the Ayes, Martin and sir Peter Wentworth the Noes. The house had divided the day before on the question for going into a committee to take this matter into consideration, 84 to 34; Cromwell and Evelyn telling the majority, Wentworth and Rainsborough the minority. I suppose it is from some of these divisions that Baron Maseres has reckoned the republican party in the house not to exceed thirty.

It was resolved on Nov. 6. 1647, that the king of England, for the time being, was bound in justice and by the duty of his office, to give his assent to all such laws as by the lords and commons in parliament shall be adjudged to be for the

good of the kingdom, and by them tendered unto him for his assent. But the previous question was carried on the following addition: "And in case the laws so offered unto him shall not thereupon be assented unto by him, that nevertheless they are as valid to all intents and purposes as if his assent had been thereunto had and obtained, which they do insist upon as an undoubted right." *Com. Jour.*

* Ludlow says that Cromwell, "finding the king's friends grow strong in 1648, began to court the commonwealth's party. The latter told him he knew how to cajole and give them good words, when he had occasion to make use of them; whereat, breaking out into a rage, he said they were a proud sort of people, and only considerable in their own conceits." P. 240. Does this look as if he had been reckoned one of them?

principal officers took the determination, which had been already menaced by some of the agitators, of bringing the king, as the first and greatest delinquent, to public justice.* Too stern and haughty, too confident of the righteousness of their actions, to think of private assassination, they sought to gratify their pride by the solemnity and notoriousness, by the very infamy and eventual danger of an act unprecedented in the history of nations. Throughout the year 1648, this design, though suspended, became familiar to the people's expectation.† The commonwealth's men and the levellers, the various sectaries (admitting a few exceptions) grew clamorous for the king's death. Petitions were presented to the commons, praying for justice on all delinquents, from the highest to the lowest.‡ And not long afterwards, the

Scheme among the officers of bringing Charles to trial.

This is finally determined.

* Clarendon says that there were many consultations among the officers about the best mode of disposing of the king; some were for deposing him, others for poison or assassination, which, he fancies, would have been put in practice, if they could have prevailed on Hammond. But this is not warranted by our better authorities.

It is hard to say at what time the first bold man dared to talk of bringing the king to justice. But in a letter of Baillie to Alexander Henderson, May 19. 1646, he says, "If God have hardened him, so far as I can perceive, this people will strive to have him in their power, and make an example of him; *I abhor to think what they speak of execution!*" ii. 20.; published also in Dalrymple's Memorials of Charles I., p. 166. Proofs may also be brought from pamphlets by Lilburne and others in 1647, especially towards the end of that year; and the remonstrance of the Scots parliament, dated Aug. 13., alludes to such language. Rush. Abr. vi. 245. Berkley indeed positively assures us, that the resolution was taken at Windsor in a council of officers, soon after the king's confinement at Carisbrook; and this with so much particularity of circumstance that, if we reject his account, we must set aside the whole of his memoirs at the same time. Maseres's Tracts, i. 383. But it is fully confirmed by an independent testimony, William Allen, himself one of the council of officers and

adjutant-general of the army, who, in a letter addressed to Fleetwood, and published in 1659, declares that after much consultation and prayer at Windsor Castle, in the beginning of 1648, they had "come to a very clear and joint resolution that it was their duty to call Charles Stuart, that man of blood, to an account for the blood he had shed, and mischief he had done to his utmost, against the Lord's cause and people in these poor nations." This is to be found in Somers Tracts, vi. 499. The only discrepancy, if it is one, between him and Berkley, is as to the precise time, which the other seems to place in the end of 1647. But this might be lapse of memory in either party; nor is it clear, on looking attentively at Berkley's narration, that he determines the time. Ashburnham says, "For some days before the king's remove from Hampton Court, there was scarcely a day in which several alarms were not brought him by and from several considerable persons, both well affected to him and likely to know much of what was then in agitation, of the resolution which a violent party in the army had to take away his life. And that such a design there was, there were strong insinuations to persuade." See also his Narrative, published in 1830.

† Somers Tracts, v. 160. 162.

‡ Sept. 11. Parl. Hist. 1077. May's Breviate in Maseres's Tracts, vol. i. p. 127, Whitelock, 335.

general officers of the army came forward with a long remonstrance against any treaty, and insisting that the capital and grand author of their troubles be speedily brought to justice, for the treason, blood, and mischief, whereof he had been guilty.* This was soon followed by the vote of the presbyterian party, that the answers of the king to the propositions of both houses are a ground for the house to proceed upon for the settlement of the peace of the kingdom †, by the violent expulsion, or, as it was called, seclusion of all the presbyterian members from the house, and the ordinance of a minority, constituting the high court of justice for the trial of the king. ‡

A very small number among those who sat in this strange tribunal upon Charles the First were undoubtedly capable of taking statesman-like views of the interests of their party, and might consider his death a politic expedient for consolidating the new settlement. It seemed to involve the army, which had openly abetted the act, and even the nation by its passive consent, in such inexpressible guilt towards the royal family, that neither common prudence nor a sense of shame would permit them to suffer its restoration. But by the far greater part of the regicides such considerations were either overlooked or kept in the background. Their more powerful motive was that fierce fanatical hatred of the king, the natural fruit of long civil dissension, inflamed by preachers more dark and sanguinary than those they addressed, and by a perverted study of the Jewish scriptures. They had been wrought to believe, not that his execution would be justified by state-necessity or any such feeble grounds of human reasoning, but that it was a bounden duty, which with a safe conscience they could not neglect. Such was the persuasion of Ludlow and Hutchinson, the most respectable

* Nov. 17. Parl. Hist. 1077. Whitelock, p. 355. A motion, Nov. 30., that the house do now proceed on the remonstrance of the army, was lost by 125 to 58 (printed 59. in Parl. Hist.). Commons' Journals. So weak was still the republican party. It is indeed remarkable that this remonstrance itself is rather against the king, than absolutely against

all monarchy; for one of the proposals contained in it is that kings should be chosen by the people, and have no negative voice.

† The division was on the previous question, which was lost by 129 to 83.

‡ No division took place on any of the votes respecting the king's trial.

names among the regicides; both of them free from all suspicion of interestedness or hypocrisy, and less intoxicated than the rest by fanaticism. “I was fully persuaded,” says the former, “that an accommodation with the king was unsafe to the people of England, and unjust and wicked in the nature of it. The former, besides that it was obvious to all men, the king himself had proved, by the duplicity of his dealing with the parliament, which manifestly appeared in his own papers, taken at the battle of Naseby and elsewhere. Of the latter I was convinced by the express words of God’s law; ‘that blood defileth the land, and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.’ (Numbers, c. xxxv. v. 33.) And therefore I could not consent to leave the guilt of so much blood on the nation, and thereby to draw down the just vengeance of God upon us all, when it was most evident that the war had been occasioned by the invasion of our rights and open breach of our laws and constitution on the king’s part.”* “As for Mr. Hutchinson,” says his high-souled consort, “although he was very much confirmed in his judgment concerning the cause, yet being here called to an extraordinary action, whereof many were of several minds, he addressed himself to God by prayer, desiring the Lord, that, if through any human frailty, he were led into any error or false opinion in those great transactions, he would open his eyes, and not suffer him to proceed, but that he would confirm his spirit in the truth, and lead him by a right-enlightened conscience; and finding no check, but a confirmation in his conscience, that it was his duty to act as he did, he, upon serious debate, both privately and in his addresses to God, and in conferences with conscientious, upright, unbiassed persons, proceeded to sign the sentence against the king. Although he did not then believe but it might one day come to be again disputed among men, yet both he and others thought they could not refuse it without giving up the people of God, whom they had led forth and engaged themselves unto by the oath of God, into the hands of God’s, and their enemies; and therefore he cast himself

Motives of some of the king’s judges.

* Ludlow, i. 267.

upon God's protection, acting according to the dictates of a conscience which he had sought the Lord to guide; and accordingly the Lord did signalise his favour afterward to him."*

The execution of Charles the First has been mentioned in later ages by a few with unlimited praise, by some with faint and ambiguous censure, by most with vehement reprobation. My own judgment will possibly be anticipated by the reader of the preceding pages. I shall certainly not rest it on the imaginary sacredness and divine origin of royalty, nor even on the irresponsibility with which the law of almost every country invests the person of its sovereign. Far be it from me to contend that no cases may be conceived, that no instances may be found in history, wherein the sympathy of mankind and the sound principles of political justice would approve a public judicial sentence as the due reward of tyranny and perfidiousness. But we may confidently deny that Charles the First was thus to be singled out as a warning to tyrants. His offences were not, in the worst interpretation, of that atrocious character which calls down the vengeance of insulted humanity, regardless of positive law. His government had been very arbitrary; but it may well be doubted whether any, even of his ministers, could have suffered death for their share in it, without introducing a principle of barbarous vindictiveness. Far from the sanguinary misanthropy of some monarchs, or the revengeful fury of others, he had in no instance displayed, nor does the minutest scrutiny since made into his character entitle us to suppose, any malevolent dispositions beyond some proneness to anger, and a considerable degree of harshness in his demeanour.† As for the charge of hav-

* Hutchinson, p. 303.

† The king's manners were not good. He spoke and behaved to ladies with indelicacy in public. See Warburton's Notes on Clarendon, vii. 629., and a passage in Milton's *Defensio pro Populo Anglicano*, quoted by Harris and Brodie. He once forgot himself so far as to cane the younger sir Henry Vaue for coming into a room of the palace reserved for persons of higher rank. Carte's *Ormond*, i. 356., where other instances are men-

tioned by that friendly writer. He had in truth none who loved him, till his misfortunes softened his temper, and excited sympathy.

An anecdote, strongly intimating the violence of Charles's temper, has been rejected by his advocates. It is said that Burnet, in searching the Hamilton papers, found that the king, on discovering the celebrated letter of the Scots covenanting lords to the king of France, was so incensed that he sent an order to

ing caused the bloodshed of the war, upon which, and not on any former misgovernment, his condemnation was grounded, it was as ill established as it would have been insufficient. Well might the earl of Northumberland say, when the ordinance for the king's trial was before the lords, that the greatest part of the people of England were not yet satisfied whether the king levied war first against the houses, or the houses against him.* The fact, in my opinion, was entirely otherwise. It is quite another question whether the parliament were justified in their resistance to the king's legal authority. But we may contend that, when Hotham, by their command, shut the gates of Hull against his sovereign, when the militia was called out in different counties by an ordinance of the two houses, both of which preceded by several weeks any levying of forces for the king, the bonds of our constitutional law were by them and their servants snapped asunder; and it would be the mere pedantry and chicane of political casuistry to enquire, even if the fact could be better ascertained, whether at Edgehill, or in the minor skirmishes that preceded, the first carbine was discharged by a cavalier or a roundhead. The aggressor in a war is not the first who uses force, but the first who renders force necessary.

But, whether we may think this war to have originated in the king's or the parliament's aggression, it is still evident that the former had a fair case with the nation, a cause which it was no plain violation of justice to defend. He was supported by the greater part of the peers, by full one third of the commons, by the principal body of the gentry, and a large proportion of other classes. If his adherents did not form,

sir William Balfour, lieutenant-governor of the Tower, to cut off the head of his prisoner, lord Loudon; but that the marquis of Hamilton, to whom Balfour immediately communicated this, urged so strongly on the king that the city would be up in arms on this violence, that with reluctance he withdrew the warrant. This story is told by Oldmixon, *Hist. of the Stuarts*, p. 140. It was brought forward on Burnet's authority, and also on that of the duke of Hamilton, killed in 1712, by Dr. Birch, no incompetent judge of historical evi-

dence; it seems confirmed by an intimation given by Burnet himself in his *Memoirs of the Duke of Hamilton*, p. 161. It is also mentioned by Scott of Scotstarvet, a contemporary writer. Harris, p. 350., quotes other authorities, earlier than the anecdote told of Burnet; and upon the whole I think the story deserving credit, and by no means so much to be slighted as the Oxford editor of Burnet has thought fit to do.

* Clement Walker, *Hist. of Independency*, Part II. p. 55.

as I think they did not, the majority of the people, they were at least more numerous, beyond comparison, than those who demanded or approved of his death. The steady deliberate perseverance of so considerable a body in any cause takes away the right of punishment from the conquerors, beyond what their own safety or reasonable indemnification may require. The vanquished are to be judged by the rules of national, not of municipal, law. Hence, if Charles, after having by a course of victories or the defection of the people prostrated all opposition, had abused his triumph by the execution of Essex or Hampden, Fairfax or Cromwell, I think that later ages would have disapproved of their deaths as positively, though not quite as vehemently, as they have of his own. The line is not easily drawn, in abstract reasoning, between the treason which is justly punished, and the social schism which is beyond the proper boundaries of law; but the civil war of England seems plainly to fall within the latter description. These objections strike me as unanswerable, even if the trial of Charles had been sanctioned by the voice of the nation through its legitimate representatives, or at least such a fair and full convention as might, in great necessity, supply the place of lawful authority. But it was, as we all know, the act of a bold but very small minority, who having forcibly expelled their colleagues from parliament, had usurped, under the protection of a military force, that power which all England reckoned illegal. I cannot perceive what there was in the imagined solemnity of this proceeding, in that insolent mockery of the forms of justice, accompanied by all unfairness and inhumanity in its circumstances, which can alleviate the guilt of the transaction; and if it be alleged that many of the regicides were firmly persuaded in their consciences of the right and duty of condemning the king, we may surely remember that private murderers have often had the same apology.

In discussing each particular transaction in the life of Charles, as of any other sovereign, it is required His charac. ter. by the truth of history to spare no just animadversion upon his faults; especially where much art has been employed by the writers most in repute to carry the stream of public prejudice in an opposite direction. But when we

come to a general estimate of his character, we should act unfairly not to give their full weight to those peculiar circumstances of his condition in this worldly scene, which tend to account for and extenuate his failings. The station of kings is, in a moral sense, so unfavourable, that those who are least prone to servile admiration should be on their guard against the opposite error of an uncandid severity. There seems no fairer method of estimating the intrinsic worth of a sovereign, than to treat him as a subject, and to judge, so far as the history of his life enables us, what he would have been in that more private and happier condition, from which the chance of birth has excluded him. Tried by this test, we cannot doubt that Charles the First would have been not altogether an amiable man, but one deserving of general esteem; his firm and conscientious virtues the same, his deviations from right far less frequent, than upon the throne. It is to be pleaded for this prince, that his youth had breathed but the contaminated air of a profligate and servile court, that he had imbibed the lessons of arbitrary power from all who surrounded him, that he had been betrayed by a father's culpable blindness into the dangerous society of an ambitious, unprincipled favourite. To have maintained so much correctness of morality as his enemies confess, was a proof of Charles's virtuous dispositions; but his advocates are compelled also to own that he did not escape as little injured by the poisonous adulation to which he had listened. Of a temper by nature, and by want of restraint, too passionate, though not vindictive; and, though not cruel, certainly deficient in gentleness and humanity, he was entirely unfit for the very difficult station of royalty, and especially for that of a constitutional king. It is impossible to excuse his violations of liberty on the score of ignorance, especially after the petition of right; because his impatience of opposition from his council made it unsafe to give him any advice that thwarted his determination. His other great fault was want of sincerity—a fault that appeared in all parts of his life, and from which no one who has paid the subject any attention will pretend to exculpate him. Those indeed who know nothing but what they find in Hume may believe, on Hume's authority, that the king's

contemporaries never dreamed of imputing to him any deviation from good faith; as if the whole conduct of the parliament had not been evidently founded upon a distrust, which on many occasions they very explicitly declared. But, so far as this insincerity was shown in the course of his troubles, it was a failing which untoward circumstances are apt to produce, and which the extreme hypocrisy of many among his adversaries might sometimes palliate. Few personages in history, we should recollect, have had so much of their actions revealed, and commented upon, as Charles; it is perhaps a mortifying truth that those who have stood highest with posterity, have seldom been those who have been most accurately known.

The turn of his mind was rather peculiar, and laid him open with some justice to very opposite censures — for an extreme obstinacy in retaining his opinion, and for an excessive facility in adopting that of others. But the apparent incongruity ceases, when we observe that he was tenacious of ends, and irresolute as to means; better fitted to reason than to act; never swerving from a few main principles, but diffident of his own judgment in its application to the course of affairs. His chief talent was an acuteness in dispute; a talent not usually much exercised by kings, but which the strange events of his life called into action. He had, unfortunately for himself, gone into the study most fashionable in that age, of polemical theology; and, though not at all learned, had read enough of the English divines to maintain their side of the current controversies with much dexterity. But this unkingly talent was a poor compensation for the continual mistakes of his judgment in the art of government and the conduct of his affairs.*

* Clarendon, Collier, and the high-church writers in general, are very proud of the superiority they fancy the king to have obtained in a long argumentation held at Newcastle with Henderson, a Scots minister, on church authority and government. This was conducted in writing, and the papers afterwards published. They may be read in the king's Works, and in Collier, p. 842. It is more than insinuated that Henderson died of mortification at his defeat. He certainly had not the excuse of the phi-

losopher, who said he had no shame in yielding to the master of fifty legions. But those who take the trouble to read these papers, will probably not think one party so much the stronger as to shorten the other's days. They show that Charles held those extravagant tenets about the authority of the church and of the fathers, which are irreconcilable with protestantism in any country where it is not established, and are likely to drive it out where it is so.

It seems natural not to leave untouched in this place the famous problem of the Icon Basiliké, which has been deemed an irrefragable evidence both of the virtues ^{Icon Basi-liké.} and the talents of Charles. But the authenticity of this work can hardly be any longer a question among judicious men. We have letters from Gauden and his family, asserting it as his own in the most express terms, and making it the ground of a claim for reward. We know that the king's sons were both convinced that it was not their father's composition, and that Clarendon was satisfied of the same. If Gauden not only set up a false claim to so famous a work, but persuaded those nearest to the king to surrender that precious record, as it had been reckoned, of his dying sentiments, it was an instance of successful impudence which has hardly a parallel. But I should be content to rest the case on that internal evidence, which has been so often alleged for its authenticity. The Icon has to my judgment all the air of a fictitious composition. Cold, stiff, elaborate, without a single allusion that bespeaks the superior knowledge of facts which the king must have possessed, it contains little but those rhetorical common-places which would suggest themselves to any forger. The prejudices of party, which exercise a strange influence in matters of taste, have caused this book to be extravagantly praised. It has doubtless a certain air of grave dignity, and the periods are more artificially constructed than was usual in that age (a circumstance not in favour of its authenticity); but the style is encumbered with frigid metaphors, as is said to be the case in Gauden's acknowledged writings; and the thoughts are neither beautiful, nor always exempt from affectation. The king's letters during his imprisonment, preserved in the Clarendon State Papers, and especially one to his son, from which an extract is given in the History of the Rebellion, are more satisfactory proofs of his integrity than the laboured self-panegyrics of the Icon Basiliké.*

* The note on this passage, which, on account of its length, was placed at the end of the volume in the two first editions, is withdrawn in this, as relating to a matter of literary controversy, little connected with the general objects of this

work. It is needless to add, that the author entertains not the smallest doubt about the justness of the arguments he had employed. — *Note to the Third Edition.*

PART II.

THE death of Charles the First was pressed forward rather through personal hatred and superstition, than out ^{Abolition of the monarchy,} of any notion of its necessity to secure a republican administration. That party was still so weak, that the commons came more slowly, and with more difference of judgment than might be expected, to an absolute renunciation of monarchy. They voted indeed that the people are, under God, the original of all just power; and that whatever is enacted by the commons in parliament hath the force of law, although the consent and concurrence of the king or house of peers be not had thereto; terms manifestly not exclusive of the nominal continuance of the two latter. They altered the public style from the king's name to that of the parliament, and gave other indications of their intentions; but the vote for the abolition of monarchy did not pass till the 7th of February, after a debate, according to Whitelock, but without a division. None of that clamorous fanaticism showed itself, which, within the memory of many*, produced, from a far more numerous assembly, an instantaneous decision against monarchy. Wise men might easily perceive that the regal power was only suspended through the force of circumstances, not abrogated by any real change in public opinion.

The house of lords, still less able than the crown to with- ^{and of the house of lords,} stand the inroads of democracy, fell by a vote of the commons at the same time. It had continued during the whole progress of the war to keep up as much dignity as the state of affairs would permit; tenacious of small privileges, and offering much temporary opposition in higher matters, though always receding in the end from a contention wherein it could not be successful. The commons, in return, gave them respectful language, and discountenanced the rude innovators who talked against the rights of the peerage. They voted, on occasion of some rumours, that they held themselves obliged, by the fundamental laws of the king-

dom and their covenant, to preserve the peerage with the rights and privileges belonging to the house of peers, equally with their own.* Yet this was with a secret reserve that the lords should be of the same mind as themselves. For, the upper house having resented some words dropped from sir John Evelyn at a conference concerning the removal of the king to Warwick Castle, importing that the commons might be compelled to act without them, the commons vindicating their member as if his words did not bear that interpretation, yet added, in the same breath, a plain hint that it was not beyond their own views of what might be done; "hoping that their lordships did not intend by their inference upon the words, even in the sense they took the same, so to bind up this house to one way of proceeding as that in no case whatsoever, though never so extraordinary, though never so much importing the honour and interest of the kingdom, the commons of England might not do their duty, for the good and safety of the kingdom, in such a way as they may, if they cannot do it in such a way as they would and most desire."†

After the violent seclusion of the constitutional party from the house of commons, on the 6th of December, 1648, very few, not generally more than five, peers continued to meet. Their number was suddenly increased to twelve on the 2d of January; when the vote of the commons, that it is high treason in the king of England for the time being to levy war against parliament, and the ordinance constituting the high court of justice, were sent up for their concurrence. These were unanimously rejected with more spirit than some, at least, of their number might be expected to display. Yet, as if apprehensive of giving too much umbrage, they voted at their next meeting to prepare an ordinance, making it treasonable for any future king of England to levy war against the parliament—a measure quite as unconstitutional as that they had rejected. They continued to linger on the verge of annihilation during the month, making petty orders about writs of error, from four to six being present: they even

* Parl. Hist. 349. The council of war more than once, in the year 1647, declared their intention of preserving the rights of the peerage. Whitelock, 288., and Sir William Waller's Vindication, 192.

† Commons' Journal, 13th and 19th May, 1646.

met on the 30th of January. On the 1st of February, six peers forming the house, it was moved, "that they would take into consideration the settlement of the government of England and Ireland, in this present conjuncture of things upon the death of the king;" and ordered that these lords following (naming those present and three more) be appointed to join with a proportionable number of the house of commons for that purpose. Soon after, their speaker acquainted the house, that he had that morning received a letter from the earl of Northumberland, "with a paper enclosed, of very great concernment;" and for the present the house ordered that it should be sealed up with the speaker's seal. This probably related to the impending dissolution of their house; for they found next day that their messengers sent to the commons had not been admitted. They persisted, however, in meeting till the 6th, when they made a trifling order, and adjourned "till ten o'clock to-morrow." * That morrow was the 25th of April, 1660. For the commons, having the same day rejected, by a majority of forty-four to twenty-nine, a motion that they would take the advice of the house of lords in the exercise of the legislative power, resolved that the house of peers was useless and dangerous, and ought to be abolished.† It should be noticed that there was no intention of taking away the dignity of peerage; the lords, throughout the whole duration of the commonwealth, retained their titles, not only in common usage, but in all legal and parliamentary documents. The earl of Pembroke, basest among the base, condescended to sit in the house of commons as knight for the county of Berks; and was received, notwithstanding his proverbial meanness and stupidity, with such excessive honour as displayed the character of those low-

* Lords' Journals.

† Commons' Journals. It had been proposed to continue the house of lords as a court of judicature, or as a court of consultation, or in some way or other to keep it up. The majority, it will be observed, was not very great; so far was the democratic scheme from being universal even within the house. Whitelock, 377. Two divisions had already taken place; one on Jan. 9., when it

was carried by thirty-one to eighteen, that "a message from the lords should be received;" Cromwell strongly supporting the motion, and being a teller for it; and again on Jan. 18., when, the opposite party prevailing, it was negatived by twenty-five to eighteen, to ask their assent to the vote of the 4th instant, that the sovereignty resides in the commons; which doubtless, if true, could not require the lords' concurrence.

minded upstarts, who formed a sufficiently numerous portion of the house to give their tone to its proceedings.*

Thus by military force, with the approbation of an inconceivably small proportion of the people, the king was put to death, the ancient fundamental laws were over-^{Commonwealth.}thrown, and a mutilated house of commons, wherein very seldom more than seventy or eighty sat, was invested with the supreme authority. So little countenance had these late proceedings even from those who seemed of the ruling faction, that, when the executive council of state, consisting of forty-one, had been nominated, and a test was proposed to them, declaring their approbation of all that had been done about the king and the kingly office, and about the house of lords, only nineteen would subscribe it, though there were fourteen regicides on the list.† It was agreed at length, that they should subscribe it only as to the future proceedings of the commons. With such dissatisfaction at head-quarters, there was little to hope from the body of the nation.‡ Hence, when an engagement was tendered to all civil officers and beneficed clergy, containing only a promise to live faithful to the commonwealth, as it was established without a king or house of lords (though the slightest test of allegiance that any government could require), it was taken with infinite reluctance, and, in fact, refused by very many; the presbyterian ministers especially showing a determined averseness to the new republican organisation.§

This, however, was established (such is the dominion of

* Whitelock, 396. They voted that Pembroke, as well as Salisbury and Howard of Escrick, who followed the ignominious example, should be added to all committees.

† Commons' Journals. Whitelock. It had been referred to a committee of five members, Lisle, Holland, Robinson, Scott, and Ludlow, to recommend thirty-five for a council of state; to whose nominations the house agreed, and added their own. Ludlow, i. 288. They were appointed for a year; but in 1650 the house only left out two of the former list, besides those who were dead. Whitelock, 441. In 1651 the change was more considerable. Id. 488.

‡ Six judges agreed to hold on their commissions, six refused. Whitelock, who makes a poor figure at this time on his own showing, consented to act still as commissioner of the great seal. Those who remained in office affected to stipulate that the fundamental laws should not be abolished; and the house passed a vote to this effect. Whitelock, 378.

§ Whitelock, 444. et alibi. Baxter's Life, 64. A committee was appointed, April, 1649, to enquire about ministers who asperse the proceedings of parliament in their pulpits. Whitelock, 395.

the sword) far beyond the control of any national sentiment: Thirty thousand veteran soldiers guaranteed the mock parliament they had permitted to reign. The sectaries, a numerous body, and still more active than numerous, possessed, under the name of committees for various purposes appointed by the house of commons, the principal local authorities, and restrained by a vigilant scrutiny the murmurs of a disaffected majority. Love, an eminent presbyterian minister, lost his head for a conspiracy, by the sentence of a high court of justice, a tribunal that superseded trial by jury.* His death struck horror and consternation into that arrogant priesthood, who had begun to fancy themselves almost beyond the scope of criminal law. The cavaliers were prostrate in the dust; and, anxious to retrieve something from the wreck of their long sequestered estates, had generally little appetite to embark afresh in a hopeless cause; besides that the mutual animosities between their party and the presbyterians were still too irreconcilable to admit of any sincere co-operation. Hence, neither made any considerable effort in behalf of Charles on his march, or rather flight, into England; a measure, indeed, too palpably desperate for prudent men who had learned the strength of their adversaries; and the great victory of Worcester consummated the triumph of the infant commonwealth, or rather of its future master.

A train of favouring events, more than any deep-laid Schemes of policy, had now brought sovereignty within the reach of Cromwell. His first schemes of ambition may probably have extended no farther than a title and estate, with a great civil and military command in the king's name. Power had fallen into his hands because they alone were fit to wield it; he was taught by every succeeding event his own undeniable superiority over his contemporaries in martial renown, in civil prudence, in decision of

* State Trials, v. 43. Baxter says that Love's death hurt the new commonwealth more than would be easily believed, and made it odious to all the religious party in the land, except the sectaries. Life of B., 67. But "oderint dum metuant" is the device of those who rule in revolutions. Clarendon speaks, on the contrary, of Love's execution tri-

umphantly. He had been distinguished by a violent sermon during the treaty of Uxbridge, for which the parliament, on the complaint of the king's commissioners, put him in confinement, Thurloe, i. 65. State Trials, 201.: though the noble historian, as usual, represents this otherwise. He also mis-states Love's dying speech.

character, and in the public esteem which naturally attached to these qualities. Perhaps it was not till after the battle of Worcester, that he began to fix his thoughts, if not on the dignity of royalty, yet on an equivalent right of command. Two remarkable conversations, in which Whitelock bore a part, seem to place beyond controversy the nature of his designs. About the end of 1651, Whitelock himself, St. John, Widdrington, Lenthall, Harrison, Desborough, Fleetwood, and Whalley, met Cromwell, at his own request, to consider the settlement of the nation. The four former were in favour of monarchy, Whitelock inclining to Charles, Widdrington and others to the duke of Gloucester; Desborough and Whalley were against a single person's government, and Fleetwood uncertain. Cromwell, who had evidently procured this conference in order to sift the inclinations of so many leading men, and to give some intimation of his own, broke it up with remarking, that, if it might be done with safety and preservation of their rights as Englishmen and Christians, a settlement of somewhat with monarchical power in it would be very effectual.* The observation he here made of a disposition among the lawyers to elect the duke of Gloucester, as being exempt by his youth from the prepossessions of the two elder brothers, may, perhaps, have put Cromwell on releasing him from confinement, and sending him to join his family beyond sea.†

Twelve months after this time, in a more confidential discourse with Whitelock alone, the general took occasion to complain both of the chief officers of the army and of the parliament; the first, as inclined to factious murmurings,

* Whitelock, 516.

† The parliament had resolved, 24th July, 1650, that Henry Stuart, son of the late king, and the lady Elizabeth, daughter of the late king, be removed forthwith beyond the seas, out of the limits of this commonwealth. Yet this intention seems to have been soon changed; for it is resolved, Sept. 11., to give the duke of Gloucester 1500*l.* per annum for his maintenance, so long as he should behave himself inoffensively. Whether this proceeded from liberality, or from a vague idea that they might

one day make use of him, is hard to say. Clarendon mentions the scheme of making the duke of Gloucester king, in one of his letters (iii. 38. 11th Nov. 1651); but says, "Truly I do believe that Cromwell might as easily procure himself to be chosen king as the duke of Gloucester; for, as none of the king's party would assist the last, so I am persuaded both presbyterians and independents would have much sooner the former than any of the race of him whom they have murdered."

His con-
versations
with
Whitelock.

and the second, as engrossing all offices to themselves, divided into parties, delaying business, guilty of gross injustice and partiality, and designing to perpetuate their own authority. Whitelock, confessing part of this, urged that having taken commissions from them as the supreme power, it would be difficult to find means to restrain them. "What," said Cromwell, "if a man should take upon him to be king?" "I think," answered Whitelock, "that remedy would be worse than the disease." "Why," rejoined the other, "do you think so?" He then pointed out that the statute of Henry VII. gave a security to those who acted under a king, which no other government could furnish; and that the reverence paid by the people to that title would serve to curb the extravagancies of those now in power. Whitelock replied, that their friends having engaged in a persuasion, though erroneous, that their rights and liberties would be better preserved under a commonwealth than a monarchy, this state of the question would be wholly changed by Cromwell's assumption of the title, and it would become a private controversy between his family and that of the Stuarts. Finally, on the other's encouragement to speak fully his thoughts, he told him "that no expedient seemed so desirable as a private treaty with the king, in which he might not only provide for the security of his friends, and the greatness of his family, but set limits to monarchical power, keeping the command of the militia in his own hands." Cromwell merely said, "that such a step would require great consideration;" but broke off with marks of displeasure, and consulted Whitelock much less for some years afterwards.*

These projects of usurpation could not deceive the watchfulness of those whom Cromwell pretended to serve. He had on several occasions thrown off enough of his habitual dissimulation to show the commonwealth's men that he was theirs only by accident, with none of their fondness for republican

* Id. p. 548. Lord Orrery told Burnet that he had once mentioned to Cromwell a report that he was to bring in the king, who should marry his daughter, and observed, that he saw no better expedient. Cromwell, without expressing any dis-

pleasure, said, "the king cannot forgive his father's blood;" which the other attempted to answer. Burnet, i. 95. It is certain, however, that such a compromise would have been dishonourable for one party, and infamous for the other.

polity. The parliament in its present wreck contained few leaders of superior ability; but a natural instinct would dictate to such an assembly the distrust of a popular general, even if there had been less to alarm them in his behaviour.* They had no means, however, to withstand him. The creatures themselves of military force, their pretensions to direct or control the army could only move scorn or resentment. Their claim to a legal authority, and to the name of representatives of a people who rejected and abhorred them, was perfectly impudent. When the house was fullest, their numbers did not much exceed one hundred; but the ordinary divisions, even on subjects of the highest moment, show an attendance of but fifty or sixty members. They had retained in their hands, notwithstanding the appointment of a council of state, most of whom were from their own body, a great part of the executive government, especially the disposal of offices.† These they largely shared among themselves or their dependents; and in many of their votes gave occasion to such charges of injustice and partiality as, whether true or false, will attach to a body of men so obviously self-interested.‡

* Cromwell, in his letter to the parliament, after the battle of Worcester, called it a *crowning mercy*. This, though a very intelligible expression, was taken in an invidious sense by the republicans.

† Journals, *passim*.

‡ One of their most scandalous acts was the sale of the earl of Craven's estate. He had been out of England during the war, and could not therefore be reckoned a delinquent. But evidence was offered that he had seen the king in Holland; and upon this charge, though he petitioned to be heard, and, as is said, indicted the informer for perjury, whereof he was convicted, they voted by 33 to 31 that his lands should be sold; Haslerig, the most savage zealot of the whole faction, being a teller for the ayes, Vane for the noes. Journals, 6th March, 1651, and 22d June, 1652. State Trials, v. 323. On the 20th of July in the same year, it was referred to a committee to select thirty delinquents, whose estates should be sold for the use of the navy. Thus, long after the cessation of hostility, the royalists continued to stand in jeopardy, not only collectively but personally, from

this arbitrary and vindictive faction. Nor were these qualities displayed against the royalists alone: one Josiah Primatt, who seems to have been connected with Lilburne, Wildman, and the levellers, having presented a petition complaining that sir Arthur Haslerig had violently dispossessed him of some collieries, the house, after voting every part of the petition to be false, adjudged him to pay a fine of 3000*l.* to the commonwealth, 2000*l.* to Haslerig, and 2000*l.* more to the commissioners for compositions. Journals, 15th Jan. 1651-2. There had been a project of erecting an university at Durham, in favour of which a committee reported, (18th June, 1651,) and for which the chapter lands would have made a competent endowment. Haslerig, however, got most of them into his own hands; and thus frustrated, perhaps, a design of great importance to education and literature in this country. For had an university once been established, it is just possible, though not very likely, that the estates would not have reverted on the king's restoration, to their former, but much less useful possessors.

It seems to be a pretty general opinion, that a popular assembly is still more frequently influenced by corrupt and dishonest motives in the distribution of favours, or the decision of private affairs, than a ministry of state; whether it be that it is more probable that a man of disinterestedness and integrity may in the course of events rise to the conduct of government than that such virtues should belong to a majority; or that the clandestine management of court corruption renders it less scandalous and more easily varnished, than the shamelessness of parliamentary iniquity.

The republican interest in the nation was almost wholly composed of two parties, both off-shoots deriving strength from the great stock of the army; the levellers, of whom Lilburne and Wildman are the most known, and the Anabaptists, fifth monarchy-men, and other fanatical sectaries, headed by Harrison, Hewson, Overton, and a great number of officers. Though the sectaries seemed to build their revolutionary schemes more on their own religious views than the levellers, they coincided in most of their objects and demands.* An equal representation of the people in short parliaments, an extensive alteration of the common law, the abolition of tithes, and indeed of all regular stipends to the ministry, a full toleration of religious worship, were reformations which they concurred in requiring, as the only substantial fruits of their arduous struggle.† Some among the wilder sects dreamed of overthrowing all civil institutions. These factions were not without friends in the commons. But the greater part were not inclined to gratify

* Mrs. Hutchinson speaks very favourably of the levellers, as they appeared about 1647, declaring against the factions of the presbyterians and independents, and the ambitious views of their leaders, and especially against the unreasonable privileges claimed by the houses of parliament collectively and personally. "Indeed, as all virtues are mediums and have their extremes, there rose up after in that house a people who endeavoured the levelling of all estates and qualities, which those sober levellers were never guilty of desiring; but were men of just and sober principles, of honest and religious ends, and were therefore hated by

all the designing self-interested men of both factions. Colonel Hutchinson had a great intimacy with many of these; and so far as they acted according to the just, pious, and public spirit which they professed, owned them and protected them as far as he had power. These were they who first began to discover the ambition of Lieut.-Gen. Cromwell and his idolaters, and to suspect and dislike it." P. 285.

† Whitelock, 399. 401. The levellers rose in arms at Banbury and other places, but were soon put down, chiefly through the energy of Cromwell, and their ring-leaders shot.

them, by taking away the provision of the church, and much less to divest themselves of their own authority. They voted indeed that tithes should cease as soon as a competent maintenance should be otherwise provided for the clergy.* They appointed a commission to consider the reformation of the law, in consequence of repeated petitions against many of its inconveniences and abuses; who, though taxed of course with dilatoriness by the ardent innovators, suggested many useful improvements, several of which have been adopted in more regular times, though with too cautious delay.† They proceeded rather slowly and reluctantly to frame a scheme for future parliaments; and resolved that they should consist of 400, to be chosen in due proportion by the several counties, nearly upon the model suggested by Lilburne, and afterwards carried into effect by Cromwell.‡ It was with much delay and difficulty, amidst the loud murmurs of their adherents, that they could be brought to any vote in regard to their own dissolution. It passed on November 17. 1651, after some very close divisions, that they should cease to exist as a parliament on

^{Their fall.}

* It was referred to a committee, 29th April, 1652, to consider how a convenient and competent maintenance for a godly and able ministry may be settled, in lieu of tithes. A proposed addition, that tithes be paid as before, till such maintenance be settled, was carried by 27 to 17.

† Journals, 19th Jan. 1652. Hale was the first named on this commission, and took an active part; but he was associated with some furious levellers, Desborough, Tomlinson, and Hugh Peters, so that it is hard to know how far he concurred in the alterations suggested. Many of them, however, seem to bear marks of his hand. Whitelock, 475. 517. 519. 820. et alibi. There had been previously a committee for the same purpose in 1650. See a list of the acts prepared by them in Somers Tracts, vi. 177; several of them are worthy of attention. Ludlow indeed blames the commission for slowness; but their delay seems to have been very justifiable, and their suggestions highly valuable. It even appears that they drew up a book containing a

regular digest or code, which was ordered to be printed. Journals, 20th Jan. 1653.

‡ A committee was named, 15th May, 1649, to take into consideration the settling of the succession of future parliaments and regulating their elections. Nothing more appears to have been done till Oct. 11th, when the committee was ordered to meet next day, and so de die in diem, and to give an account thereof to the house on Tuesday come fortnight; all that came to have voices, but the special care thereof commended to sir Henry Vane, colonel Ludlow, and Mr. Robinson. We find nothing farther till Jan. 3d, 1650, when the committee is ordered to make its report the next Wednesday. This is done accordingly, Jan. 9., when sir H. Vane reports the resolutions of the committee, one of which was, that the number in future parliaments should be 400. This was carried, after negating the previous question in a committee of the whole house. They proceeded several days afterwards on the same business. See also Ludlow, p. 313. 435.

November 3. 1654.* The republicans out of doors, who deemed annual, or at least biennial, parliaments essential to their definition of liberty, were indignant at so unreasonable a prolongation. Thus they forfeited the good-will of the only party on whom they could have relied. Cromwell dexterously aggravated their faults; he complained of their delaying the settlement of the nation; he persuaded the fanatics of his concurrence in their own schemes; the parliament, in turn, conspired against his power, and, as the conspiracies of so many can never be secret, let it be seen that one or other must be destroyed; thus giving his forcible expulsion of them the pretext of self-defence. They fell with no regret, or rather with much joy of the nation, except a few who dreaded more from the alternative of military usurpation or anarchy than from an assembly, which still retained the names and forms so precious in the eyes of those who adhere to the ancient institutions of their country.†

It was now the deep policy of Cromwell to render himself the sole refuge of those who valued the laws, or the regular ecclesiastical ministry, or their own estates, all in peril from the mad enthusiasts who were in hopes to prevail.‡ These he had admitted into that motley convention of one hundred and twenty persons, sometimes called Barebone's parliament, but more commonly the little parlia-

Little parliament.

* Two divisions had taken place, Nov. 14. (the first on the previous question), on a motion, that it is convenient to declare a certain time for the continuance of this parliament, 50 to 46, and 49 to 47. On the last division, Cromwell and St. John were tellers for the ayes.

† Whitelock was one of these; and being at that time out of Cromwell's favour, inveighs much against this destruction of the power from which he had taken his commission, p. 552. 554. St. John appears to have concurred in the measure. In fact, there had so long been an end of law, that one usurpation might seem as rightful as another. But, while any house of commons remained, there was a stock left from which the ancient constitution might possibly germinate. Mrs. Macaulay, whose lamentations over the Rump did not certainly proceed from this cause, thus vents her wrath on the

English nation: "An acquiescence thus universal in the insult committed on the guardians of the infant republic, and the first step towards the usurpation of Cromwell, fixes an indelible stain on the character of the English, as a people basely and incorrigibly attached to the sovereignty of individuals, and of natures too ignoble to endure an empire of equal laws," vol. v. p. 112.

‡ Harrison, when Ludlow asked him why he had joined Cromwell to turn out the parliament, said, he thought Cromwell would own and favour a set of men who acted on higher principles than those of civil liberty; and quoted from Daniel, "that the saints shall take the kingdom and possess it." Ludlow argued against him; but what was argument to such a head? Mem. of Ludlow, p. 565. Not many months after, Cromwell sent his coadjutor to Carisbrook Castle.

ment, on whom his council of officers pretended to devolve the government, mingling them with a sufficient proportion of a superior class whom he could direct.* This assembly took care to avoid the censure which their predecessors had incurred, by passing a good many bills, and applying themselves with a vigorous hand to the reformation of what their party deemed the most essential grievances, those of the law and of the church. They voted the abolition of the Court of Chancery, a measure provoked by its insufferable delay, its engrossing of almost all suits, and the uncertainty of its decisions. They appointed a committee to consider of a new body of the law, without naming any lawyer upon it.† They nominated a set of commissioners to preside in courts of justice, among whom they with difficulty admitted two of that profession‡; they irritated the clergy by enacting that marriages should be solemnised before justices of the peace§; they alarmed them still more, by manifesting a determination to take away their tithes, without security for an equivalent maintenance.|| Thus having united against itself these two powerful bodies, whom neither kings nor parliaments in England have in

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* Hume speaks of this assembly as chiefly composed of the lowest mechanics. But this was not the case. Some persons of inferior rank there were, but a large proportion of the members were men of good family, or, at least, military distinction, as the list of the names in the Parliamentary History is sufficient to prove; and Whitelock remarks, "It was much wondered at by some that these gentlemen, many of them being persons of fortune and knowledge, would at this summons, and from those hands, take upon them the supreme authority of this nation," p. 559. With respect to this, it may be observed, that those who have lived in revolutions find it almost necessary, whether their own interests or those of their country are their aim, to comply with all changes, and take a greater part in supporting them, than men of inflexible consciences can approve. No one felt this more than Whitelock; and his remark in this place is a satire upon all his conduct. He was at the moment dissatisfied, and out of Cromwell's favour, but lost no time in regaining it.

† Journals, August 19. This was carried by 46 to 38 against Cromwell's party. Yet Cromwell, two years afterwards, published an ordinance for regulating and limiting the jurisdiction of chancery; which offended Whitelock so much that he resigned the great seal, not having been consulted in framing the regulations. This is a rare instance in his life; and he vaunts much of his conscience accordingly, but thankfully accepted the office of commissioner of the treasury instead, p. 621. 625. He does not seem, by his own account, to have given much satisfaction to suitors in equity (p. 548.); yet the fault may have been theirs, or the system's.

‡ 4th October.

§ This had been proposed by the commission for amendment of the law appointed in the long parliament. The great number of dissenters from the established religion rendered it a very reasonable measure.

Thurloe, i. 369.; iii. 132.

general offended with impunity, this little synod of legislators was ripe for destruction. Their last vote was to negative a report of their own committee, recommending that such as should be approved as preachers of the gospel, should enjoy the maintenance already settled by law; and that the payment of tithes, as a just property, should be enforced by the magistrates. The house having, by the majority of two, disagreed with this report*, the speaker, two days after, having secured a majority of those present, proposed the surrender of their power into the hands of Cromwell, who put an end to the opposition of the rest, by turning them out of doors.

It can admit of no doubt that the despotism of a wise man is more tolerable than that of political or religious fanatics; and it rarely happens that there is any better remedy in revolutions which have given the latter an ascendant. Cromwell's assumption, therefore, of the title of Protector was a necessary and wholesome usurpation, however he may have caused the necessity; it secured the nation from the mischievous lunacy of the anabaptists, and from the more cool-blooded tyranny of that little oligarchy which arrogated to itself the name of commonwealth's men. Though a gross and glaring evidence of the omnipotence of the army, the instrument, under which he took his title, accorded to him no unnecessary executive authority. The sovereignty still resided in the parliament; he had no negative voice on their laws. Until the meeting of the next parliament, a power was given him of making temporary ordinances; but this was not, as Hume, on the authority of Clarendon and Warwick, has supposed, and as his conduct, if that were any proof of the law, might lead us to infer, designed to exist in future intervals of the legislature.† It would be scarcely

* Journals, 2d and 10th Dec. 1653. Whitelock. See the sixth volume of the Somers Tracts, p. 266., for a long and rather able vindication of this parliament by one of its members. Ludlow also speaks pretty well of it, p. 471.; and says, truly enough, that Cromwell frightened the lawyers and clergy, by showing what the parliament meant to do with them, which made them in a hurry to have it destroyed. See also Parl. Hist. 1412. 1414.

† See the instrument of government

in Whitelock, p. 571.; or Somers Tracts, vi. 257. Ludlow says, that some of the officers opposed this; but Lambert forced it down their throats, p. 276. Cromwell made good use of this temporary power. The union of Scotland with England was by one of these ordinances, April 12. (Whitelock, 586.); and he imposed an assessment of 120,000*l.* monthly, for three months, and 90,000*l.* for the next three, instead of 70,000*l.*, which had been paid before (Id. 591.), besides many other ordinances of a legislative nature. "I

worth while, however, to pay much attention to a form of government which was so little regarded, except as it marks the jealousy of royal power, which those most attached to Cromwell, and least capable of any proper notions of liberty, continued to entertain.

In the ascent of this bold usurper to greatness, he had successively employed and thrown away several of the powerful factions who distracted the nation. He had encouraged the levellers and persecuted them; he had flattered the long parliament and betrayed it; he had made use of the sectaries to crush the commonwealth; he had spurned the sectaries in his last advance to power. These, with the royalists and the presbyterians, forming, in effect, the whole people, though too disunited for such a coalition as must have overthrown him, were the perpetual, irreconcilable enemies of his administration. Master of his army, which he well knew how to manage, surrounded by a few deep and experienced counsellors, furnished by his spies with the completest intelligence of all designs against him, he had no great cause of alarm from open resistance. But he was bound by the instrument of government to call a parliament; and in any parliament his adversaries must be formidable.

Parliament called by Cromwell.

He adopted in both those which he summoned the reformed model already determined; limiting the number of representatives to 400, to be chosen partly in the counties, according to their wealth or supposed population, by electors possessing either freeholds, or any real or moveable property to the value of 200*l.*; partly by the more considerable boroughs, in whose various rights of election no change appears to have been made.* This alteration, conformable to the equalising principles of the age, did not produce so considerable a difference in the persons returned as it perhaps might at present.† The court-party, as those subservient to

am very glad," says Fleetwood (Feb. 1655, Thurloe, iii. 183.), "to hear his highness has declined the legislative power, which by the instrument of government, in my opinion, he could not exercise after this last parliament's meeting." And the parliament of 1656, at the Protector's desire, confirmed all ordinances made since the dissolution of the long parliament. Thurloe, vi. 243.

* I infer this from the report of a committee of privileges on the election for Lynn, Oct. 20. 1656. See also Journals, Nov. 26. 1654.

† It is remarkable that Clarendon seems to approve this model of a parliament, saying, "it was then generally looked upon as an alteration fit to be more warrantably made, and in a better time."

him were called, were powerful through the subjection of the electors to the army. But they were not able to exclude the presbyterian and republican interests; the latter headed by Bradshaw, Haslerig, and Scott, eager to thwart the power which they were compelled to obey.* Hence they began by taking into consideration the whole instrument of government; and even resolved themselves into a committee to debate its leading article, the Protector's authority. Cromwell, his supporters having lost this question on a division of 141 to 136, thought it time to interfere. He gave them to understand that the government by a single person and a parliament, was a fundamental principle, not subject to their discussion; and obliged every member to a recognition of it, solemnly promising neither to attempt nor to concur in any alteration of that article.† The commons voted, however, that this recognition should not extend to the entire instrument, consisting of forty-two articles; and went on to discuss them with such heat and prolixity, that after five months, the limited term of their session, the Protector, having obtained the ratification of his new scheme neither so fully nor so willingly as he desired, particularly having been disappointed by the great majority of 200 to 60, which voted the protectorate to be elective, not hereditary, dissolved the parliament with no small marks of dissatisfaction.‡

* Bourdeaux, the French ambassador, says, "Some were for Bradshaw as speaker, but the Protector's party carried it for Lenthall. By this beginning one may judge what the authority of the lord protector will be in this parliament. However it was observed that as often as he spoke in his speech of liberty or religion, the members did seem to rejoice with acclamations of joy." Thurloe, v. 588. But the election of Lenthall appears by Guibbon Goddard's Journal, lately published in the Introduction to Burton's Diary, to have been unanimous.

† Journals, 14th and 18th Sept. Parl. Hist. 1445. 1459. Whitelock, 605, &c. Ludlow, 499. Goddard's Journal, 32.

‡ This division is not recorded in the Journals, in consequence, I suppose, of its having been resolved in a committee of the whole house. But it is impossible

to doubt the fact, which is referred to Oct. 19. by a letter of Bourdeaux, the French ambassador (Thurloe, ii. 681.), who observes, "Hereby it is easily discerned that the nation is nowise affected to his family, nor much to himself. Without doubt he will strengthen his army, and keep that in a good posture." It is also alluded to by Whitelock, 609. They resolved to keep the militia in the power of the parliament, and that the Protector's negative should extend only to such bills as might alter the instrument; and in other cases, if he did not pass bills within twenty days, they were to become laws without his consent. Journals, Nov. 10. 1654. Whitelock, 608. This was carried against the court by 109 to 85. Ludlow insinuates that this parliament did not sit out its legal term of five months; Cromwell having inter-

The banished king, meanwhile, began to recover a little of that political importance which the battle of Worcester had seemed almost to extinguish. So ill supported by his English adherents on that occasion, so incapable with a better army than he had any prospect of ever raising again, to make a stand against the genius and fortune of the usurper, it was vain to expect that he could be restored by any domestic insurrection, until the disunion of the prevailing factions should offer some more favourable opportunity. But this was too distant a prospect for his court of starving followers. He had from the beginning looked around for foreign assistance. But France was distracted by her own troubles; Spain deemed it better policy to cultivate the new commonwealth; and even Holland, though engaged in a dangerous war with England, did not think it worth while to accept his offer of joining her fleet, in order to try his influence with the English seamen.* Totally unscrupulous as to the means by which he might reign, even at the moment that he was treating to become the covenanted king of Scotland, with every solemn renunciation of popery, Charles had recourse to a very delicate negotiation, which deserves remark, as having led, after a long course of time, but by gradual steps, to the final downfall of his family. With the advice of Ormond, and with the concurrence of Hyde, he attempted to interest the pope (Innocent X.) on his side, as the most powerful intercessor with the catholic princes of Europe.† For this purpose it was necessary to promise toleration at least to the catholics. The king's

Intrigues of the king and his party.

pretended the months to be lunar instead of calendar. Hume has adopted this notion; but it is groundless, the month in law being always of twenty-eight days, unless the contrary be expressed. Whitelock says that Cromwell's dissolution of the parliament, because he found them not so pliable to his purposes as he expected, caused much discontent in them and others; but that he valued it not, esteeming himself above those things, p. 618. He gave out that the parliament were concerned in the conspiracy to bring in the king.

* Exiles are seldom scrupulous: we find that Charles was willing to propose to the States, in return for their acknow-

ledging his title, "such present and lasting advantages to them by this alliance as may appear most considerable to that nation and to their posterity, and a valuable compensation for whatever present advantages the king can receive by it." Clarendon State Papers, iii. 90. These intrigues would have justly made him odious in England.

† Ormond wrote strongly to this effect, after the battle of Worcester, convinced that nothing but foreign assistance could restore the king. "Amongst protestants there is none that hath the power, and amongst the catholics it is visible." Carte's Letters, i. 461.

ambassadors to Spain in 1650, Cottington and Hyde, and other agents despatched to Rome at the same time, were empowered to offer an entire repeal of the penal laws.* The king himself, some time afterwards, wrote a letter to the pope, wherein he repeated this assurance. That court, however, well aware of the hereditary duplicity of the Stuarts, received his overtures with haughty contempt. The pope returned no answer to the king's letter; but one was received after many months from the general of the jesuits, requiring that Charles should declare himself a catholic, since the goods of the church could not be lavished for the support of an heretical prince.† Even after this insolent refusal, the wretched exiles still clung, at times, to the vain hope of succour, which as protestants and Englishmen they could not honourably demand.‡ But many of them remarked too clearly the conditions on which assistance might be obtained; the court of Charles, openly or in secret, began to pass over to the catholic church; and the contagion soon spread to the highest places.

In the year 1654, the royalist intrigues in England began to grow more active and formidable through the accession of many discontented republicans.§ Though there could be no coalition, properly speaking, between such irreconcilable factions, they came into a sort of tacit agreement, as is not unusual, to act in concert for the only purpose they enter-

* Clarendon State Papers, ii. 481. et sæpe alibi. The protestant zeal of Hyde had surely deserted him; and his veracity in one letter gave way also, see vol. iii. p. 158. But the great criminality of all these negotiations lay in this, that Charles was by them soliciting such a measure of foreign aid as would make him at once the tyrant of England and the vassal of Spain; since no free parliament, however royalist, was likely to repeal all the laws against popery. "That which the king will be ready and willing to do, is to give his consent for the repeal of all the penal laws and statutes which have been made in the prejudice of catholics, and to put them into the same condition as his other subjects." Cottington to Father Bapthorpe. Id. 541. These negotiations with Rome were soon known; and a tract was published by the parliament's authority, containing the documents.

Notwithstanding the delirium of the restoration, this had made an impression which was not afterwards effaced.

† Clarendon State Papers, iii. 181.

‡ "The pope very well knows," says Hyde to Clement, an agent at the court of Rome, 2d April, 1656, "how far the king is from thoughts of severity against his catholic subjects; nay, that he doth desire to put them into the same condition with his other subjects, and that no man shall suffer in any consideration for being a Roman catholic." Id. 291.

§ Clarendon's History of the Rebellion, b. 14. State Papers, iii. 265. 300, &c. Whitelock observes at this time, "Many sober and faithful patriots did begin to incline to the king's restoration;" and hints, that this was his opinion, which excited Cromwell's jealousy of him, p. 620.

tained alike, the destruction of their common enemy. Major Wildman, a name not very familiar to the general reader, but which occurs perpetually, for almost half a century, when we look into more secret history, one of those dark and restless spirits who delight in the deep game of conspiracy against every government, seems to have been the first mover of this unnatural combination. He had been early engaged in the schemes of the levellers, and was exposed to the jealous observation of the ruling powers. It appears most probable that his views were to establish a commonwealth, and to make the royalists his dupes. In his correspondence however with Brussels, he engaged to restore the king. Both parties were to rise in arms against the new tyranny; and the nation's temper was tried by clandestine intrigues in almost every county.* Greater reliance however was placed on the project of assassinating Cromwell. Neither party were by any means scrupulous on this score: if we have not positive evidence of Charles's concurrence in this scheme, it would be preposterous to suppose that he would have been withheld by any moral hesitation. It is frequently mentioned without any disapprobation by Clarendon in his private letters†; and, as the royalists certainly justified the murders of Ascham and Dorislaus, they could not in common sense or consistency have scrupled one so incomparably more capable of defence.‡ A Mr. Gerard suffered death for one of these plots to kill Cromwell; justly sentenced, though by an illegal tribunal.§

* Clarendon's History, vii. 129. State Papers, iii. 265, &c. These levellers were very hostile to the interference of Hyde and Ormond, judging them too inflexibly attached to the ancient constitution; but this hostility recommended them to others of the banished king's court who showed the same sentiments.

† P. 315. 324. 343. Thurloe, i. 360. 510. In the same volume, p. 248., we find even a declaration from the king, dated at Paris, 3d May, 1654, offering 500*l.* per annum to any one who should kill Cromwell, and pardon to any one who should leave that party, except Bradshaw, Lenthall, and Haslerig. But this seems unlikely to be authentic: Charles would not have avowed a design of assassination so openly; and it is strange that Lenthall and Haslerig, especially the

former, should be thus exempted from pardon, rather than so many regicides.

‡ See what Clarendon says of Ascham's death, State Papers, ii. 542. In another place he observes: — "It is a worse and a baser thing that any man should appear in any part beyond sea under the character of an agent from the rebels, and not have his throat cut." Id. iii. 144.

§ State Trials, 518. Thurloe, ii. 416. Some of the malecontent commonwealthmen were also eager to get rid of Cromwell by assassination; Wildman, Saxby, Titus. Syndercome's story is well known; he was connected in the conspiracy with those already mentioned. The famous pamphlet by Titus, *Killing no Murder*, was printed in 1657. Clarendon State Papers, 315. 324. 343.

In the year 1655, Penruddock, a Wiltshire gentleman, with a very trifling force, entered Salisbury at the time of the assizes; and, declaring for the king, seized the judge and the sheriff.* This little rebellion, meeting with no resistance from the people, but a supineness equally fatal, was soon quelled. It roused Cromwell to secure himself by an unprecedented exercise of power. In possession of all the secrets of his enemies, he knew that want of concert or courage had alone prevented a general rising, towards which indeed there had been some movements in the midland counties.† He was aware of his own unpopularity, and the national bias towards the exiled king. Juries did not willingly convict the sharers in Penruddock's rebellion.‡ To govern according to law may sometimes be an usurper's wish, but can seldom be in his power. The Protector abandoned all thought of it. Dividing the kingdom into districts, he placed at the head of each a major-general as a sort of military magistrate, responsible for the subjection of his prefecture. These were eleven in number, men bitterly hostile to the royalist party, and insolent towards all civil authority.§ They were employed to secure the payment of a tax of ten per cent., imposed by Cromwell's arbitrary will on those who had ever sided with the king

Insurrection-
ary move-
ments in
1655.

Rigorous
measures of
Cromwell.

* A very reprehensible passage occurs in Clarendon's account of this transaction, vol. vii. p. 140.; where he blames and derides the insurgents for not putting chief justice Rolle and others to death, which would have been a detestable and useless murder.

† Whitelock, 618. 620. Ludlow, 513. Thurloe, iii. 264., and through more than half the volume, passim. In the preceding volume we have abundant proofs how completely master Cromwell was of the royalist schemes. The "sealed knot" of the king's friends in London is mentioned as frequently as we find it in the Clarendon Papers at the same time.

‡ Thurloe, iii. 371, &c. "Penruddock and Grove," Ludlow says, "could not have been justly condemned, if they had as sure a foundation in what they declared for, as what they declared against. But certainly it can never be esteemed by a wise man to be worth the scratch of a finger to remove a single person acting

by an arbitrary power, in order to set up another with the same unlimited authority." P. 518. This is a just and manly sentiment. Woe to those who do not recognise it! But is it fair to say that the royalists were contending to set up an unlimited authority?

§ They were originally ten, Lambert, Desborough, Whalley, Goffe, Fleetwood, Skippon, Kelsey, Butler, Worsley, and Berry. Thurloe, iii. 701. Barkstead was afterwards added. "The major-generals," says Ludlow, "carried things with unheard-of insolence in their several precincts, decimating to extremity whom they pleased, and interrupting the proceedings at law upon petitions of those who pretended themselves aggrieved; threatening such as would not yield a ready submission to their orders with transportation to Jamaica, or some other plantation in the West Indies," &c. P. 559.

during the late wars, where their estates exceeded 100*l.* per annum. The major-generals, in their correspondence printed among Thurloe's papers, display a rapacity and oppression beyond their master's. They complain that the number of those exempted is too great; they press for harsher measures; they incline to the unfavourable construction in every doubtful case; they dwell on the growth of malignancy and the general disaffection.* It was not indeed likely to be mitigated by this unparalleled tyranny. All illusion was now gone as to the pretended benefits of the civil war. It had ended in a despotism, compared to which all the illegal practices of former kings, all that had cost Charles his life and crown, appeared as dust in the balance. For what was ship-money, a general burthen, by the side of the present decimation of a single class, whose offence had long been expiated by a composition and effaced by an act of indemnity? or were the excessive punishments of the star-chamber so odious as the capital executions inflicted without trial by peers, whenever it suited the usurper to erect his high court of justice? A sense of present evils not only excited a burning desire to live again under the ancient monarchy, but obliterated, especially in the new generation, that had no distinct remembrance of them, the apprehension of its former abuses.†

* Thurloe, vol. iv. *passim*. The unpopularity of Cromwell's government appears strongly in the letters of this collection. Duckinfield, a Cheshire gentleman, writes:—"Charles Stuart hath 500 friends in these adjacent counties for every one friend to you amongst them." Vol. iii. 294.

† It may be fair towards Cromwell to give his own apology for the decimation of the royalists, in a declaration, published 1655. "It is a trouble to us to be still rubbing upon the old sore, disobliging those whom we hoped time and patience might make friends; but we can with comfort appeal to God, and dare also to their own consciences, whether this way of proceeding with them hath been the matter of our choice, or that which we have sought an occasion for; or whether, contrary to our own inclinations and the constant course of our

carriage towards them, which hath been to oblige them by kindness to forsake their former principles, which God hath so often and so eminently bore witness against, we have not been constrained and necessitated hereunto, and without the doing whereof we should have been wanting to our duty to God and these nations.

"That character of difference between them and the rest of the people which is now put upon them is occasioned by themselves, not by us. There is nothing they have more industriously laboured in than this; to keep themselves distinguished from the well-affected of this nation: to which end they have kept their conversation apart; as if they would avoid the very beginnings of union, have bred and educated their children by the sequestered and ejected clergy, and very much confined their marriages and alli-

If this decimation of the royalists could pass for an act of severity towards a proscribed faction, in which the rest of the nation might fancy themselves not interested, Cromwell did not fail to show that he designed to exert an equally despotic command over every man's property. With the advice of his council, he had imposed, or as I conceive (for it is not clearly explained) continued, a duty on merchandize beyond the time limited by law. A Mr. George Cony having refused to pay this tax, it was enforced from him, on which he sued the collector. Cromwell sent his counsel, Maynard, Twisden, and Wyndham, to the Tower, who soon petitioned for liberty, and abandoned their client. Rolle, the chief justice, when the cause came on, dared not give judgment against the protector; yet, not caring to decide in his favour, postponed the case till the next term, and meanwhile retired from the bench. Glyn, who succeeded him upon it, took care to have this business accommodated with Cony, who, at some loss of public reputation, withdrew his suit. Sir Peter Wentworth, having brought a similar action, was summoned before the council, and asked if he would give it up. "If you command me," he replied to Cromwell, "I must submit;" which the protector did, and the action was withdrawn.*

Though it cannot be said that such an interference with the privileges of advocates or the integrity of judges was without precedents in the times of the Stuarts, yet it had never been done in so public or shameless a manner. Several other instances wherein the usurper diverted justice from its course, or violated the known securities of Englishmen, will be found in most general histories; not to dwell on that most flagrant of all, the erection of his high court of justice, by

ances within their own party, as if they meant to entail their quarrel, and prevent the means to reconcile posterity; which with the great pains they take upon all occasions to lessen and suppress the esteem and honour of the English nation in all their actions and undertakings abroad, striving withal to make other nations distinguish their interest from it, gives us ground to judge that they have separated themselves from the body of the nation; and therefore we leave it to

all mankind to judge whether we ought not to be timely jealous of that separation, and to proceed so against them as they may be at the charge of those remedies which are required against the dangers they have bred."

* Ludlow, 528. Clarendon, &c. Clarendon relates the same story, with additional circumstances of Cromwell's audacious contempt for the courts of justice, and for the very name of magna charta.

which Gerard and Vowel in 1654, Slingsby and Hewit in 1658, were brought to the scaffold.* I cannot therefore agree in the praises which have been showered upon Cromwell for the just administration of the laws under his dominion. That, between party and party, the ordinary civil rights of men were fairly dealt with, is no extraordinary praise; and it may be admitted that he filled the benches of justice with able lawyers, though not so considerable as those of the reign of Charles the Second; but it is manifest that, so far as his own authority was concerned, no hereditary despot, proud in the crimes of a hundred ancestors, could more have spurned at every limitation than this soldier of a commonwealth.†

Amidst so general a hatred, trusting to the effect of an equally general terror, the protector ventured to summon a parliament in 1656. Besides the common necessities for money, he had doubtless in his head that remarkable scheme which was developed during its session.‡ Even the despotic influence of his major-generals, and the political annihilation of the most considerable body of the gentry, then labouring under the imputation of delinquency for their attachment to the late king, did not enable him to

He summons another parliament.

* State Trials, vi. Whitelock advised the protector to proceed according to law, against Hewit and Slingsby; "but his highness was too much in love with the new way." P. 673.

† The late editor of the State Trials, v. 935., has introduced a sort of episodic dissertation on the administration of justice during the commonwealth, with the view, as far as appears, of setting Cromwell in a favourable light. For this purpose he quotes several passages of vague commendation from different authors, and among others one from Burke, written in haste, to serve an immediate purpose, and evidently from a very superficial recollection of our history. It has been said that Cromwell sought out men of character from the party most opposite to his designs. The proof given is the appointment of Hale to be a puisné judge. But Hale had not been a loyalist, that is, an adherent of Charles, and had taken the engagement as well as the covenant. It was no great effort of virtue to place an eminent lawyer and worthy man on the bench.

And it is to be remembered that Hale fell under the usurper's displeasure for administering justice with an impartiality that did not suit his government; and ceased to go the circuit, because the criminal law was not allowed to have its course.

‡ Thurloe writes to Montague (Carte's Letters, ii. 110.), that he cannot give him the reasons for calling this parliament, except in cipher. He says in the same place of the committal of Ludlow, Vane, and others, "There was a necessity not only for peace-sake to do this, but to let the nation see those that govern are in good earnest, and intend not to quit the government wholly into the hands of the parliament, as some would needs make the world believe." P. 112. His first direct allusion to the projected change is in writing to Henry Cromwell, 9th Dec. 1656. Thurl. Papers, v. 194. The influence exerted by his legates, the major-generals, appears in Thurloe, v. 299. et post. But they complained of the elections. Id. 302. 341. 371.

obtain a secure majority in the assembly; and he was driven to the audacious measure of excluding above ninety members, duly returned by their constituents, from taking their seats. Their colleagues wanted courage to resist this violation of all privilege; and, after referring them to the council for approbation, resolved to proceed with public business. The excluded members, consisting partly of the republican, partly of the presbyterian factions, published a remonstrance in a very high strain, but obtained no redress.*

Cromwell, like so many other usurpers, felt his position too precarious, or his vanity ungratified, without the name which mankind have agreed to worship. He had, as evidently appears from the conversations recorded by Whitelock, long since aspired to this titular, as well as to the real, pre-eminence; and the banished king's friends had contemplated the probability of his obtaining it with dismay.† Affectionate towards his family, he wished to assure the stability of his son's succession, and perhaps to please the vanity of his daughters. It was indeed a very reasonable object with one who had already advanced so far. His assumption of the crown was desirable to many different classes; to the lawyers, who, besides their regard for the established constitution, knew that an ancient statute would protect those who served a *de facto* king in case of a restor-

Designs to
take the
crown.

* Whitelock, 650. Parl. Hist. 1486. On a letter to the speaker from the members who had been refused admittance at the door of the lobby, Sept. 18., the house ordered the clerk of the commonwealth to attend next day with all the indentures. The deputy clerk came accordingly, with an excuse for his principal, and brought the indentures; but on being asked why the names of certain members were not returned to the house, answered, that he had no certificate of approbation for them. The house on this sent to inquire of the council why these members had not been approved. They returned for answer, that whereas it is ordained by a clause in the instrument of government that the persons who shall be elected to serve in parliament shall be such and no other than such as are persons of known integrity, fearing God, and of good con-

versation; that the council, in pursuance of their duty, and according to the trust reposed in them, have examined the said returns, and have not refused to approve any who have appeared to them to be persons of integrity, fearing God, and of good conversation; and those who are not approved, his highness hath given order to some persons to take care that they do not come into the house. Upon this answer, an adjournment was proposed, but lost by 115 to 80: and it being moved that the persons who have been returned from the several counties, cities, and boroughs to serve in this parliament, and have not been approved, be referred to the council for approbation, and that the house do proceed with the great affairs of the nation; the question was carried by 125 to 29. Journals, Sept. 22.

† Clar. State Papers, iii. 201, &c.

ation of the exiled family; to the nobility, who perceived that their legislative right must immediately revive; to the clergy, who judged the regular ministry more likely to be secure under a monarchy; to the people, who hoped for any settlement that would put an end to perpetual changes; to all of every rank and profession who dreaded the continuance of military despotism, and demanded only the just rights and privileges of their country. A king of England could succeed only to a bounded prerogative, and must govern by the known laws; a protector, as the nation had well felt, with less nominal authority, had all the sword could confer. And, though there might be little chance that Oliver would abate one jot of a despotism for which not the times of the Tudors could furnish a precedent, yet his life was far worn, and under a successor it was to be expected that future parliaments might assert again all those liberties for which they had contended against Charles.* A few of the royalists might perhaps fancy that the restoration of the royal title would lead to that of the lawful heir; but a greater number were content to abandon a nearly desperate cause, if they could but see the more valuable object of their concern, the form itself of polity, re-established.† There can be, as it

* The whole conference that took place at Whitehall, between Cromwell and the committee of parliament on this subject, was published by authority, and may be read in the Somers Tracts, vi. 349. It is very interesting. The lawyers did not hesitate to support the proposition, on the ground of the more definite and legal character of a king's authority. "The king's prerogative," says Glyn, "is known by law; he (king Charles) did expatiate beyond the duty; that's the evil of the man: but in Westminster-hall the king's prerogative was under the courts of justice, and is bounded as well as any acre of land, or any thing a man hath, as much as any controversy between party and party: and therefore the office being lawful in its nature, known to the nation, certain in itself, and confined and regulated by the law, and the other office not being so, that was a great ground of the reason why the parliament did so much insist upon this office and title, not as circumstantial,

but as essential." P. 359. See also what Lenthall says, p. 356., against the indefiniteness of the protector's authority.

Those passages were evidently implied censures of the late course of government. Cromwell's indistinct and evasive style in his share of this debate betrays the secret inclinations of his heart. He kept his ultimate intentions, however, very secret; for Thurloe professes his ignorance of them, even in writing to Henry Cromwell, vol. vi. p. 219. et post. This correspondence shows that the prudent secretary was uneasy at the posture of affairs, and the manifest dissatisfaction of Fleetwood and Desborough, which had a dangerous influence on others less bound to the present family; yet he had set his heart on this mode of settlement, and was much disappointed at his master's ultimate refusal.

† Clarendon's Hist. vii. 194. It appears by Clarendon's private letters that he had expected to see Cromwell assume the title of king from the year 1654.

appears to me, little room for doubt that, if Cromwell had overcome the resistance of his generals, he would have transmitted the sceptre to his descendants with the acquiescence and tacit approbation of the kingdom. Had we been living ever since under the rule of his dynasty, what tone would our historians have taken as to his character and that of the house of Stuart?

The scheme, however, of founding a new royal line failed of accomplishment, as is well known, through his own caution, which deterred him from encountering the decided opposition of his army. Some of his contemporaries seem The project fails. to have deemed this abandonment, or more properly suspension, of so splendid a design rather derogatory to his firmness.* But few men were better judges than Cromwell of what might be achieved by daring. It is certainly not impossible that, by arresting Lambert, Whalley, and some other generals, he might have crushed for the moment any tendency to open resistance. But the experiment would have been infinitely hazardous. He had gone too far in the path of violence to recover the high road of law by any short cut. King or protector, he must have intimidated every parliament, or sunk under its encroachments. A new-modelled army might have served his turn; but there would have been great difficulties in its formation. It had from the beginning been the misfortune of his government that it rested on a basis too narrow for its safety. For two years he had reigned with no support but the independent sectaries and the army. The army or its commanders becoming odious to the people, he had sacrificed them to the hope of popularity, by abolishing the civil prefectures of the major-generals†, and permitting a bill for again decimating the royalists to be thrown out of the house.‡ Their disgust

Vol. iii. p. 201, 223, 224. If we may trust what is here called an intercepted letter, p. 328., Mazarin had told Cromwell that France would enter into a strict league with him, if he could settle himself in the throne, and make it hereditary; to which he answered, that he designed shortly to take the crown, restore the two houses, and govern by the ancient laws. But this may be apocryphal.

* Clar. vii. 203.

† Ludlow, p. 581. The major-generals, or at least many of them, joined the opposition to Cromwell's royalty. Id. p. 586. Clar. State Papers, 332.

‡ This appears from the following passage in a curious letter of Mr. Vincent Gookin to Henry Cromwell, 27th Jan. 1657. "To-morrow the bill for decimating the cavaliers comes again into debate. It is debated with much

and resentment, excited by an artful intriguer, Lambert, who aspired at least to the succession of the protectorship, found scope in the new project of monarchy, naturally obnoxious to the prejudices of true fanatics, and who still fancied themselves to have contended for a republican liberty. We find that even Fleetwood, allied by marriage to Cromwell, and not involved in the discontent of the major-generals, in all the sincerity of his clouded understanding, revolted from the invidious title, and would have retired from service had it been assumed. There seems therefore reason to think that Cromwell's refusal of the crown was an inevitable mortification. But he undoubtedly did not lose sight of the object for the short remainder of his life.*

heat by the major-generals, and as hotly almost by the anti-decimators. I believe the bill will be thrown out of the house. In my opinion those that speak against the bill have much to say in point of moral justice and prudence; but that which makes me fear the passing of the bill is, that thereby his highness' government will be more founded in force, and more removed from that natural foundation which the people in parliament are desirous to give him; supposing that he will become more theirs than now he is, and will in time find the safety and peace of the nation to be as well maintained by the laws of the land as by the sword. And truly, sir, if any others have pretensions to succeed him by their interest in the army, the more of force upholds his highness living, the greater when he is dead will be the hopes and advantages for such a one to effect his aim, who desires to succeed him. Lambert is much for decimations." Thurloe, vi. 20. He writes again, "I am confident it is judged by some that the interest of the godly cannot be preserved but by the dissolution of this, if not all, parliaments; and their endeavours in it have been plainly discovered to the party most concerned to know them; which will, I believe, suddenly occasion a reducing of the government to kingship, to which his highness is not averse. Pierpoint and St. John have been often, but secretly, at Whitehall, I know, to advise thereof." P. 37. Thurloe again to the same Henry Cromwell, on February 3., that the decimation bill was thrown out by a majority of forty:—

"Some gentlemen do think themselves much trampled upon by this vote, and are extremely sensible thereof; and the truth is, it hath wrought such a heat in the house, that I fear little will be done for the future." Id. p. 38. No such bill appears, *eo nomine*, in the journals. But a bill for regulating the militia forces was thrown out, Jan. 29., by 124 to 88, Col. Cromwell (Oliver's cousin) being a teller for the majority. Probably there was some clause in this renewing the decimation of the royalists.

* Whitelock, who was consulted by Cromwell on this business, and took an active part as one of the committee of conference appointed by the house of commons, intimates that the project was not really laid aside. "He was satisfied in his private judgment that it was fit for him to take upon him the title of king, and matters were prepared in order thereunto; but afterwards, by solicitation of the commonwealth's men, and fearing a mutiny and defection of a great part of the army, in case he should assume that title and office, his mind changed, and many of the officers of the army gave out great threatenings against him in case he should do it; he therefore thought it best to attend some better season and opportunity in this business, and refused it at this time with great seeming earnestness." P. 656. The chief advisers with Cromwell on this occasion, besides Whitelock, were lord Brogill, Pierpoint, Thurloe, and sir Charles Wolseley. Many passages in Thurloe, vol. vii., show that Cromwell preserved to the last his views on royalty.

The fundamental charter of the English commonwealth under the protectorship of Cromwell, had been the instrument of government, drawn up by the council of officers in December, 1653, and approved with modifications by the parliament of the next year. It was now changed to the "Petition and Advice," tendered to him by the present parliament in May, 1657, which made very essential innovations in the frame of polity. Though he bore, as formerly, the name of lord protector, we may say, speaking according to theoretical classification, and without reference to his actual exercise of power, which was nearly the same, that the English government in the first period should be ranged in the order of republics, though with a chief magistrate at its head; but that from 1657 it became substantially a monarchy, and ought to be placed in that class, notwithstanding the difference in the style of its sovereign. The Petition and Advice had been compiled with a constant respect to that article, which conferred the royal dignity on the protector*; and when this was withdrawn at his request, the rest of the instrument was preserved with all its implied attributions of sovereignty. The style is that of subjects addressing a monarch; the powers it bestows, the privileges it claims, are supposed, according to the expressions employed, the one to be already his own, the other to emanate from his will. The necessity of his consent to laws, though nowhere mentioned, seems to have been taken for granted. An unlimited power of appointing a successor, unknown even to constitutional kingdoms, was vested in the protector. He was inaugurated with so-

* Whitelock, 657. It had been agreed, in discussing the Petition and Advice in parliament, to postpone the first article requesting the protector to assume the title of king, till the rest of the *charter* (to use a modern but not inapplicable word) had been gone through. One of the subsequent articles, fixing the revenue at 1,300,000*l.* per annum, provides that no part thereof should be raised by a land-tax, "and this not to be altered without the consent of the *three estates in parliament.*" A division took place, in consequence, no doubt, of this insidious expression, which was preserved by 97 to 50.

Journals, 13th March. The first article was carried, after much debate, on March 24., by 123 to 62. It stood thus: "Resolved, That your highness will be pleased to assume the name, style, dignity, and office of king of England, Scotland, and Ireland, and the respective dominions and territories thereunto belonging; and to exercise the same according to the laws of these nations." On Cromwell's first demurring to the proposal, it was resolved to adhere to the petition and advice by the small majority of 78 to 65. This was perhaps a sufficient warning that he should not proceed.

lemnities applicable to monarchs ; and what of itself is a sufficient test of the monarchical and republican species of government, an oath of allegiance was taken by every member of parliament to the protector singly, without any mention of the commonwealth.* It is surely, therefore, no paradox to assert that Oliver Cromwell was *de facto* sovereign of England, during the interval from June, 1657, to his death in September, 1658.

The zealous opponents of royalty could not be insensible that they had seen it revive in every thing except a title, which was not likely to remain long behind.† It was too late however to oppose the first magistrate's personal authority. But there remained one important point of contention, which the new constitution had not fully settled. It was therein provided that the parliament should consist of two houses ; namely, the commons, and what they always termed, with an awkward generality, the other house. This was to consist of not more than seventy, nor less than forty persons, to be nominated by the protector, and, as it stood at first, to be approved by the commons. But before the close of the session, the court party prevailed so far as to procure the repeal of this last condition ‡ ; and Cromwell accordingly issued writs of summons to persons of various parties, a few of the ancient peers, a few of his adversaries, whom he hoped to gain over, or at least to exclude from the commons, and of course a majority of his steady adherents. To all these he gave the title of lords, and in the next session their assembly denominated itself the lords' house.§ This measure encountered considerable difficulty. The republican party, almost as much attached to that vote which had declared the house of lords useless, as

* Journals, 21st June. This oath, which effectually declared the parliament to be the protector's subjects, was only carried by 63 to 55. Lambert refused it, and was dismissed the army in consequence, with a pension of 2000*l.* per annum, instead of his pay, 10*l.* a day. So well did they cater for themselves. Ludlow, 593. Broderick wrote to Hyde, June 30, 1657, that there was a general tranquillity in England, all parties seem-

ing satisfied with the compromise ; Fleetwood and Desborough more absolutely Cromwell's friends than before, and Lambert very silent. Clar. State Papers, 349.

† Thurloe, vi. 310.

‡ Compare Journals, 11th March with 24th June.

§ Whitelock, 665. They were to have a judicial power, much like that of the real house of lords. Journals, March.

to that which had abolished the monarchy, and well aware of the intimate connexion between the two, resisted the assumption of this aristocratic title, instead of that of the other house, which the petition and advice had sanctioned. The real peers feared to compromise their hereditary right by sitting in an assembly where the tenure was only during life; and disdained some of their colleagues, such as Pride and Hewson, low-born and insolent men, whom Cromwell had rather injudiciously bribed with this new nobility; though, with these few exceptions, his house of lords was respectably composed. Hence, in the short session of January, 1658, wherein the late excluded members were permitted to take their seats, so many difficulties were made about acknowledging the lords' house by that denomination, that the protector hastily and angrily dissolved the parliament.*

It is a singular part of Cromwell's system of policy, that he would neither reign with parliaments nor without them; impatient of an opposition which he was sure to experience, he still never seems to have meditated the attainment of a naked and avowed despotism. This was probably due to his observation of the ruinous consequences that Charles had brought on himself by that course, and his knowledge of the temper of the English, never content without the exterior forms of liberty, as well as to the suggestions of counsellors who were not destitute of concern for the laws. He had also his great design yet to accomplish, which could only be safely done under the sanction of a parliament. A very short time, accordingly, before his death, we find that he had not only resolved to meet once more the representatives of the nation, but was tampering with several of the leading officers to obtain their consent to an hereditary succession. The majority however of a council of nine, to whom he referred this suggestion, would only consent that the protector for the time being should have the power of nominating his successor; a vain

* Whitelock; Parl. Hist. The former says this was done against his advice. These debates about the other house are to be traced in the Journals, and are mentioned by Thurloe, vi. 107, &c.; and Ludlow, 597. Not one of the true peers, except Lord Eure, took his seat in this

house; and Haslerig, who had been nominated merely to weaken his influence, chose to retain his place in the commons. The list of these pretended lords in Thurloe, vi. 668., is not quite the same as that in Whitelock.

attempt to escape from that regal form of government which they had been taught to abhor.* But a sudden illness, of a nature seldom fatal except to a constitution already shattered by fatigue and anxiety, rendered abortive all these projects of Cromwell's ambition.

He left a fame behind him proportioned to his extraordinary fortunes and to the great qualities which sustained them; still more perhaps the admiration of ^{His death, and character.} strangers than of his country, because that sentiment was less alloyed by hatred, which seeks to extenuate the glory that irritates it. The nation itself forgave much to one who had brought back the renown of her ancient story, the traditions of Elizabeth's age, after the ignominious reigns of her successors. This contrast with James and Charles in their foreign policy gave additional lustre to the era of the protectorate. There could not but be a sense of national pride to see an Englishman, but yesterday raised above the many, without one drop of blood in his veins which the princes of the earth could challenge as their own, receive the homage of those who acknowledged no right to power, and hardly any title to respect, except that of prescription. The sluggish pride of the court of Spain, the mean-spirited cunning of Mazarin, the irregular imagination of Christina, sought with emulous ardour the friendship of our usurper.† He had the advantage of reaping the harvest which he had not sown, by an honourable treaty with Holland, the fruit of

* This junto of nine debated how they might be secure against the cavaliers. One scheme was an oath of abjuration; but this it was thought they would all take: another was to lay a heavy tax on them: "a moiety of their estates was spoken of; but this, I suppose, will not down with all the nine, and least of all will it be swallowed by the parliament, who will not be persuaded to punish both noent and innocent without distinction." 22d June; Thurloe, vol. vii. p. 198. And again, p. 269.: "I believe we are out of danger of our junto, and I think also of ever having such another. As I take it, the report was made to his highness upon Thursday. After much consideration, the major part voted that succession in the government was indifferent whether

it were by election or hereditary; but afterwards some would needs add that it was desirable to have it continued elective; that is, that the chief magistrate should always name his successor; and that of hereditary avoided; and I fear the word 'desirable' will be made 'necessary,' if ever it come upon the trial. His highness finding he can have no advice from those he most expected it from, saith he will take his own resolutions, and that he can no longer satisfy himself to sit still, and make himself guilty of the loss of all the honest party and of the nation itself."

† Harris, p. 348., has collected some curious instances of the servility of crowned heads to Cromwell.

victories achieved under the parliament. But he still employed the great energies of Blake in the service for which he was so eminently fitted ; and it is just to say that the maritime glory of England may first be traced from the era of the commonwealth in a track of continuous light. The oppressed protestants in catholic kingdoms, disgusted at the lukewarmness and half-apostasy of the Stuarts, looked up to him as their patron and mediator.* Courted by the two rival monarchies of Europe, he seemed to threaten both with his hostility ; and when he declared against Spain, and attacked her West India possessions, with little pretence certainly of justice, but not by any means, as I conceive, with the impolicy sometimes charged against him, so auspicious was his star that the very failure and disappointment of that expedition obtained a more advantageous possession for England than all the triumphs of her former kings.

Notwithstanding this external splendour, which has deceived some of our own, and most foreign writers, it is evident that the submission of the people to Cromwell was far from peaceable or voluntary. His strong and skilful grasp kept down a nation of enemies that must naturally, to judge from their numbers and inveteracy, have overwhelmed him. It required a dexterous management to play with the army, and without the army he could not have existed as sovereign for a day. Yet it seems improbable that, had Cromwell lived, any insurrection or conspiracy, setting aside assassination, could have overthrown a possession so fenced by systematic vigilance, by experienced caution, by the respect and terror that belonged to his name. The royalist and republican in-

* See Clarendon, vii. 297. He saved Nismes from military execution on account of a riot, wherein the Huguenots seem to have been much to blame. In the treaty between England and France, 1654, the French, in agreeing to the secret article about the exclusion of the royalists, endeavoured to make it reciprocal, that the commissioners of rebels in France should not be admitted in England. This did not seem very outrageous—but Cromwell objected that the French protestants would be thus excluded from imploring the assistance of England, if they were persecuted ; protesting however that he was very far from having any

thought to draw them from their obedience, as had been imputed to him, and that he would arm against them, if they should offer frivolously and without a cause to disturb the peace of France. Thurloe, iii. 6. In fact, the French protestants were in the habit of writing to Thurloe, as this collection testifies, whenever they thought themselves injured, which happened frequently enough. Cromwell's noble zeal in behalf of the Vaudois is well known. See this volume of Thurloe, p. 412, &c. Mazarin and the catholic powers in general endeavoured to lye down that massacre ; but the usurper had too much protestant spirit to believe them. Id. 536.

trigues had gone on for several years without intermission ; but every part of their designs was open to him ; and it appears that there was not courage or rather temerity sufficient to make any open demonstration of so prevalent a disaffection.*

The most superficial observers cannot have overlooked the general resemblances in the fortunes and character of Cromwell, and of him who, more recently and upon an ampler theatre, has struck nations with wonder and awe. But the parallel may be traced more closely than perhaps has hitherto been remarked. Both raised to power by the only merit which a revolution leaves uncontroverted and untarnished, that of military achievements, in that reflux of public sentiment, when the fervid enthusiasm of democracy gives place to disgust at its excesses and a desire of firm government. The means of greatness the same to both ; the extinction of a representative assembly, once national, but already mutilated by violence, and sunk by its submission to that illegal force into general contempt. In military science or the renown of their exploits, we cannot certainly rank Cromwell by the side of him, for whose genius and ambition all Europe seemed the appointed quarry ; but it may be said that the former's exploits were as much above the level of his contemporaries, and more the fruits of an original uneducated capacity. In civil government, there can be no adequate parallel between one who had sucked only the dregs of a besotted fanaticism, and one to whom the stores of reason and philosophy were open. But it must here be added that Cromwell, far unlike his antitype, never showed any signs of a legislative mind, or any desire to fix his renown on that noblest basis, the amelioration of social institutions. Both were eminent masters of human nature, and played with inferior capacities in all the security of powerful minds. Though both, coming at the conclusion of a struggle for liberty, trampled upon her claims, and sometimes spoke disdainfully of her name, each knew how to associate the interests of those who had contended for her with his own ascendancy, and made himself the representative of a victorious revolution. Those who had

* Ludlow, 607. ; Thurloe, i. and ii. passim.

too much philosophy or zeal for freedom to give way to popular admiration for these illustrious usurpers, were yet amused with the adulation that lawful princes showered on them, more gratuitously in one instance, with servile terror in the other. Both too repaid in some measure this homage of the pretended great by turning their ambition towards those honours and titles which they knew to be so little connected with high desert. A fallen race of monarchs, which had made way for the greatness of each, cherished hopes of restoration by their power till each, by an inexpiable act of blood, manifested his determination to make no compromise with that line. Both possessed a certain coarse good nature and affability that covered the want of conscience, honour, and humanity; quick in passion, but not vindictive, and averse to unnecessary crimes. Their fortunes in the conclusion of life were indeed very different: one forfeited the affections of his people, which the other, in the character at least of their master, had never possessed; one furnished a moral to Europe by the continuance of his success, the other by the prodigiousness of his fall. A fresh resemblance arose afterwards, when the restoration of those royal families, whom their ascendant had kept under, revived ancient animosities, and excited new ones; those who from love of democratical liberty had borne the most deadly hatred to the apostates who had betrayed it, recovering some affection to their memory, out of aversion to a common enemy. Our English republicans have, with some exceptions, displayed a sympathy for the name of Cromwell; and I need not observe how remarkably this holds good in the case of his mighty parallel.*

* Mrs. Macaulay, who had nothing of compromise or conciliation in her temper, and breathed the entire spirit of Vane and Ludlow, makes some vigorous and just animadversions on the favour shown to Cromwell by some professors of a regard for liberty. The dissenting writers, such as Neal, and in some measure Harris, were particularly open to this reproach. He long continued (perhaps the present tense is more appropriate) to be revered by the independents. One who well knew the manners he

paints, has described the secret idolatry of that sect to their hero-saint. See Crabbe's Tale of the Frank Courtship.

Slingsly Bethell, an exception perhaps to the general politics of this sect, published in 1667 a tract, entitled *The World's Mistake in Oliver Cromwell*, with the purpose of decrying his policy and depreciating his genius. *Harleian Miscellany*, i. 280. But he who goes about to prove the world mistaken in its estimate of a public character has always a difficult cause to maintain. Bethell,

The death of a great man, even in the most regular course of affairs, seems always to create a sort of pause in the movement of society; it is always a problem to be solved only by experiment, whether the mechanism of government may not be disordered by the shock, or have been deprived of some of its moving powers. But what change could be so great as that from Oliver Cromwell to his son! from one beneath the terror of whose name a nation had cowered and foreign princes grown pale, one trained in twenty eventful years of revolution, the first of his age in the field or in council, to a young man fresh from a country life, uneducated, unused to business, as little a statesman as a soldier, and endowed by nature with capacities by no means above the common. It seems to have been a mistake in Oliver that with the projects he had long formed in his eldest son's favour, he should have taken so little pains to fashion his mind and manners for the exercise of sovereign power, while he had placed the second in a very eminent and arduous station; or that, if he despaired of Richard's capacity, he should have trusted him to encounter those perils of disaffection and conspiracy which it had required all his own vigilance to avert. But, whatever might be his plans, the sudden illness which carried him from the world left no time for completing them. The Petition and Advice had simply empowered him to appoint a successor, without prescribing the mode. It appeared consonant to law and reason that so important a trust should be executed in a notorious manner, and by a written instrument; or, if a verbal nomination might seem sufficient, it was at least to be expected that this should be authenticated by solemn and indisputable testimony. No proof however was ever given of Richard's appointment by his father, except a recital in the

Richard his
son succeeds
him.

like Mrs. Macaulay and others, labours to set up the Rump parliament against the soldier who dispersed them; and asserts that Cromwell, having found 500,000*l.* in ready money, with the value of 700,000*l.* in stores, and the army in advance of their pay (subject, however, to a debt of near 500,000*l.*); the customs and excise bringing in nearly a million annually, left a debt which, in Richard's parliament, was given in at 1,900,000*l.*,

though he believes this to have been purposely exaggerated in order to procure supplies. I cannot say how far these sums are correct; but it is to be kept in mind, that one great resource of the parliament, confiscation, sequestration, composition, could not be repeated for ever. Neither of these governments, it will be found on inquiry, were economical, especially in respect to the emoluments of those concerned in them.

proclamation of the privy council, which, whether well founded or otherwise, did not carry conviction to the minds of the people; and this, even if we call it but an informality, aggravated the numerous legal and natural deficiencies of his title to the government.*

This very difference however in the personal qualifications of the father and the son, procured the latter some friends whom the former had never been able to gain. Many of the presbyterian party began to see the finger of God, as they called it, in his peaceable accession, and to think they owed subjection to one who came in neither by regicide, nor hypocrisy, nor violence.† Some cool-headed and sincere friends of liberty entertained similar opinions. Pierpoint, one of the wisest men in England, who had stood aloof from the protector's government till the scheme of restoring monarchy came into discussion, had great hopes, as a writer of high authority informs us, of settling the nation in the enjoyment of its liberties under the young man; who was "so flexible," says that writer, "to good counsels, that there was nothing desirable in a prince which might not have been hoped in him, but a great spirit and a just title; the first of which sometimes doth more hurt than good in a sovereign; the latter would have been supplied by the people's deserved approbation." Pierpoint believed that the restoration of the ancient family could not be effected without the ruin of the people's liberty, and of all who had been its champions; so that no royalist, he thought, who had any regard to his country, would attempt it: while this establishment of monarchy in Richard's person might reconcile that party, and compose all differences among men of weight and of zeal for the public good.‡

* Whitelock, 674.; Ludlow, 611. 624. Lord Fauconberg writes in cipher to Henry Cromwell, on August 30., that "Thurloe has seemed resolved to press him in his intervals to such a nomination (of a successor); but whether out of apprehensions to displease him if recovering, or others hereafter, if it should not succeed, he has not yet done it, nor do I believe will." Thurloe, however, announces on Sept. 4. that "his highness was pleased before his death to declare my lord Richard successor. He did it on Monday; and the Lord hath so ordered it, that the council and army hath

received him with all manner of affection. He is this day proclaimed, and hitherto there seems great face of peace; the Lord continue it." Thurloe State Papers, vii. 365. 372. Lord Fauconberg afterwards confirms the fact of Richard's nomination. P. 375.; and see p. 415.

† "Many sober men that called his father no better than a traitorous hypocrite, did begin to think that they owed him [R. C.] subjection," &c. Baxter, 100.

‡ Hutchinson, 343. She does not name Pierpoint, but I have little doubt that he is meant.

He acted accordingly on those principles ; and became, as well as his friend St. John, who had been discountenanced by Oliver, a steady supporter of the young protector's administration. These two, with Thurloe, Whitelock, lord Broghill, and a very few more, formed a small phalanx of experienced counsellors around his unstable throne. And I must confess that their course of policy in sustaining Richard's government appears to me the most judicious that, in the actual circumstances, could have been adopted. Pregnant as the restoration of the exiled family was with incalculable dangers, the English monarchy would have revived with less lustre in the eyes of the vulgar, but with more security for peace and freedom, in the line of Cromwell. Time would have worn away the stains of ignoble birth and criminal usurpation ; and the young man, whose misfortune has subjected him to rather an exaggerated charge of gross incapacity, would probably have reigned as well as most of those who are born in the purple.*

But this termination was defeated by the combination of some who knew not what they wished, and of some who wished what they could never attain. The but opposed by a coalition. general officers who had been well content to make Cromwell the first of themselves, or greater than themselves by their own creation, had never forgiven his manifest design to reign over them as one of a superior order, and owing nothing to their pleasure. They had begun to cabal during his last illness. Though they did not oppose Richard's succession, they continued to hold meetings, not quite public, but exciting intense alarm in his council. As if disdainful of the command of a clownish boy, they proposed that the station of lord general should be separated from that of protector, with the power over all commissions in the army, and conferred on Fleetwood ; who, though his brother-in-law, was a certain instrument in their hands. The vain ambitious Lambert, aspiring, on the credit of some military reputation, to wield the sceptre of Cromwell, influenced this junto ; while the commonwealth's party, some of whom were, or

* Richard's conduct is more than once commended in the correspondence of Thurloe, pp. 491. 497. ; and in fact he did nothing amiss during his short administration.

had been, in the army, drew over several of these ignorant and fanatical soldiers. Thurloe describes the posture of affairs in September and October, while all Europe was admiring the peaceable transmission of Oliver's power, as most alarming; and it may almost be said that Richard had already fallen when he was proclaimed the lord protector of England.*

It was necessary to summon a parliament on the usual score of obtaining money. Lord Broghill had advised this measure immediately on Oliver's death †, and perhaps the delay might be rather prejudicial to the new establishment. But some of the council feared a parliament almost as much as they did the army. They called one, however, to meet Jan. 27. 1659, issuing writs in the ordinary manner to all boroughs which had been accustomed to send members, and consequently abandoning the reformed model of Cromwell. This Ludlow attributes to their expectation of greater influence among the small boroughs; but it may possibly be ascribed still more to a desire of returning by little and little to the ancient constitution, by eradicating the revolutionary innovations. The new parliament consisted of courtiers, as the Cromwell party were always denominated, of presbyterians, among whom some of cavalier principles crept in, and of republicans; the two latter nearly balancing, with their united weight, the ministerial majority.‡ They

* Thurloe, vii. 320. et post, passim. in letters both from himself and lord Fauconberg. Thus, immediately on Richard's accession, the former writes to Henry Cromwell, "It hath pleased God hitherto to give his highness your brother a very easy and peaceable entrance upon his government. There is not a dog that wags his tongue, so great a calm we are in. . . . But I must needs acquaint your excellency that there are some secret murmurings in the army, as if his highness were not general of the army as his father was," &c. P. 374. Here was the secret: the officers did not like to fall back under the civil power, by obeying one who was not a soldier. This soon displayed itself openly; and lord Fauconberg thought the game was over as early as Sept. 28. P. 413. It is to be

observed that Fauconberg was secretly a royalist, and might hope to bring over his brother-in-law.

† Thurloe, vii. 573.

‡ Lord Fauconberg says, "The commonwealth men in the parliament were very numerous, and beyond measure bold, but more than doubly overbalanced by the sober party; so that, though this make their results slow, we see no great cause as yet to fear." P. 612. And Dr. Barwick, a correspondent of lord Clarendon, tells him the republicans were the minority, but all speakers, zealous and diligent — it was likely to end in a titular protector without militia or negative voice. P. 615.

According to a letter from Allen Broderick to Hyde, (Clar. St. Pap. iii. 443.) there were 47 republicans, from 100 to

began with an oath of allegiance to the Protector, as presented by the late parliament, which, as usual in such cases, his enemies generally took without scruple.* But upon a bill being offered for the recognition of Richard as the undoubted lord protector and chief magistrate of the commonwealth, they made a stand against the word recognise, which was carried with difficulty, and caused him the mortification of throwing out the epithet undoubted.† They subsequently discussed his negative voice in passing bills, which had been purposely slurred over in the Petition and Advice; but now every thing was disputed. The thorny question as to the powers and privileges of the other house came next into debate. It was carried by 177 to 113, to transact business with them. To this resolution an explanation was added, that it was not thereby intended to exclude such peers as had been faithful to the parliament, from their privilege of being duly summoned to be members of that house. The court supporting this not impolitic, but logically absurd, proviso, which confounded the ancient and modern systems of government, carried it by the small majority of 195 to 188.‡ They were stronger in rejecting an important motion, to make the approbation of the commons a preliminary to their transacting business with the persons now sitting in the other house as a house of parliament, by 183 voices to 146. But the opposition succeeded in inserting the words “during the present parliament,” which left the matter still unsettled.§

140 neuters or moderates (including many royalists), and 170 court lawyers, or officers.

* Ludlow tells us, that he contrived to sit in the house without taking the oath, and that some others did the same, p. 619.

† Whitelock, *Parl. Hist.* 1530. 1541.

‡ The numbers are differently, but, I suppose, erroneously stated in Thurloe, vii. 640. It is said, in a pamphlet of the time, that this clause was introduced to please the cavaliers, who acted with the court; Somers Tracts, vi. 482. Ludlow seems also to think that these parties were united in this parliament, p. 629.; but this seems not very probable, and is contrary to some things we know. Clarendon had advised that the royalists should try to get into parliament, and

there to oppose all raising of money, and every thing else that might tend to settle the government. *Clar. State Papers*, 411. This of course was their true game.

It is said, that Richard pressing the earl of Northumberland to sit, in the other house, he declined, urging that when the government was such as his predecessors had served under, he would serve him with his life and fortune. *Id.* 433.

§ *Parl. Hist. Journals*, 27 Jan. 14. 18. Feb. 1. 8. 21. 23. 28. March. The names of the tellers in these divisions show the connexions of leading individuals: we find indifferently presbyterian and republican names for the minority, as Fairfax, Lambert, Nevil, Haslerig, Townshend, Booth.

The sitting of the Scots and Irish members was also unsuccessfully opposed. Upon the whole, the court party, notwithstanding this coalition of very heterogeneous interests against them, were sufficiently powerful to disappoint the hopes which the royalist intriguers had entertained. A strong body of lawyers, led by Maynard, adhered to the government, which was supported also on some occasions by a part of the presbyterian interest, or, as then called, the moderate party; and Richard would probably have concluded the session with no loss of power, if either he or his parliament could have withstood the more formidable cabal of Wallingford House. This knot of officers, Fleetwood, Desborough, Berry, Sydenham, being the names most known among them, formed a coalition with the republican faction, who despaired of any success in parliament. The dissolution of that assembly was the main article of this league. Alarmed at the notorious caballing of the officers, the commons voted that, during the sitting of the parliament, there should be no general council, or meeting of the officers of the army, without leave of the protector and of both houses.* Such a vote could only accelerate their own

* There seems reason to believe that Richard would have met with more support both in the house and among the nation, if he had not been oppressed by the odium of some of his father's counsellors. A general indignation was felt at those who had condemned men to death in illegal tribunals, whom the republicans and cavaliers were impatient to bring to justice. He was forced also to employ and to screen from vengeance his wise and experienced secretary Thurloe, master of all the secret springs that had moved his father's government, but obnoxious from the share he had taken in illegal and arbitrary measures. Petitions were presented to the house from several who had been committed to the Tower upon short written orders, without any formal warrant, or expressed cause of commitment. In the case of one of these, Mr. Portman, the house resolved that his apprehension, imprisonment, and detention in the Tower was illegal and unjust, Journals, 26. Feb. A still more flagrant tyranny was that frequently practised by Cromwell, of sending persons

disaffected to him as slaves to the West Indies. One Mr. Thomas petitioned the house of commons, complaining that he had been thus sold as a slave. A member of the court side justified it on the score of his being a malignant. Major-general Browne, a secret royalist, replied that he was nevertheless an Englishman and free-born. Thurloe had the presumption to say that he had not thought to live to see the day, when such a thing as this so justly and legally done by lawful authority, should be brought before parliament. Vane replied that he did not think to have seen the day when free-born Englishmen should be sold for slaves by such an arbitrary government. There were, it seems, not less than fifty gentlemen sold for slaves at Barbadoes. Clarendon State Papers, p. 447. The royalists had planned to attack Thurloe for some of these unjustifiable proceedings, which would have greatly embarrassed the government. Ibid. 423. 428. They hoped that Richard would be better disposed towards the king, if his three advisers, St. John, Thurloe, and Pierpoint, all im-

downfall. Three days afterwards, the junto of Wallingford House insisted with Richard that he should dissolve parliament; to which, according to the advice of most of his council, and perhaps by an overruling necessity, he gave his consent.* This was immediately followed by a declaration of the council of officers, calling back the Long Parliament, such as it had been expelled in 1653, to those seats which had been filled meanwhile by so many transient successors.†

It is not in general difficult for an armed force to destroy a government; but something else than the sword is required to create one. The military conspirators were destitute of any leader whom they would acknowledge, or who had capacity to go through the civil labours of sovereignty; Lambert alone excepted, who was lying in wait for another occasion. They might have gone on with Richard, as a

placable to their cause, could be removed. But they were not strong enough in the house. If Richard however had continued in power, he must probably have sacrificed Thurloe to public opinion; and the consciousness of this may have led this minister to advise the dissolution of the parliament, and perhaps to betray his master, from the suspicion of which he is not free.

It ought to be remarked what an outrageous proof of Cromwell's tyranny is exhibited in this note. Many writers glide favourably over his administration, or content themselves with treating it as an usurpation, which can furnish no precedent, and consequently does not merit particular notice; but the effect of this generality is, that the world forms an imperfect notion of the degree of arbitrary power which he exerted; and I believe there are many who take Charles the First and even Charles the Second, for greater violators of the laws than the protector. Neal and Harris are full of this dishonest bigotry. Since this note was first printed, the publication of Burton's Diary has confirmed its truth, which had rashly been called in question by a passionate and prejudiced reviewer. See Vol. iv. p. 253, &c.

* Richard advised with Broghill, Fienes, Thurloe, and others of his council, all of whom, except Whitelock, who informs us of this, were in favour of the

dissolution. This caused, he says, much trouble to honest men; the cavaliers and republicans rejoiced at it; many of Richard's council were his enemies. P. 177. The army at first intended to raise money by their own authority; but this was deemed impossible, and it was resolved to recall the Long Parliament. Lambert and Haslerig accordingly met Lenthal, who was persuaded to act again as speaker; though, if Ludlow is right, against his will, being now connected with the court, and in the pretended house of lords. The parliament now consisted of 91 members. Parl. Hist. 1547. Harris quotes a manuscript journal of Montague, afterwards earl of Sandwich, wherein it is said that Richard's great error was to dissolve the parliament, and that he might have over-ruled the army, if he would have employed himself, Ingoldsby, lord Fauconberg, and others, who were suspected to be for the king. Life of Charles II., 194. He afterwards, p. 203., quotes Calamy's Life of Howe, for the assertion that Richard stood out against his council, with Thurloe alone, that the parliament should not be dissolved. This is very unlikely.

† This was carried against the previous question by 163 to 87. Journals, Abr. 111. Some of the protector's friends were alarmed at so high a vote against the army, which did in fact bring the matter to a crisis. Thurloe, vii. 659., et post.

pageant of nominal authority. But their new allies, the commonwealth's men, insisted upon restoring the Long Parliament.* It seemed now the policy, as much as duty, of the officers to obey that civil power they had set up. For to rule ostensibly was, as I have just observed, an impracticable scheme. But the contempt they felt for their pretended masters, and even a sort of necessity arising out of the blindness and passion of that little oligarchy, drove them to a step still more ruinous to their cause than that of deposing Richard, the expulsion once more of that assembly, now ^{Expelled again,} worn out and ridiculous in all men's eyes, yet seeming a sort of frail protection against mere anarchy, and the terror of the sword. Lambert, the chief actor in this last act of violence, and indeed many of the rest, might plead the right of self-defence. The prevailing faction in the parliament, led by Haslerig, a bold and headstrong man, perceived that, with very inferior pretensions, Lambert was aiming to tread in the steps of Cromwell; and, remembering their neglect of opportunities, as they thought, in permitting the one to overthrow them, fancied that they would anticipate the other. Their intemperate votes cashiering Lambert, Desborough, and other officers, brought on, as every man of more prudence than Haslerig must have foreseen, an immediate revolution that crushed once more their boasted commonwealth.† They revived again a few months ^{and again restored.} after, not by any exertion of the people, who hated

* The army, according to Ludlow, had not made up their minds how to act after the dissolution of the parliament, and some were inclined to go on with Richard; but the republican party, who had coalesced with that faction of officers who took their denomination from Wallingford House, their place of meeting, insisted on the restoration of the old parliament; though they agreed to make some provision for Richard. *Memoirs*, pp. 635—646. Accordingly it was voted to give him an income of 10,000*l.* per annum. *Journals*, July 16.

† *Journals*. Sept. 23. et post. Whitelock, 683. *Parl. Hist.* 1562. Thurloe, vii. 703. et post. Ludlow's account of this period is the most interesting part of his *Memoirs*. The chief officers, it appears from his narrative, were soon dis-

gusted with their republican allies, and "behaved with all imaginable perverseness and insolence" in the council of state, whenever they came there, which was but seldom, scrupling the oath to be true to the commonwealth against Charles Stuart or any other person. P. 657. He censures, however, the violence of Haslerig, "a man of a disobliging temper, sour and morose of temper, liable to be transported with passion, and in whom liberality seemed to be a vice. Yet to do him justice, I must acknowledge that I am under no manner of doubt concerning the rectitude and sincerity of his intentions." P. 718. Ludlow gave some offence to the hot-headed republicans by his half compliance with the army; and much disapproved the proceedings they adopted after their second restoration

alike both parties, in their behalf, but through the disunion of their real masters, the army, and vented the impotent and injudicious rage of a desperate faction on all who had not gone every length on their side, till scarce any man of eminence was left to muster under the standard of Haslerig and his little knot of associates.*

I can by no means agree with those who find in the character of the English nation some absolute incompatibility with a republican constitution of government. Impossibility of establishing a republic. Under favouring circumstances, it seems to me not at all incredible that such a polity might have existed for many ages in great prosperity, and without violent convulsion. For the English are, as a people, little subject to those bursts of passion which inflame the more imaginative multitude of southern climates, and render them both apt for revolutions, and incapable of conducting them. Nor are they again of that sluggish and stationary temper, which chokes all desire of improvement, and even all zeal for freedom and justice, through which some free governments have degenerated into corrupt oligarchies. The most conspicuously successful experiment of republican institutions (and those far more democratical than, according to the general theory of politics, could be reconciled with perfect tranquillity,) has taken place in a people of English original; and though much must here be ascribed to the peculiarly fortunate situation of the nation to which I allude, we can hardly avoid giving some weight to the good sense and well-balanced temperament, which have come in their inheritance with our laws and our language. But the establishment of free commonwealths depends much rather on temporary causes, the influence of persons and particular events, and all those intricacies in the course of Providence which we term accident, than on any general maxims that can become the basis of prior calculation. In the year 1659, it is manifest that no idea could be more chimerical than that of a republican settlement in England. The name, never familiar or venerable in En-

in December, 1659, against Vane and others. P. 800. Yet, though nominated on the committee of safety, on the expulsion of the parliament in October,

he never sat on it, as Vane and Whitelock did.

* Journals, and other authorities above cited.

glish ears, was grown infinitely odious : it was associated with the tyranny of ten years, the selfish rapacity of the Rump, the hypocritical despotism of Cromwell, the arbitrary sequestrations of committee-men, the iniquitous decimations of military prefects, the sale of British citizens for slavery in the West Indies, the blood of some shed on the scaffold without legal trial, the tedious imprisonment of many with denial of the habeas corpus, the exclusion of the ancient gentry, the persecution of the Anglican church, the bacchanalian rant of sectaries, the morose preciseness of puritans, the extinction of the frank and cordial joyousness of the national character. Were the people again to endure the mockery of the good old cause, as the commonwealth's men affected to style the interests of their little faction, and be subject to Lambert's notorious want of principle, or to Vane's contempt of ordinances (a godly mode of expressing the same thing), or to Haslerig's fury, or to Harrison's fanaticism, or to the fancies of those lesser schemers, who in this utter confusion and abject state of their party, were amusing themselves with plans of perfect commonwealths, and debating whether there should be a senate as well as a representation ; whether a fixed number should go out or not by rotation ; and all those details of political mechanism so important in the eyes of theorists ?* Every project of this description must have wanted what alone could give it either the pretext of legitimate existence, or the chance of permanency, popular consent ; the republican party, if we exclude those who would have had a protector, and those fanatics who expected the appearance of Jesus Christ, was incalculably small ; not, perhaps, amounting in the whole nation to more than a few hundred persons.

The little court of Charles at Brussels watched with trembling hope these convulsive struggles of their enemies. During the protectorship of Oliver their best chance appeared to be, that some of the numerous schemes for his assassination might take effect. Their cor-

*Intrigues
of the
royalists.*

* The Rota Club, as it was called, was composed, chiefly at least, of these dealers in new constitutions, which were debated

in due form. Harrington was one of the most conspicuous.

respondence indeed, especially among the presbyterian or neutral party, became more extensive* ; but these men were habitually cautious : and the marquis of Ormond, who went over to England in the beginning of 1658, though he reported the disaffection to be still more universal than he had expected, was forced to add, that there was little prospect of a rising until foreign troops should be landed in some part of the country ; an aid, which Spain had frequently promised, but, with an English fleet at sea, could not very easily furnish.† The death of their puissant enemy brightened the visions of the royalists. Though the apparent peaceableness of Richard's government gave them some mortification, they continued to spread their toils through zealous emissaries, and found a very general willingness to restore the ancient constitution under its hereditary sovereign. Besides the cavaliers, who, though numerous and ardent, were impoverished and suspected, the chief presbyterians, lords Fairfax and Willoughby, the earls of Manchester and Denbigh, sir William Waller, sir George Booth, sir Ashley Cooper, Mr. Popham of Somerset, Mr. Howe of Gloucester, sir Horatio Townshend of Norfolk, with more or less of zeal and activity, pledged themselves to the royal cause.‡ Lord Fauconberg, a royalist by family, who had married a daughter of Cromwell, undertook the important office of working on his brothers-in-law, Richard and Henry, whose position, in respect to the army and republican party, was so hazardous. It seems, in fact, that Richard, even during his continuance in power, had not refused to hear the king's agents §, and hopes were entertained of him ; yet at

They unite with the presbyterians.

* Thurloe, vi. 579. Clarendon State Papers, 391. 395.

† Carte's Letters, ii. 118. In a letter of Ormond to Hyde about this time, he seems to have seen into the king's character, and speaks of him severely : " I fear his immoderate delight in empty, effeminate, and vulgar conversations, is become an irresistible part of his nature," &c. Clarendon State Papers, iii. 387.

‡ Clarendon Papers, 391. 418. 460. et post. Townshend, a young man who seems to have been much looked up to, was not, in fact, a presbyterian, but is reckoned among them as not being a

cavalier, having come of age since the war, and his family neutral.

§ This curious fact appears for the first time, I believe, in the Clarendon State Papers, unless it is any where intimated in Carte's collection of the Ormond letters. In the former collection we find several allusions to it ; the first is in a letter from Rumbold, a royalist emissary, to Hyde, dated Dec. 2. 1658, p. 421. ; from which I collect lord Fauconberg's share in this intrigue ; which is also confirmed by a letter of Mordaunt to the king, in p. 423. " The lord Falconbridge protests that Cromwell is so remiss a person that

that time even he could not reasonably be expected to abandon his apparent interests. But soon after his fall, while his influence, or rather that of his father's memory, was still supposed considerable with Montagu, Monk, and Lockhart, they negotiated with him to procure the accession of those persons, and of his brother Henry, for a pension of 20,000*l.* a year, and a title.* It soon appeared, however that those prudent veterans of revolution would not embark under such a pilot, and that Richard was not worth purchasing on the lowest terms. Even Henry Cromwell, with whom a separate treaty had been carried on, and who is said to have determined at one time to proclaim the king at Dublin, from want of courage, or, as is more probable, of seriousness in what must have seemed so unnatural an undertaking, submitted quietly to the vote of parliament that deprived him of the command of Ireland.†

The conspiracy, if indeed so general a concert for the restoration of ancient laws and liberties ought to have so equivocal an appellation, became ripe in the summer of 1659. The royalists were to appear in arms in different quarters; several principal towns to be seized: but as the moment grew nigh, the courage of most began to fail. Twenty years of depression and continual failure mated the spirits of the cavaliers. The shade of Cromwell seemed to hover over and protect the wreck of his greatness. Sir George Booth, almost alone, rose in Cheshire; every other scheme, intended to be executed simultaneously, failing

he cannot play his own game, much less another man's, and is thereby discouraged from acting in business, having also many enemies who oppose his gaining either power or interest in the army or civil government, because they conceive his principles contrary to theirs. He says, Thurloe governs Cromwell, and St. John and Pierpoint govern Thurloe; and therefore is not likely he will think himself in danger till these tell him so, nor seek a diversion of it but by their councils." Feb. 10. 1659. These ill-grounded hopes of Richard's accession to their cause appear in several other letters, and even Hyde seems to have given in to them, 434. 454, &c. Broderick, another active

emissary of the royalists, fancied that the three above mentioned would restore the king if they dared, 477. ; but this is quite unlikely.

* P. 469. This was carried on through colonel Henry Cromwell, his cousin. It is said that Richard had not courage to sign the letters to Monk and his other friends, which he afterwards repented, 491. The intrigues still went on with him for a little longer. This was in May, 1659.

† Clarendon State Papers, 434. 500. et post. Thurloe, vi. 686. See also an enigmatical letter to Henry Cromwell, 629., which certainly hints at his union with the king; and Carte's Letters, ii. 293.

through the increased prudence of those concerned, or the precautions taken by the government on secret intelligence of the plots; and Booth, thus deserted, made less resistance to Lambert than perhaps was in his power.* This discomfiture, of course, damped the expectations of the king's party. The presbyterians thought themselves ill-used by their new allies, though their own friends had been almost equally cautious. † Sir Richard Willis, an old cavalier, and in all the secrets of their conspiracy, was detected in being a spy both of Cromwell and of the new government; a discovery which struck consternation into the party, who could hardly trust any one else with greater security. ‡ In a less favourable posture of affairs, these untoward circumstances might have ruined Charles's hopes; they served, as it was, to make it evident that he must look to some more efficacious aid than a people's good wishes for his restoration.

The royalists in England, who played so deep a stake on the king's account, were not unnaturally desirous that he should risk something in the game, and continually pressed that either he or one of his brothers would land on the coast. His standard would become a rallying-point for the well-affected, and create such a demonstration of public sentiment as would overthrow the present unstable government. But Charles, not by nature of a chivalrous temper, shrunk from an enterprise which was certainly very hazardous, unless he could have obtained a greater assistance of troops from the Low Countries than was to be hoped. § He was as little inclined to permit the duke of York's engaging in it, on account of the differences that had existed between them, and his knowledge of an intrigue that was going forward in England, principally among the catholics, but with the mischievous talents of the duke of Buckingham at its head,

* Clarendon State Papers, 552. 556. &c.

† Clarendon confesses, *Life*, p. 20., that the cavaliers disliked this whole intrigue with the presbyterians, which was planned by Mordaunt, the most active and intelligent agent that the king possessed in England. The former, doubtless, perceived that by extending the basis of the coalition, they should lose all chance of indemnity for their own

sufferings; besides which, their timidity and irresolution are manifest in all the Clarendon correspondence at this period. See particularly 491. 520.

‡ Willis had done all in his power to obstruct the rising. Clarendon was very slow in believing this treachery, of which he had at length conclusive proofs. 552. 562.

§ *Clar. Papers*, 514. 530. 536. 543.

to set up the duke instead of himself.* He gave, however, fair words to his party, and continued for some time on the French coast, as if waiting for his opportunity. It was in great measure, as I suspect, to rid himself of this importunity, that he set out on his long and very needless journey to the foot of the Pyrenees. Thither the two monarchs of France and Spain, wearied with twenty years of hostility without a cause and without a purpose, had sent their ministers to conclude the celebrated treaty which bears the name of those mountains. Charles had long cherished hopes that the first fruits of their reconciliation would be a joint armament to place him on the English throne: many of his adherents almost despaired of any other means of restoration. But Lewis de Haro was a timid statesman, and Mazarin a cunning one: there was little to expect from their generosity; and the price of assistance might probably be such as none but desperate and unscrupulous exiles would offer, and the English nation would with unanimous indignation reject. It was well for Charles that he contracted no public engagement with these foreign powers, whose co-operation must either have failed of success, or have placed on his head a degraded and unstable crown. The full toleration of popery in England, its establishment in Ireland, its profession by the sovereign and his family, the surrender of Jamaica, Dunkirk, and

* Clarendon Papers, 425. 427. 458. 462. 475. 526. 579. It is evident that the catholics had greater hopes from the duke than from the king, and considered the former as already their own. A remarkable letter of Morley to Hyde, April 24. 1659, p. 458., shows the suspicions already entertained of him by the writer in point of religion; and Hyde is plainly not free from apprehension that he might favour the scheme of supplanting his brother. The intrigue might have gone a great way, though we may now think it probable that their alarm magnified the danger. "Let me tell you," says sir Antony Ashley Cooper in a letter to Hyde, "that Wildman is as much an enemy now to the king as he was before a seeming friend; yet not upon the account of a commonwealth, for his ambition meets with every day repulses and affronts from that party; but upon a

finer spun design of setting up the interest of the duke of York against the king; in which design I fear you will find confederated the duke of Bucks, who perhaps may draw away with him lord Fairfax, the presbyterians, levellers, and many catholics. I am apt to think these things are not transacted without the privity of the queen; and I pray God that they have not an ill influence upon your affairs in France." 475. Buckingham was surmised to have been formally reconciled to the church of Rome. 427. Some supposed that he, with his friend Wildman, were for a republic. But such men are for nothing but the intrigue of the moment. These projects of Buckingham to set up the duke of York are hinted at in a pamphlet by Shaftesbury or one of his party, written about 1680. Somers Tracts, viii. 342.

perhaps the Norman islands, were conditions on which the people might have thought the restoration of the Stuart line too dearly obtained.

It was a more desirable object for the king to bring over, if possible, some of the leaders of the commonwealth. Except Vane, accordingly, and the decided republicans, there was hardly any man of consequence whom his agents did not attempt, or, at least, from whom they did not entertain hopes. Three stood at this time conspicuous above the rest, not all of them in ability, but in apparent power of serving the royal cause by their defection, Fleetwood, Lambert, and Monk. The first had discovered, as far as his understanding was capable of perceiving any thing, that he had been the dupe of more crafty men in the cabals against Richard Cromwell, whose complete fall from power he had neither designed nor foreseen. In pique and vexation, he listened to the overtures of the royalist agents, and sometimes, if we believe their assertions, even promised to declare for the king.* But his resolutions were not to be relied upon, nor was his influence likely to prove considerable; though from his post of lieutenant-general of the army, and long accustomed precedence, he obtained a sort of outward credit far beyond his capacity. Lambert was of a very different stamp; eager, enterprising, ambitious, but destitute of the qualities that inspire respect or confidence. Far from the weak enthusiasm of Fleetwood, he gave offence by displaying less show of religion than the temper of his party required, and still more by a current suspicion that his secret faith was that of the church of Rome, to which the partiality of the catholics towards him gave support.† The crafty unfettered ambition of Lambert rendered it not unlikely that, finding his own schemes of sovereignty impracticable, he would make terms with the king; and there were not wanting those who recommended the latter to

* Hyde writes to the duke of Ormond: "I pray inform the king that Fleetwood makes great professions of being converted, and of a resolution to serve the king upon the first opportunity." Oct. 11. 1659. Carte's Letters, ii. 231. See Clarendon State Papers, 551. (Sept. 2.) and 577. But it is said afterwards, that he had "not courage enough to follow the

honest thoughts which some time possess him," 592. (Oct. 31.), and that Manchester, Popham, and others, tried what they could do with Fleetwood; but "though they left him with good resolutions, they were so weak as not to continue longer than the next temptation," 635. (Dec. 27.)

† Id. 588. Carte's Letters, ii. 225.

secure his services by the offer of marrying his daughter *; but it does not appear that any actual overtures were made on either side.

There remained one man of eminent military reputation, in the command of a considerable insulated army, to whom the royalists anxiously looked with alternate hope and despondency. Monk's early connections were with the king's party, among whom he had been defeated and taken prisoner by Fairfax at Namptwich. Yet even in this period of his life he had not escaped suspicions of disaffection, which he effaced by continuing in prison till the termination of the war in England. He then accepted a commission from the parliament to serve against the Irish; and now falling entirely into his new line of politics, became strongly attached to Cromwell, by whom he was left in the military government, or rather vice-royalty of Scotland, which he had reduced to subjection, and kept under with a vigorous hand. Charles had once, it is said, attempted to seduce him by a letter from Cologne, which he instantly transmitted to the protector. † Upon Oliver's death, he wrote a very sensible letter to Richard Cromwell, containing his advice for the government. He recommends him to obtain the affections of the moderate presbyterian ministers, who have much influence over the people, to summon to his house of lords the wisest and most faithful of the old nobility and some of the leading gentry, to diminish the number of superior officers in the army, by throwing every two regiments into one, and to take into his council as his chief advisers Whitelock, St. John, lord Broghill, sir Richard Onslow, Pierpoint, and Thurloe. ‡

* Lord Hatton, an old royalist, suggested this humiliating proposition in terms scarcely less so to the heir of Cerdic and Fergus. "The race is a *very good gentleman's family*, and kings have condescended to marry subjects. The lady is pretty, of an extraordinary sweetness of disposition, and very virtuously and ingenuously disposed; the father is a person, set aside his unhappy engagement, of very great parts and noble inclinations." Clarendon State Papers, 592. Yet, after all, Miss Lambert was hardly more a mesalliance than Hortense Mancini, whom Charles had asked for in vain.

† Biogr. Brit. art. Monk. The royalists continued to entertain hopes of him, especially after Oliver's death. Clarendon Papers, iii. 393, 395, 396. In a sensible letter of Colepepper to Hyde, Sept. 20. 1658, he points out Monk as able alone to restore the king, and not absolutely averse to it, either in his principles or affections; kept hitherto by the vanity of adhering to his professions, and by his affection to Cromwell, the latter whereof is dissolved both by the jealousies he entertained of him, and by his death, &c. Id. 412.

‡ Thurloe, vii. 387. Monk wrote

The judiciousness of this advice is the surest evidence of its sincerity, and must leave no doubt on our minds that Monk was at that time very far from harbouring any thoughts of the king's restoration.

But when, through the force of circumstances and the deficiencies in the young protector's capacity, he saw the house of Cromwell for ever fallen, it was for ^{His dissimulation.} Monk to consider what course he should follow, and by what means the nation was to be rescued from the state of anarchy that seemed to menace it. That very different plans must have passed through his mind before he commenced his march from Scotland, it is easy to conjecture; but at what time his determination was finally taken, we cannot certainly pronounce.* It would be the most honourable supposition to

about the same time against the earl of Argyle, as not a friend to the government, 584. Two years afterwards he took away his life as being too much so.

* If the account of his chaplain, Dr. Price, republished in Maseres's Tracts, vol. ii., be worthy of trust, Monk gave so much encouragement to his brother, a clergyman, secretly despatched to Scotland by sir John Grenvil, his relation, in June, 1659, as to have approved sir George Booth's insurrection, and to have been on the point of publishing a declaration in favour of it. P. 718. But this is flatly in contradiction of what Clarendon asserts, that the general not only sent away his brother with no hopes, but threatened to hang him if he came again on such an errand. And, in fact, if any thing so favourable as what Price tells us had occurred, the king could not fail to have known it. See Clarendon State Papers, iii. 543. This throws some suspicion on Price's subsequent narrative (so far as it professes to relate the general's intentions); so that I rely far less on it than on Monk's own behaviour, which seems irreconcilable with his professions of republican principles. It is however an obscure point of history, which will easily admit of different opinions.

The story told by Locke, on lord Shaftesbury's authority, that Monk had agreed with the French ambassador to take on himself the government, wherein

he was to have the support of Mazarin, and that his wife, having overheard what was going forward, sent notice to Shaftesbury who was thus enabled to frustrate the intrigue (Locke's Works, iii. 456.), seems to have been confirmed lately by Mr. D'Israeli, in an extract from the manuscript memoirs of sir Thomas Browne (Curiosities of Literature, N. S. vol. ii.), but in terms so nearly resembling those of Locke, that it may be suspected of being merely an echo. It is certain, as we find by Phillips's continuation of Baker's Chronicle, (said to be assisted, in this part, by sir Thomas Clarges, Monk's brother-in-law,) that Bourdeaux, the French ambassador, did make such overtures to the general, who absolutely refused to enter upon them; but, as the writer admits, received a visit from the ambassador on condition that he should propose nothing in relation to public matters. I quote from Kennet's Register, 85. But, according to my present impression, this is more likely to have been the foundation of Shaftesbury's story, who might have heard from Mrs. Monk the circumstance of the visit, and conceived suspicions upon it, which he afterwards turned into proofs. It was evidently not in Monk's power to have usurped the government, after he had let the royalist inclinations of the people show themselves; and he was by no means of a rash character. He must have taken his resolution when the secluded mem-

believe that he was sincere in those solemn protestations of adherence to the commonwealth which he poured forth, as well during his march as after his arrival in London; till discovering, at length, the popular zeal for the king's restoration, he concurred in a change which it would have been unwise, and perhaps impracticable, to resist. This however seems not easily reconcilable to Monk's proceedings in new-modelling his army, and confiding power, both in Scotland and England, to men of known intentions towards royalty; nor did his assurances of support to the republican party become less frequent or explicit at a time when every one must believe that he had taken his resolution, and even after he had communicated with the king. I incline therefore, upon the whole, to believe that Monk, not accustomed to respect the parliament, and incapable, both by his temperament and by the course of his life, of any enthusiasm for the name of liberty, had satisfied himself as to the expediency of the king's restoration from the time that the Cromwells had sunk below his power to assist them; though his projects were still subservient to his own security, which he was resolved not to forfeit by any premature declaration or unsuccessful enterprise. If the coalition of cavaliers and presbyterians, and the strong bent of the entire nation, had not convinced this wary dissembler that he could not fail of success, he would have continued true to his professions as the general of a commonwealth, content with crushing his rival Lambert, and breaking that fanatical interest which he most disliked. That he aimed at such a sovereignty as Cromwell had usurped has been the natural conjecture of many, but does not appear to me either warranted by any presumptive evidence, or consonant to the good sense and phlegmatic temper of Monk.

At the moment when, with a small but veteran army of 7000 men, he took up his quarters in London, it seemed to be within his arbitrement which way the scale should pre-

bers were restored to the house. Feb. 21.; and this alleged intrigue with Mazarin could hardly have been so early.

It may be added, that in one of the pamphlets about the time of the exclusion bill, written by Shaftesbury himself, or one of his party (Somers Tracts, viii.

338.), he is hinted to have principally brought about the restoration; "without whose courage and dexterity some men, the most highly rewarded, had done otherwise than they did." But this still depends on his veracity.

ponderate. On one side were the wishes of the nation, but restrained by fear ; on the other, established possession, maintained by the sword, but rendered precarious by disunion and treachery. It is certainly very possible that, by keeping close to the parliament, Monk might have retarded, at least for a considerable time, the great event which has immortalized him. But it can hardly be said that the king's restoration was rather owing to him than to the general sentiments of the nation and almost the necessity of circumstances, which had already made every judicious person anticipate the sole termination of our civil discord which they had prepared. Whitelock, who, incapable of refusing compliance with the ruling power, had sat in the committee of safety established in October, 1659, by the officers who had expelled the parliament, has recorded a curious anecdote, whence we may collect how little was wanting to prevent Monk from being the great mover in the restoration. He had for some time, as appears by his journal, entertained a persuasion that the general meditated nothing but the king's return, to which he was doubtless himself well inclined, except from some apprehension for the public interest, and some also for his own. This induced him to have a private conference with Fleetwood, which he enters as of the 22d December, 1659, wherein, after pointing out the probable designs of Monk, he urged him either to take possession of the Tower, and declare for a free parliament, in which he would have the assistance of the city, or to send some trusty person to Breda, who might offer to bring in the king upon such terms as should be settled. Both these propositions were intended as different methods of bringing about a revolution, which he judged to be inevitable. "By this means," he contended, "Fleetwood might make terms with the king for preservation of himself and his friends, and of that cause, in a good measure, in which they had been engaged ; but, if it were left to Monk, they and all that had been done would be left to the danger of destruction. Fleetwood then asked me, 'If I would be willing to go myself upon this employment?' I answered, 'that I would go, if Fleetwood thought fit to send me.' And after much other discourse to this effect, Fleetwood seemed fully satisfied to send me to the king, and desired me to go and prepare

myself forthwith for the journey; and that in the mean time Fleetwood and his friends would prepare the instructions for me, so that I might begin my journey this evening or to-morrow morning early.

“I going away from Fleetwood, met Vane, Desborough, and Berry in the next room, coming to speak with Fleetwood, who thereupon desired me to stay a little; and I suspected what would be the issue of their consultation, and within a quarter of an hour Fleetwood came to me and in much passion said to me, ‘I cannot do it, I cannot do it.’ I desired his reason why he could not do it. He answered, ‘Those gentlemen have remembered me, and it is true, that I am engaged not to do any such thing without my lord Lambert’s consent.’ I replied, ‘that Lambert was at too great a distance to have his consent to this business, which must be instantly acted.’ Fleetwood again said, ‘I cannot do it without him.’ Then I said, ‘You will ruin yourself and your friends.’ He said, ‘I cannot help it.’ Then I told him I must take my leave, and so we parted.”*

Whatever might have been in the power of Monk, by adhering to his declarations of obedience to the parliament, it would have been too late for him, after consenting to the restoration of the secluded members to their seats on February 21. 1660, to withstand the settlement which it seems incredible that he should not at that time have desired. That he continued for at least six weeks afterwards, in a course of astonishing dissimulation, so as to deceive, in a great measure, almost all the royalists, who were distrusting his intentions at the very moment when he made his first and most private tender of service to the king through sir John Grenvil about the beginning of April, might at first seem rather to have proceeded from a sort of inability to shake off his inveterate reservedness, than from consummate prudence and discretion. For any sudden risings in the king’s favour, or an intrigue in the council of state, might easily have brought about the restoration without his concurrence; and, even as it was, the language held in the house of commons before their dissolution, the votes

Secluded
members
return to
their seats.

* Whitelock, 690.

expunging all that appeared on their journals against the regal government and the house of lords*, and, above all, the course of the elections for the new parliament, made it sufficiently evident that the general had delayed his assurances of loyalty till they had lost a part of their value. It is however a full explanation of Monk's public conduct, that he

* The engagement was repealed March 13. This was of itself tantamount to a declaration in favour of the king; though perhaps the previous order of March 5., that the solemn league and covenant should be read in churches, was still more so. Prynne was the first who had the boldness to speak for the king, declaring his opinion that the parliament was dissolved by the death of Charles the First; he was supported by one or two more. *Clar. Papers*, 696. *Thurloe*, vii. 854. *Carte's Letters*, ii. 312. Prynne wrote a pamphlet advising the peers to meet and issue writs for a new parliament, according to the provisions of the triennial act; which in fact was no bad expedient. *Somers Tracts*, vi. 534.

A speech of sir Harbottle Grimston before the close of the parliament, March, 1660, is more explicit for the king's restoration than any thing which I have seen elsewhere; and as I do not know that it has been printed, I will give an extract from the Harleian MS. 1576.

He urges it as necessary to be done by them, and not left for the next parliament, who all men believed would restore him. "This is so true and so well understood, that we all believe that whatsoever our thoughts are, this will be the opinion of the succeeding parliament, whose concerns as well as affections will make them active for his introduction. And I appeal then to your own judgments whether it is likely that those persons, as to their particular interest more unconcerned, and probably less knowing in the affairs of the nation, can or would obtain for any those terms or articles as we are yet in a capacity to procure both for them and us. I must confess sincerely that it would be as strange to me as a miracle, did I not know that God infatuates whom he designs to destroy, that we can see the king's return so unavoidable, and yet be no more stu-

dious of serving him, or at least ourselves, in the managing of his recall.

"The general, that noble personage to whom under God we do and must owe all the advantages of our past and future changes, will be as far from opposing us in the design, as the design is removed from the disadvantage of the nation. He himself is, I am confident, of the same opinion; and if he has not yet given notice of it to the house, it is not that he does not look upon it as the best expedient; but he only forbears to oppose it, that he might not seem to necessitate us, and by an over early discovery of his own judgment be thought to take from us the freedom of ours."

In another place he says, "That the recalling of our king is this only way (for composure of affairs), is already grown almost as visible as true; and, were it but confessed of all of whom it is believed, I should quickly hear from the greatest part of this house what now it hears alone from me. Had we as little reason to fear as we have too much, that, if we bring not in the king, he either already is, or shortly may be, in a capacity of coming in unsent for; methinks the very knowledge of his right were enough to keep just persons, such as we would be conceived to be, from being accessory to his longer absence. We are already, and but justly, reported to have been the occasion of our prince's banishment; we may, then, with reason and equal truth, for ought I know, be thought to have been the contrivers of it; unless we endeavour the contrary, by not suffering the mischief to continue longer which is in our power to remove."

Such passages as these, and the general tenor of public speeches, sermons, and pamphlets, in the spring of 1660, show how little Monk can be justly said to have restored Charles II.; except so far as he did not persist in preventing it so long as he might have done.

was not secure of the army, chiefly imbued with fanatical principles, and bearing an inveterate hatred towards the name of Charles Stuart. A correspondent of the king writes to him on the 28th of March: "the army is not yet in a state to hear your name publicly."* In the beginning of that month, many of the officers, instigated by Haslerig and his friends, had protested to Monk against the proceedings of the house, insisting that they should abjure the king and house of lords. He repressed their mutinous spirit, and bade them obey the parliament, as he should do.† Hence he redoubled his protestations of abhorrence of monarchy, and seemed for several weeks, in exterior demonstrations, rather the grand impediment to the king's restoration, than the one person who was to have the credit of it.‡ Meanwhile he silently proceeded in displacing the officers whom he could least trust, and disposing the regiments near to the metropolis, or at a distance, according to his knowledge of their tempers; the parliament having given him a commission as lord general of all the forces in the three kingdoms. § The commissioners appointed by parliament for raising the militia in each county were chiefly gentlemen of the presbyterian party; and there seemed likely to be such a considerable force under their orders as might rescue the nation from its ignominious servitude to the army. In fact, some of the

* Clarendon State Papers, 711.

† Id. 696.

‡ Id. 678. et post. He wrote a letter (Jan. 21.) to the gentry of Devon, who had petitioned the speaker for the re-admission of the secluded members, objecting to that measure as likely to bring in monarchy, very judicious, and with an air of sincerity that might deceive any one; and after the restoration of these secluded members, he made a speech to them (Feb. 21.), strongly against monarchy; and that so ingenuously, upon such good reasons, so much without invective or fanaticism, that the professional hypocrites, who were used to their own tone of imposture, were deceived by his. Cromwell was a mere bungler to him. See these in Harris's Charles II., 296., or Somers Tracts, vi. 551. It cannot be wondered at that the royalists were exasperated at Monk's behaviour. They

published abusive pamphlets against him in February, from which Kennet, in his Register, p. 53., gives quotations:—"Whereas he was the common hopes of all men, he is now the common hatred of all men, as a traitor more detestable than Oliver himself, who, though he manacled the citizens' hands, yet never took away the doors of the city," and so forth. It appears by the letters of Mordaunt and Broderick to Hyde, and by those of Hyde himself in the Clarendon Papers, that they had no sort of confidence in Monk till near the end of March; though Barwick, another of his correspondents, seems to have had more insight into the general's designs (Thurloe, 852. 860. 870.), who had expressed himself to a friend of the writer, probably Cloberry, fully in favour of the king, before March 19.

§ Clar. 699. 705. Thurloe, vii. 860. 870.

royalists expected that the great question would not be carried without an appeal to the sword.* The delay of Monk in privately assuring the king of his fidelity is still not easy to be explained, but may have proceeded from a want of confidence in Charles's secrecy, or that of his counsellors. It must be admitted that lord Clarendon, who has written with some minuteness and accuracy this important part of his history, has more than insinuated (especially as we now read his genuine language, which the ill faith of his original editors had shamefully garbled) that Monk entertained no purposes in the king's favour till the last moment; but a manifest prejudice that shows itself in all his writings against the general, derived partly from offence at his extreme reserve and caution during this period, partly from personal resentment of Monk's behaviour at the time of his own impeachment, greatly takes off from the weight of the noble historian's judgment.†

The months of March and April, 1660, were a period of extreme inquietude, during which every one spoke of the king's restoration as imminent, yet none could distinctly perceive by what means it would be effected, and much less how the difficulties of such a settlement could be overcome.‡ As the moment approached, men

Difficulties
about the
restoration.

* A correspondent of Ormond writes, March 16: "This night the fatal long parliament hath dissolved itself. All this appears well; but I believe we shall not be settled upon our ancient foundations without a war, for which all prepare vigorously and openly." Carte's Letters, ii. 513. It appears also from a letter of Massey to Hyde, that a rising in different counties was intended. Thurloe, 854.

† After giving the substance of Monk's speech to the house, recommending a new parliament, but insisting on commonwealth principles, Clarendon goes on: "There was no dissimulation in this, in order to cover and conceal his good intentions to the king; for without doubt he had not to this hour entertained any purpose or thought to serve him, but was really of the opinion he expressed in his paper, that it was a work impossible; and desired nothing but that he might see a commonwealth established on such a model as Holland was, where he had

been bred, and that himself might enjoy the authority and place which the prince of Orange possessed in that government."

‡ The Clarendon and Thurloe Papers are full of more proofs of this than can be quoted, and are very amusing to read, as a perpetually shifting picture of hopes and fears, and conjectures right or wrong. Pepys's Diary also, in these two months, strikingly shows the prevailing uncertainty as to Monk's intentions, as well as the general desire of having the king brought in. It seems plain that, if he had delayed a very little longer, he would have lost the whole credit of the restoration. All parties began to crowd in with addresses to the king in the first part of April, before Monk was known to have declared himself. Thurloe, among others, was full of his offers, though evidently anxious to find out whether the king had an interest with Monk, p. 898. The royalists had long entertained hopes, from time to time, of

turned their attention more to the obstacles and dangers that lay in their way. The restoration of a banished family, concerning whom they knew little, and what they knew not entirely to their satisfaction, with ruined, perhaps revengeful, followers; the returning ascendancy of a distressed party, who had sustained losses that could not be repaired without fresh changes of property, injuries that could not be atoned without fresh severities; the conflicting pretensions of two churches, one loth to release its claim, the other to yield its possession; the unsettled dissensions between the crown and parliament, suspended only by civil war and usurpation; all seemed pregnant with such difficulties, that prudent men could hardly look forward to the impending revolution without some hesitation and anxiety.* Hence Pierpoint, one of

this deep politician; but it is certain he never wished well to their cause, and with St. John and Pierpoint, had been most zealous, to the last moment that it seemed practicable, against the restoration. There had been, so late as February, 1660, or even afterwards, a strange plan of setting up again Richard Cromwell, wherein not only these three, but Montague, Jones, and others, were thought to be concerned, erroneously no doubt as to Montague. Clarendon State Papers, 693. Carte's Letters, ii. 310. 330. "One of the greatest reasons they alleged was, that the king's party, consisting altogether of indigent men, will become powerful by little and little to force the king, whatever be his own disposition, to break any engagement he can now make: and, since the nation is bent on a single person, none will combine all interests so well as Richard." This made Monk, it is said, jealous of St. John, so that he was chosen at Cambridge to exclude him. In a letter of Thurloe to Downing at the Hague, April 6., he says, "that many of the presbyterians are alarmed at the prospect, and thinking how to keep the king out without joining the sectaries." vii. 887. This could hardly be achieved but by setting up Richard. Yet that, as is truly said in one of the letters quoted, was ridiculous. None were so conspicuous and intrepid on the king's side as the presbyterian ministers. Reynolds preached before the lord mayor, Feb. 28., with

manifest allusion to the restoration; Gauden (who may be reckoned on that side, as conforming to it,) on the same day much more explicitly. Kennet's Register, 69. Sharp says, in a letter to a correspondent in Scotland, that he, Ash, and Calamy, had a long conversation with Monk, March 11., "and convinced him a commonwealth was impracticable, and to our sense sent him off that sense he had hitherto maintained, and came from him as being satisfied of the necessity of dissolving this house, and calling a new parliament." Id. p. 81. Baxter thinks the presbyterian ministers, together with Clarges and Morrice, turned Monk's resolution, and induced him to declare for the king. Life, p. 2. This is a very plausible conjecture, though I incline to think Monk more disposed that way by his own judgment or his wife's. But she was influenced by the presbyterian clergy. They evidently deserved of Charles what they did not meet with.

* The royalists began too soon with threatening speeches, which well-nigh frustrated their object. Id. 721, 722. 727. Carte's Letters, 318. Thurloe, 887. One Dr. Griffith published a little book vindicating the late king in his war against the parliament, for which the ruling party were by no means ripe; and having justified it before the council, was committed to the Gate-house, early in April. Id. *ibid.* These imprudences occasioned the king's declaration from Breda. Somers Tracts, vi. 562. Another

the wisest statesmen in England, though not so far implicated in past transactions as to have much to fear, seems never to have overcome his repugnance to the recall of the king; and I am by no means convinced that the slowness of Monk himself was not in some measure owing to his sense of the embarrassments that might attend that event. The presbyterians, generally speaking, had always been on their guard against an unconditional restoration. They felt much more of hatred to the prevailing power than of attachment to the house of Stuart, and had no disposition to relinquish, either as to church or state government, those principles for which they had fought against Charles the First. Hence they began, from the very time that they entered into the coalition, that is, the spring and summer of 1659, to talk of the treaty of Newport, as if all that had passed since their vote of 5th December, 1648, that the king's concessions were a sufficient ground whereon to proceed to the settlement of the kingdom, had been like an hideous dream, from which they had awakened to proceed exactly in their former course.* The council of state, appointed on the 23d of February, two days after the return of the secluded members, consisted principally of this party. And there can, I conceive, be no question that, if Monk had continued his neutrality to the last, they would, in conjunction with the new parliament, have sent over propositions for the king's acceptance. Meet-

also was published, April 25. 1660, signed by several peers, knights, divines, &c. of the royalist party, disclaiming all private passions and resentments. Kennet's Register, 120. Clar. vii. 471. But these public professions were weak disguises, when belied by their current language. See Baxter, 217. Marchmont Needham, in a tract entitled, "Interest will not lye," (written in answer to an artful pamphlet ascribed to Fell, afterwards bishop of Oxford, and reprinted in Maseres's Tracts, "The Interest of England stated,") endeavoured to alarm all other parties, especially the presbyterians, with representations of the violence they had to expect from that of the king. See Harris's Charles II., 268.

* Proofs of the disposition among this party to revive the treaty of the Isle of Wight occur perpetually in the

Thurloe and Clarendon Papers, and in those published by Carte. The king's agents in England evidently expected nothing better; and were, generally speaking, much for his accepting the propositions. "The presbyterian lords," says sir Allen Broderic to Hyde, "with many of whom I have spoken, pretend that, should the king come in upon any such insurrection, abetted by those of his own party, he would be more absolute than his father was in the height of his prerogative. Stay therefore, say they, till we are ready; our numbers so added will abundantly recompense the delay, rendering what is now extremely doubtful morally certain, and establishing his throne upon the true basis, liberty and property." July 16. 1659. Clar. State Papers, 527.

ings were held of the chief presbyterian lords, Manchester, Northumberland, Bedford, Say, with Pierpoint, (who, finding it too late to prevent the king's return, endeavoured to render it as little dangerous as possible,) Hollis, Annesley, sir William Waller, Lewis, and other leaders of that party. Monk sometimes attended on these occasions, and always urged the most rigid limitations.* His sincerity in this was the less suspected, that his wife, to whom he was notoriously submissive, was entirely presbyterian, though a friend to the king; and his own preference of that sect had always been declared in a more consistent and unequivocal manner than was usual to his dark temper.

These projected limitations, which but a few weeks before Charles would have thankfully accepted, seemed now intolerable; so rapidly do men learn, in the course of prosperous fortune, to scorn what they just before hardly presumed to expect. Those seemed his friends, not who desired to restore him, but who would do so at the least sacrifice of his power and pride. Several of the council, and others in high posts, sent word that they would resist the imposition of unreasonable terms.† Monk himself redeemed his ambiguous and dilatory behaviour by taking the restoration, as it were, out of the hands of the council, and suggesting the judicious scheme of anticipating their proposals by the king's letter to the two houses of parliament. For this purpose he had managed, with all his dissembling pretences of common-

* Clarendon, *Hist. of Rebellion*, vii. 440. *State Papers*, 705. 729. "There is so insolent a spirit among some of the nobility," says Clarendon, about the middle of February, "that I really fear it will turn to an aristocracy; Monk inclining that way too. My opinion is clear, that the king ought not to part with the church, crown, or friends' lands, lest he make my lord of Northumberland his equal, nay, perhaps his superior." P. 680.

† Downing, the minister at the Hague, was one of these. His overtures to the king were as early as Monk's, at the beginning of April; he declared his wish to see his majesty restored on good terms, though many were desirous to make him a doge of Venice. *Carte's Let-*

ters, ii. 320. See also a remarkable letter of the king to Monk (dated May 21.; but I suspect he used the new style, therefore read May 11.), intimating what a service it would be to prevent the imposition of any terms. *Clar.* 745. And another from him to Morrice of the same tenor, May 20. (N. S.) 1660, and hinting that his majesty's friends in the house had complied with the general in all things, according to the king's directions, departing from their own sense, and restraining themselves from pursuing what they thought most for his service. *Thurloe*, vii. 912. This perhaps referred to the indemnity and other provisions then pending in the commons, or rather to the delay of a few days before the delivery of sir John Grenvil's message.

wealth principles, or, when he was (as it were) compelled to lay them aside, of insisting on rigorous limitations, to prevent any overtures from the council, who were almost entirely presbyterian, before the meeting of parliament, which would have considerably embarrassed the king's affairs.* The elections meantime had taken a course which the faction now in power by no means regarded with satisfaction. Though the late house of commons had passed a resolution that no person who had assisted in any war against the parliament since 1642, unless he should since have manifested his good affection towards it, should be capable of being elected; yet this, even if it had been regarded, as it was not, by the people, would have been a feeble barrier against the royalist party, composed in a great measure of young men who had grown up under the commonwealth, and of those who, living in the parliamentary counties during the civil war, had paid a reluctant obedience to its power.† The tide ran so strongly for the king's friends, that it was as much as the presbyterians could effect, with the weight of government in their

* "Monk came this day (about the first week of April) to the council, and assured them that, notwithstanding all the appearance of a general desire of kingly government, yet it was in no wise his sense, and that he would spend the last drop of his blood to maintain the contrary." Extract of a letter from Thurloe to Downing. *Carte's Letters*, ii. 322. "The council of state are utterly ignorant of Monk's treating with the king; and surely, as the present temper of the council of state is now, and may possibly be also of the parliament, by reason of the presbyterian influence upon both, I should think the first chapman will not be the worst, who perhaps will not offer so good a rate in conjunction with the company, as he may give to engross the commodity." *Clar*, 722. April 6. This sentence is a clue to all the intrigue. It is said soon afterwards (p. 726., April 11.) that the presbyterians were much troubled at the course of the elections, which made some of the council of state again address themselves to Monk for his consent to propositions they would send to the king; but he absolutely refused, and said he would leave

all to a free parliament, as he had promised the nation. Yet, though the elections went as well as the royalists could reasonably expect, Hyde was dissatisfied that the king was not restored without the intervention of the new parliament; and this may have been one reason of his spleen against Monk. P. 726. 731.

† A proposed resolution, that those who had been on the king's side, or *their sons*, should be disabled from voting at elections, was lost by 93 to 56, the last effort of the expiring long parliament. *Journals*, 13th March. The electors did not think themselves bound by this arbitrary exclusion of the cavaliers from parliament; several of whom (though not perhaps a great number within the terms of the resolution) were returned. Massey however, having gone down to stand for Gloucester, was put under arrest by order of the council of state. *Thurloe*, 887. Clarendon, who was himself not insensible to that kind of superstition, had fancied that any thing done at Gloucester by Massey for the king's service would make a powerful impression on the people.

hands, to obtain about an equality of strength with the cavaliers in the convention parliament.*

It has been a frequent reproach to the conductors of this great revolution, that the king was restored without those terms and limitations which might secure the nation against his abuse of their confidence; and this, not only by contemporaries who had suffered by the political and religious changes consequent on the restoration, or those who, in after times, have written with some prepossession against the English church and constitutional monarchy, but by the most temperate and reasonable men; so that it has become almost regular to cast on the convention parliament, and more especially on Monk, the imputation of having abandoned public liberty, and brought on, by their inconsiderate loyalty or self-interested treachery, the misgovernment of the two last Stuarts, and the necessity of their ultimate expulsion. But, as this is a very material part of our history, and those who pronounce upon it have not always a very distinct notion either of what was or what could have been done, it may be worth while to consider the matter somewhat more analytically; confining myself, it is to be observed, in the present chapter, to what took place before the king's personal assumption of the government on the 29th of May, 1660. The subsequent proceedings of the convention parliament fall within another period.

We may remark, in the first place, that the unconditional restoration of Charles the Second is sometimes spoken of in too hyperbolic language, as if he had come in as a sort of conqueror, with the laws and liberties of the people at his discretion. Yet he was restored to nothing but the bounded prerogatives of a king of England; bounded by every ancient and modern statute, including those of the long parliament, which had been enacted for the subjects' security. If it be true, as I have elsewhere observed, that the long parliament, in the year 1641, had established, in its most essential parts, our existing constitution, it can hardly be maintained that fresh limitations and additional securities were absolutely in-

* It is a curious proof of the state of public sentiment that, though Monk himself wrote a letter to the electors of Bridgenorth, recommending Thurloe, the

cavalier party was so powerful, that his friends did not even produce the letter, lest it should be treated with neglect. Thurloe, vii. 895.

dispensable, before the most fundamental of all its principles, the government by king, lords, and commons, could be permitted to take its regular course. Those who so vehemently reprobate the want of conditions at the restoration would do well to point out what conditions should have been imposed, and what mischiefs they can probably trace from their omission.* They should be able also to prove that, in the circumstances of the time, it was quite as feasible and convenient to make certain secure and obligatory provisions the terms of the king's restoration, as seems to be taken for granted.

The chief presbyterians appear to have considered the treaty of Newport, if not as fit to be renewed in every article, yet at least as the basis of the compact into which they were to enter with Charles the Second.† But were the concessions wrested in this treaty from his father, in the hour of peril and necessity, fit to become the permanent rules of the English constitution? Turn to the articles prescribed by the long parliament in that negotiation. Not to mention the establishment of a rigorous presbytery in the church, they had insisted on the exclusive command of all forces by land and sea for twenty years, with the sole power of levying and expending the monies necessary for their support; on the nomination of the principal officers of state and of the judges during the same period; and on the exclusion of the king's adherents from all trust or political power. Admit even that the insincerity and arbitrary principles of Charles the First had rendered necessary such extraordinary precautions, was it to be supposed that the executive power should not revert to his successor? Better it were, beyond comparison, to maintain the perpetual exclusion of his family than to mock them with such a titular crown, the certain cause of discontent and intrigue, and to mingle premature distrust with their professions of

Plan of
reviving the
treaty of
Newport
inexpedient.

* "To the king's coming in without conditions may be well imputed all the errors of his reign." Thus says Burnet. The great political error, if so it should be termed, of his reign, was a conspiracy with the king of France and some wicked advisers at home, to subvert the religion and liberty of his subjects; and it is dif-

ficult to perceive by what conditions this secret intrigue could have been prevented.

† Clarendon Papers, p. 729. They resolved to send the articles of that treaty to the king, leaving out the preface. This was about the middle of April.

affection. There was undoubtedly much to apprehend from the king's restoration ; but it might be expected that a steady regard for public liberty in the parliament and the nation would obviate that danger without any momentous change of the constitution ; or that, if such a sentiment should prove unhappily too weak, no guarantees of treaties or statutes would afford a genuine security.

If, however, we were to be convinced that the restoration was effected without a sufficient safeguard against the future abuses of royal power, we must still allow, on looking attentively at the circumstances, that there were very great difficulties in the way of any stipulations for that purpose. It must be evident that any formal treaty between Charles and the English government, as it stood in April, 1660, was inconsistent with their common principle. That government was, by its own declarations, only *de facto*, only temporary ; the return of the secluded members to their seats, and the votes they subsequently passed, held forth to the people that every thing done since the force put on the house in December, 1648, was by an usurpation ; the restoration of the ancient monarchy was implied in all recent measures, and was considered as out of all doubt by the whole kingdom. But between a king of England and his subjects no treaty, as such, could be binding ; there was no possibility of entering into stipulations with Charles, though in exile, to which a court of justice would pay the slightest attention, except by means of acts of parliament. It was doubtless possible that the council of state might have entered into a secret agreement with him on certain terms, to be incorporated afterwards into bills, as at the treaty of Newport. But at that treaty his father, though in prison, was the acknowledged sovereign of England ; and it is manifest that the king's recognition must precede the enactment of any law. It is equally obvious that the contracting parties would no longer be the same, and that the conditions that seemed indispensable to the council of state, might not meet with the approbation of parliament. It might occur to an impatient people, that the former were not invested with such legal or permanent authority as could give them any pretext for bargaining with the king, even in behalf of public liberty.

Difficulty
of framing
conditions.

But, if the council of state, or even the parliament on its first meeting, had resolved to tender any hard propositions to the king, as the terms, if not of his recognition, yet of his being permitted to exercise the royal functions, was there not a possibility that he might demur about their acceptance, that a negotiation might ensue to procure some abatement, that, in the interchange of couriers between London and Brussels, some weeks at least might be whiled away? Clarendon, we are sure, inflexible and uncompromising as to his master's honour, would have dissuaded such enormous sacrifices as had been exacted from the late king. And during this delay, while no legal authority would have subsisted, so that no officer could have collected the taxes or executed process without liability to punishment, in what a precarious state would the parliament have stood! On the one hand, the nation, almost maddened with the intoxication of reviving loyalty, and rather prone to cast at the king's feet the privileges and liberties it possessed than to demand fresh security for them, might insist upon his immediate return, and impair the authority of parliament. On the other hand, the army, desperately irreconcilable to the name of Stuart, and sullenly resenting the hypocrisy that had deluded them, though they knew no longer where to seek a leader, were accessible to the furious commonwealth's men, who, rushing as it were with lighted torches along their ranks, endeavoured to rekindle a fanaticism that had not quite consumed its fuel.* The escape of Lambert from the Tower had struck a panic into all the kingdom; some such accident might again furnish a rallying point for the disaffected, and plunge the country into an unfathomable abyss of confusion. Hence the motion of sir Matthew Hale, in the convention parliament, to appoint a committee who should draw up propositions to be sent over for the king's acceptance, does not appear to me well timed and expedient; nor can I censure Monk for having objected to it.† The business in hand required greater despatch. If the king's restoration was an essential

* Life of Clarendon, p. 10.

† "This," says Burnet somewhat invidiously, "was the great service that Monk did; for as to the restoration itself,

the tide ran so strong, that he only went into it dexterously enough to get much praise and great rewards." P. 123.

blessing, it was not to be thrown away in the debates of a committee. A wary, scrupulous, conscientious English lawyer, like Hale, is always wanting in the rapidity and decision necessary for revolutions, though he may be highly useful in preventing them from going too far.

It is, I confess, more probable that the king would have accepted almost any conditions tendered to him; such at least would have been the advice of most of his counsellors; and his own conduct in Scotland was sufficient to show how little any sense of honour or dignity would have stood in his way. But on what grounds did his English friends, nay some of the presbyterians themselves, advise his submission to the dictates of that party? It was in the expectation that the next free parliament, summoned by his own writ, would undo all this work of stipulation, and restore him to an unfettered prerogative. And this expectation there was every ground, from the temper of the nation, to entertain. Unless the convention parliament had bargained for its own perpetuity, or the privy council had been made immovable, or a military force, independent of the crown, had been kept up to overawe the people (all of them most unconstitutional and abominable usurpations), there was no possibility of maintaining the conditions, whatever they might have been, from the want of which so much mischief is fancied to have sprung. Evils did take place, dangers did arise, the liberties of England were once more impaired; but these are far less to be ascribed to the actors in the restoration than to the next parliament, and to the nation who chose it.

I must once more request the reader to take notice that I am not here concerned with the proceedings of the convention parliament after the king's return to England, which, in some respects, appear to me censurable; but discussing the question, whether they were guilty of any fault in not tendering bills of limitation on the prerogative, as preliminary conditions of his restoration to the exercise of his lawful authority. And it will be found, upon a review of what took place in that interregnum from their meeting together on the 25th of April, 1660, to Charles's arrival in London on the 29th of May, that they were less unmindful than has been

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sometimes supposed, of provisions to secure the kingdom against the perils which had seemed to threaten it in the restoration.

On the 25th of April, the commons met and elected Grimston, a moderate presbyterian, as their speaker, somewhat against the secret wish of the cavaliers, who, elated by their success in the elections, were beginning to aim at superiority, and to show a jealousy of their late allies.* On the same day, the doors of the house of lords were found open; and ten peers, all of whom had sat in 1648, took their places as if nothing more than a common adjournment had passed in the interval.† There was, however, a very delicate and embarrassing question, that had been much discussed in their private meetings. The object of these, as I have mentioned, was to impose terms on the king, and maintain the presbyterian ascendancy. But the peers of this party were far from numerous, and must be out-voted, if all the other lawful members of the house should be admitted to their privileges. Of these there were three classes. The first was of the peers who had come to their titles since the commencement of the civil war, and whom there was no colour of justice, nor any vote of the house, to exclude. To some of these accordingly they caused letters to be directed; and the others took their seats without objection on the 26th and 27th of April, on the latter of which days thirty-eight peers were present.‡ The second class was of those who had joined Charles the First, and had been excluded from sitting in the house by votes of the long parliament. These it had been in contemplation among the presbyterian junto to keep out; but the glaring inconsistency of such a measure with the popular sentiment, and the strength that the first class had given to the royalist interest among the aristocracy, prevented them from insisting on it. A third class consisted of those who had been created

* Grimston was proposed by Pierpoint, and conducted to the chair by him, Monk, and Hollis. Journals, Parl. Hist. The cavaliers complained that this was done before they came into the house, and that he was partial. Mordaunt to Hyde, April 27. Clarendon State Papers, 734.

† These were the earls of Manchester, Northumberland, Lincoln, Denbigh, and Suffolk; lords Say, Wharton, Hunsdon, Grey, Maynard. Lords' Journals, April 25.

‡ Clar. St. Pap., 734. Lords' Jour.

since the great seal was taken to York in 1642; some by the late king, others by the present in exile; and these, according to the fundamental principle of the parliamentary side, were incapable of sitting in the house. It was probably one of the conditions on which some meant to insist, conformably to the articles of the treaty of Newport, that the new peers should be perpetually incapable; or even that none should in future have the right of voting, without the concurrence of both houses of parliament. An order was made therefore on May 4., that no lords created since 1642 should sit. This was vacated by a subsequent resolution of May 31.

A message was sent down to the commons on April 27., desiring a conference on the great affairs of the kingdom. This was the first time that word had been used for more than eleven years. But the commons, in returning an answer to this message, still employed the word nation. It was determined that the conference should take place on the ensuing Tuesday, the first of May.* In this conference, there can be no doubt that the question of further securities against the power of the crown would have been discussed. But Monk, whether from conviction of their inexpedience or to atone for his ambiguous delay, had determined to prevent any encroachment on the prerogative. He caused the king's letter to the council of state, and to the two houses of parliament, to be delivered on that very day. A burst of enthusiastic joy testified their long repressed wishes; and,

* "It was this day (April 27.) moved in the house of commons to call in the king; but it was deferred till Tuesday next by the king's friends' consent, and then it is generally believed something will be done in it. The calling in of the king is now not doubted; but there is a party among the old secluded members, that would have the treaty grounded upon the Isle of Wight propositions; and the old lords are thought generally of that design. But it is believed the house of commons will use the king more gently. The general hath been highly complimented by both houses, and, without doubt, the giving the king easy or hard conditions dependeth totally upon him; for, if he appear for the king,

the affections of the people are so high for him, that no other authority can oppose him." H. Coventry to Marquis of Ormond. Carte's Letters, ii. 328. Mordaunt confirms this. Those who moved for the king were colonel King and Mr. Finch, both decided cavaliers. It must have been postponed by the policy of Monk. What could Clarendon mean by saying (*History of Rebellion*, vii. 478.) that "none had the courage, how loyal soever their wishes were, to mention his majesty?" This strange way of speaking has misled Hume, who copies it. The king was as generally talked of as if he were on the throne.

when the conference took place, the earl of Manchester was instructed to let the commons know, that the lords “do own and declare that, according to the ancient and fundamental laws of this kingdom, the government is and ought to be by king, lords, and commons.” On the same day, the commons resolved to agree in this vote; and appointed a committee to report what pretended acts and ordinances were inconsistent with it.*

It is however so far from being true that this convention gave itself up to a blind confidence in the king, that their journals during the month of May bear witness to a considerable activity in furthering provisions which the circumstances appeared to require. They appointed a committee, on May 3d, to consider of the king’s letter and declaration, both holding forth, it will be remembered, all promises of indemnity, and every thing that could tranquillize apprehension, and to propose bills accordingly, especially for taking away military tenures. One bill was brought into the house, to secure lands purchased from the trustees of the late parliament; another, to establish ministers already settled in benefices; a third, for a general indemnity; a fourth, to take away tenures in chivalry and wardship; a fifth, to make void all grants of honour or estate, made by the late or present king since May, 1642. Finally, on the very 29th of May, we find a bill read twice and committed, for the confirmation of privilege of parliament, Magna Charta, the petition of right, and other great constitutional statutes.† These measures, though some of them were never completed, proved that the restoration was not carried forward with so thoughtless a precipitancy and neglect of liberty as has been asserted.

There was undoubtedly one very important matter of past controversy, which they may seem to have avoided, the power over the militia. They silently gave up that momentous question. Yet it was become, in a practical sense, incomparably more important that the representatives of the commons should retain a control over the

except in respect of the militia.

* Lords’ and Commons’ Journals. Parl. Hist. iv. 24.

† Commons’ Journals.

land forces of the nation than it had been at the commencement of the controversy. War and usurpation had sown the dragon's teeth in our fields; and, instead of the peaceable trained bands of former ages, the citizen soldiers who could not be marched beyond their counties, we had a veteran army accustomed to tread upon the civil authority at the bidding of their superiors, and used alike to govern and obey. It seemed prodigiously dangerous to give up this weapon into the hands of our new sovereign. The experience of other countries as well as our own demonstrated that the public liberty could never be secure, if a large standing army should be kept on foot, or any standing army without consent of parliament. But this salutary restriction the convention parliament did not think fit to propose; and in this respect I certainly consider them as having stopped short of adequate security. It is probable that the necessity of humouring Monk, whom it was their first vote to constitute general of all the forces in the three kingdoms *, with the hope, which proved not vain, that the king himself would disband the present army whereon he could so little rely, prevented any endeavour to establish the control of parliament over the military power, till it was too late to withstand the violence of the cavaliers, who considered the absolute prerogative of the crown in that point the most fundamental article of their creed.

Of Monk himself it may, I think, be said that, if his Conduct of Monk. conduct in this revolution was not that of a high-minded patriot, it did not deserve all the reproach that has been so frequently thrown on it. No one can, without forfeiting all pretensions to have his own word believed, excuse his incomparable deceit and perjury; a master-piece, no doubt, as it ought to be reckoned by those who set at nought the obligations of veracity in public transactions, of that wisdom which is not from above. But, in seconding the public wish for the king's restoration, a step which few

* Lords' Journals, May 2. Upon the same day, the house went into consideration how to settle the militia of this kingdom. A committee of twelve lords was appointed for this purpose, and the commons were requested to appoint a proportionate number to join therein. But no bill was brought in till after the king's return.

perhaps can be so much in love with fanatical and tyrannous usurpation as to condemn, he seems to have used what influence he possessed, an influence by no means commanding, to render the new settlement as little injurious as possible to public and private interests. If he frustrated the scheme of throwing the executive authority into the hands of a presbyterian oligarchy, I, for one, can see no great cause for censure; nor is it quite reasonable to expect that a soldier of fortune, inured to the exercise of arbitrary power, and exempt from the prevailing religious fanaticism which must be felt or despised, should have partaken a fervent zeal for liberty, as little congenial to his temperament as it was to his profession. He certainly did not satisfy the king even in his first promises of support, when he advised an absolute indemnity, and the preservation of actual interests in the lands of the crown and church. In the first debates on the bill of indemnity, when the case of the regicides came into discussion, he pressed for the smallest number of exceptions from pardon. And, though his conduct after the king's return displayed his accustomed prudence, it is evident that, if he had retained great influence in the council, which he assuredly did not, he would have maintained as much as possible of the existing settlement in the church. The deepest stain on his memory is the production of Argyle's private letters on his trial in Scotland; nor indeed can Monk be regarded, upon the whole, as an estimable man, though his prudence and success may entitle him, in the common acceptance of the word, to be reckoned a great one.

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